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STATUTORY INSTRUMENTS

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**2004 No. 433**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The General Medical Services Transitional  
and Consequential Provisions Order 2004**

*Made* - - - - 23rd February 2004  
*Laid before Parliament* 25th February 2004  
*Coming into force* - - 17th March 2004

The Secretary of State for Health, in exercise of the powers conferred upon him by sections 176, 195, 200 and 201 of the Health and Social Care (Community Health and Standards) Act 2003<sup>(1)</sup> and of all other powers enabling him in that behalf, hereby makes the following Order:

**PART 1**

**GENERAL**

**Citation, commencement, application and interpretation**

**1.**—(1) This Order may be cited as the General Medical Services Transitional and Consequential Provisions Order 2004 and shall come into force on 17th March 2004.

(2) This Order applies only in relation to England.

(3) In this Order—

“the 1983 Act” means the Medical Act 1983<sup>(2)</sup>;

“the 1990 Act” means the National Health Service and Community Care Act 1990<sup>(3)</sup>;

“the 1992 Regulations” means the National Health Service (General Medical Services) Regulations 1992<sup>(4)</sup>;

“the 2004 Regulations” means the National Health Service (General Medical Services Contracts) Regulations 2004<sup>(5)</sup>;

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(1) [2003 c. 43](#). The powers conferred by sections 176, 200 and 201 are conferred on the appropriate authority. See sections 176(6), 200(2) and 201(2) which provide that, in relation to England, the appropriate authority is the Secretary of State.

(2) [1983 c. 54](#).

(3) [1990 c. 19](#).

(4) [S.I.1992/635](#).

(5) [S.I. 2004/291](#).

- “the Act” means the Health and Social Care (Community Health and Standards) Act 2003;
- “additional services” has the same meaning as in the 2004 Regulations;
- “bank holiday” means any day that is specified or proclaimed as a bank holiday pursuant to section 1 of the Banking and Financial Dealings Act 1971(6);
- “the Choice Regulations” means the National Health Service (Choice of Medical Practitioner) Regulations 1998(7);
- “contractor’s list of patients” means the list prepared and maintained by the Primary Care Trust under the term of a general medical services contract which gives effect to paragraph 14 of Schedule 6 to the 2004 Regulations or under the equivalent term of a default contract or of contractual arrangements made under article 15;
- “core hours” means the period beginning at 8am and ending at 6.30pm on any day from Monday to Friday except Good Friday, Christmas Day or bank holidays;
- “default contract” means a contract entered into under article 13 and “default contractor” shall be construed accordingly;
- “essential services” means the services described in regulation 15(3), (5), (6) and (8) of the 2004 Regulations;
- “FHSAA” means the Family Health Services Appeal Authority constituted under section 49S of the Act(8);
- “global sum” has the same meaning as in the Statement of Financial Entitlements;
- “immediate family member” has the same meaning as in the 2004 Regulations;
- “Local Medical Committee” means—
- (a) until 1st April 2004, a committee recognised under section 44 of the 1977 Act(9), and
  - (b) from that date, a committee recognised under section 45A of that Act(10);
- “medical list” means the list of medical practitioners undertaking to provide general medical services for persons in its area kept by a Primary Care Trust under regulations made under section 29(2)(a) of the 1977 Act(11);
- “medical performers list” means a list of medical practitioners prepared in accordance with regulations made under section 28X of the 1977 Act(12);
- “Medical Register” means the registers kept under section 2 of the 1983 Act(13);
- “out of hours period” means—
- (a) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day,
  - (b) the period between 6.30pm on Friday and 8am on the following Monday, and
  - (c) Good Friday, Christmas Day and bank holidays;

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(6) 1971 c. 80.

(7) S.I. 1998/668.

(8) Section 49S was inserted into the 1977 Act by section 27(1) of the Health and Social Care Act 2001 (c. 15) (“the 2001 Act”) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (“the 2002 Act”), Schedule 1, paragraph 18.

(9) Section 44 was amended by the Health and Social Security Act 1984 (c. 48), section 24 and Schedule 8, Part 1, the National Health Service and Community Care Act 1990 (c. 19), section 12(4), the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 32(a), the Health Act 1999 (c. 8), section 11, the 2001 Act, section 43(6) and Schedule 5, paragraph 5(7), the 2002 Act, section 5 and S.I. 2002/2861 and was repealed, in relation to Local Medical Committees, by the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (“the 2003 Act”), Schedule 11, paragraph 21.

(10) Section 45A was inserted into the 1977 Act by paragraph 23 of Schedule 1 to the 2003 Act.

(11) Section 29(2)(a) was substituted by the 2002 Act, Schedule 2, paragraph 3(3)(a).

(12) Section 28X was inserted into the 1977 Act by section 179(1) of the 2003 Act.

(13) Section 2 was amended by S.I. 1996/1591 and 2002/3135.

“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), or
  - (ii) in a general medical services contract as additional services funded under the global sum;

“practice premises” means the addresses specified in the contract as ones at which services are to be provided under the contract;

“registered patient” means—

- (a) a person who is recorded by the Primary Care Trust as being on the contractor’s list of patients, or
- (b) a person whom the contractor has accepted for inclusion on its list of patients, whether or not notification of that acceptance has been received by the Primary Care Trust and who has not been notified by the Primary Care Trust as having ceased to be on that list;

“relevant service” means—

- (a) whole-time service in the armed forces of the Crown in a national emergency as a volunteer or otherwise,
- (b) compulsory whole-time service in those forces, including service resulting from any reserve liability, or
- (c) any equivalent service by a person liable for compulsory whole-time service in those forces;

“Statement of Financial Entitlements” has the meaning given in article 35;

“temporary resident” means a person accepted by the contractor as a temporary resident under the term of a general medical services contract which gives effect to paragraph 16 of Schedule 6 to the 2004 Regulations, or the equivalent term of a default contract, and for whom the contractor’s responsibility has not been terminated in accordance with that term;

“vacancy” means a vacancy declared by a Primary Care Trust under regulation 13 of the 1992 Regulations<sup>(14)</sup>.

(4) In this Order, the use of the term “it” in relation to the contractor shall be deemed to include a reference to a contractor that is an individual medical practitioner or two or more individuals practising in partnership and related expressions shall be construed accordingly.

## PART 2

### ENTITLEMENT TO CONTRACTS

#### Entitlement to a general medical services contract

2. For the purposes of section 176(2) of the Act, the circumstances in which a Primary Care Trust must enter into a general medical services contract with a person who, on 31st March 2004, is providing services under section 29 of the 1977 Act (general medical services)<sup>(15)</sup> are those specified in articles 3 to 12.

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<sup>(14)</sup> Regulation 13 was substituted by S.I. 1998/2838 and amended by S.I. 2002/554 and 2469.

<sup>(15)</sup> Section 29 was amended by the Health Services Act 1980 (c. 53), section 7, the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 6, paragraph 2, the Medical Act 1983 (c. 54), Schedule 5, paragraph 16(a), the

### Entitlement to a general medical services contract as an individual medical practitioner

3.—(1) Subject to paragraphs (3) and (6) and articles 6 and 12, a Primary Care Trust must, if a person so wishes, enter into a general medical services contract with him as an individual medical practitioner if—

- (a) on 31st March 2004, or on the date on which the contract is to be signed, if earlier, he is included in the medical list of that Primary Care Trust by virtue of regulation 4(1)(a) of the 1992 Regulations<sup>(16)</sup> and has a list of patients under regulation 19 of those Regulations<sup>(17)</sup>;
- (b) on the date on which the contract is to be signed, he is practising as an individual medical practitioner and no other medical practitioner has been approved by the Primary Care Trust to be in partnership with him under regulation 18A or 18B of the 1992 Regulations<sup>(18)</sup>; and
- (c) in the case of a contract which is to be signed after 31st March 2004, he is, at the date on which the contract is to be signed, included in a medical performers list.

(2) A person shall be regarded as practising for the purposes of paragraph (1)(b) if he would have been so practising on the date in question except for the fact that on that date—

- (a) he is suspended from the Medical Register in the circumstances specified in paragraph (4) or from the Primary Care Trust's medical list or a medical performers list; or
- (b) the Primary Care Trust has in place for him temporary arrangements under regulation 25(6) of the 1992 Regulations<sup>(19)</sup> or contractual arrangements under article 15 which replace such temporary arrangements.

(3) Where a person is suspended from the Medical Register in the circumstances specified in paragraph (4), or suspended from its medical list or a medical performers list, a Primary Care Trust shall only be required under paragraph (1) to enter into a general medical services contract with him during the period of that suspension if it is satisfied that—

- (a) in the case of a suspension on grounds relating to the practitioner's physical or mental health, he is able to provide (but not perform) services under the contract;
- (b) having regard to the grounds of suspension, the letting of the contract would not—
  - (i) put at risk the safety of the contractor's patients, or
  - (ii) be prejudicial to the efficiency of the provision of primary medical services in the area of the Primary Care Trust; and
- (c) the practitioner has in place adequate arrangements for the provision of services under the contract during the period of his suspension.

(4) The circumstances referred to in paragraphs (2)(a) and (3) are suspension—

- (a) by the Committee on Professional Performance of the General Medical Council under section 36A (professional performance) or 38(1) (power to order immediate suspension after a finding of professional misconduct or unfitness to practise) of the 1983 Act or

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Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 18, the Medical (Professional Performance) Act 1995 (c. 51), Schedule, paragraph 28(b), the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 8, the 2001 Act, sections 17 and 23, the 2002 Act, Schedule 2, paragraph 3 and Schedule 8, paragraph 2 and S.I. 1985/39 and 2002/3135. It is to be repealed from 1st April 2004 by section 175(2) of the 2003 Act.

<sup>(16)</sup> Regulation 4(1)(a) was amended by S.I. 1998/682 and 2838 and 2002/2469.

<sup>(17)</sup> Regulation 19 was amended by S.I. 1994/633, 1998/682 and 2002/2469.

<sup>(18)</sup> Regulations 18A and 18B were substituted by S.I. 1998/2838 and amended by S.I. 2002/554 and 2469.

<sup>(19)</sup> Regulation 25(6) was amended by S.I. 2002/2469.

under rules made under paragraph 5A(3) of Schedule 4 (proceedings before professional conduct, health and preliminary proceedings committees) to that Act<sup>(20)</sup>;

- (b) by the Health Committee of the General Medical Council under section 37 (unfitness to practise through illness etc.)<sup>(21)</sup> or 38(1) of the 1983 Act; or
- (c) under section 41A (interim orders) of the 1983 Act<sup>(22)</sup>.

(5) In relation to any suspension which occurs after the coming into force of articles 13 and 14 of the Medical Act 1983 (Amendment) Order 2002<sup>(23)</sup>, sub-paragraphs (a) and (b) of paragraph (4) shall be read as if they referred to suspension by a Fitness to Practise Panel constituted under Part 3 of Schedule 1 to the 1983 Act in a case relating to deficient professional performance or adverse physical or mental health under—

- (a) section 35D (functions of a fitness to practise panel) of the 1983 Act;
- (b) section 38(1) (power to order immediate suspension etc after a finding of impairment of fitness to practise) of that Act; or
- (c) rules made under paragraph 5A(3) of Schedule 4 (proceedings before the investigation committee, interim orders panels, and fitness to practise panels) to that Act.

(6) A Primary Care Trust shall not be required under paragraph (1) to enter into a general medical services contract with a person for whom it has in place—

- (a) temporary arrangements under regulation 25(6) of the 1992 Regulations; or
- (b) contractual arrangements under article 15 which replace such temporary arrangements,

for so long as those arrangements continue, unless it is satisfied that, at the time the contract is to be signed, he is able to provide (but not perform) services under the contract.

(7) Whenever a Primary Care Trust is considering refusing to enter into a general medical services contract under paragraph (3) or (6), it shall consult the Local Medical Committee (if any) for its area before making its decision and, in a case where it is considering refusal under paragraph (6), it shall have regard to any written report made to it by the Local Medical Committee under regulation 25(9) of the 1992 Regulations<sup>(24)</sup>.

(8) Where a Primary Care Trust is refusing to enter into a general medical services contract pursuant to paragraph (3) or (6) it shall notify the prospective contractor in writing of its decision, its reasons for that decision and of the practitioner's right of appeal under article 4.

### **Appeal against refusal of a contract under article 3**

4.—(1) A person who has been notified by a Primary Care Trust under article 3(8) of its refusal to enter into a general medical services contract may appeal to the Secretary of State by giving notice in writing to the Secretary of State within a period of 28 days beginning on the day that the Primary Care Trust notified him of the refusal.

- (2) A notice of appeal under paragraph (1) shall include—
  - (a) the names and addresses of the parties to the dispute;
  - (b) a copy of the notification received from the Primary Care Trust under article 3(8); and
  - (c) a brief statement of the grounds for appeal.

<sup>(20)</sup> Section 36A was inserted by the Medical (Professional Performance) Act 1995 (c. 51), section 1 and amended by S.I. 2000/1803; section 38(1) was amended by paragraph 7 of the Schedule to that Act; paragraph 5A was inserted by paragraph 20 of the Schedule to that Act. All three provisions are prospectively substituted by S.I. 2002/3135.

<sup>(21)</sup> Section 37 was amended by the Medical (Professional Performance) Act 1995 (c. 51), Schedule, paragraph 6(2) to (4). It is prospectively substituted by S.I. 2002/3135.

<sup>(22)</sup> Section 41A was inserted by S.I. 2000/1803. It is prospectively substituted by S.I. 2002/3135.

<sup>(23)</sup> S.I. 2002/3135. This Order substitutes the sections referred to in article 3(5).

<sup>(24)</sup> Regulation 25(9) was amended by S.I. 2002/2469.

(3) The Secretary of State may determine the appeal himself or, if he considers it appropriate, appoint a person or persons to consider and determine it.

(4) Before reaching a decision as to who should determine the dispute, the Secretary of State shall, within the period of 7 days beginning with the date on which the notice of appeal was sent to him, send a written request to the parties to make in writing, within a specified period, any representations which they may wish to make about the matter.

(5) The Secretary of State shall give, with the notice given under paragraph (4), to the Primary Care Trust which is a party to the appeal, a copy of the notice of appeal.

(6) The Secretary of State shall give a copy of any representations received from a party to the other party and shall in each case request (in writing) a party to whom a copy of the representations is given to make within a specified period any written observations which it wishes to make on those representations.

(7) Following receipt of any representations from the parties or, if earlier, at the end of the period for making such representations specified in the request sent under paragraph (4) or (6), the Secretary of State shall, if he decides to appoint a person or persons to consider and determine the dispute—

- (a) inform the parties in writing of the name of the person or persons whom he has appointed; and
- (b) pass to the person or persons so appointed any documents received from the parties under or pursuant to paragraph (2), (4) or (6).

(8) For the purpose of assisting him in his consideration of the matter, the adjudicator may—

- (a) invite representatives of the parties to appear before him to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which he wishes them to give special consideration; or
- (b) consult other persons whose expertise he considers will assist him in his consideration of the matter.

(9) Where the adjudicator consults another person under paragraph (8)(b), he shall notify the parties accordingly in writing and, where he considers that the interests of any party might be substantially affected by the result of the consultation, he shall give to the parties such opportunity as he considers reasonable in the circumstances to make observations on those results.

(10) In considering the matter, the adjudicator shall consider—

- (a) any written representations made in response to a request under paragraph (4), but only if they are made within the specified period;
- (b) any written observations made in response to a request under paragraph (6), but only if they are made within the specified period;
- (c) any oral representations made in response to an invitation under paragraph (8)(a);
- (d) the results of any consultation under paragraph (8)(b); and
- (e) any observations made in accordance with an opportunity given under paragraph (9).

(11) In this article, “specified period” means such period as the Secretary of State shall specify in the request, being not less than 2, nor more than 4, weeks beginning with the date on which the notice referred to is given, but the Secretary of State may, if he considers that there is good reason for doing so, extend any such period (even after it has expired) and, where he does so, a reference in this article to the specified period is to the period as so extended.

(12) The adjudicator may, when determining the appeal require the Primary Care Trust to enter into a general medical services contract with the prospective contractor on terms to be agreed between the parties or, where necessary, determined under the pre-contract dispute resolution procedure in section 4(4) of the 1990 Act (NHS contracts) or under regulation 9 of the 2004

Regulations (whichever is applicable) but may not require the prospective contractor to proceed with the contract.

(13) The adjudicator shall record his determination in writing and shall give notice of the determination (including the record of the reasons) to the parties.

(14) The determination of the adjudicator shall be binding upon the parties.

(15) Subject to the other provisions of this article, the adjudicator shall have wide discretion in determining the procedure of the appeal to ensure the just, expeditious, economical and final determination of the dispute.

(16) In this article, “adjudicator” means the Secretary of State or a person or persons appointed by him under this article or under paragraph 101(5) of Schedule 6 to the 2004 Regulations.

### **Entitlement to a contract as one of two or more individuals practising in partnership**

5. Subject to article 6, a Primary Care Trust must, if a person so wishes, enter into a general medical services contract with him as one of two or more individuals practising in partnership if—

- (a) on 31st March 2004, or on the date on which the contract is to be signed, if earlier, he is—
  - (i) included in the medical list of the Primary Care Trust by virtue of regulation 4(1)(a) of the 1992 Regulations, or
  - (ii) a medical practitioner who has been approved by the Primary Care Trust under regulation 18A or 18B of the 1992 Regulations but whose name has not yet been entered on the medical list of that Primary Care Trust in accordance with regulation 18F(1) of those Regulations<sup>(25)</sup>;
- (b) except in the case of a person who falls within paragraph (a)(ii), he is, on the date on which the contract is to be signed, providing general medical services under section 29 of the 1977 Act or services under a default contract —
  - (i) in partnership with one or more other persons who meet the requirements in paragraph (a)(i), or
  - (ii) as an individual medical practitioner with whom another medical practitioner has been approved to be in partnership under regulation 18A or 18B of the 1992 Regulations; and
- (c) he wishes to enter into a contract as an individual practising in partnership with one or more medical practitioners who meet the requirements in paragraph (a)(i) and with whom he was on 31st March 2004, or is on the date on which the contract is to be signed, if earlier, practising in partnership or whose nomination, in relation to the partnership, has been approved by the Primary Care Trust under regulations 18A or 18B of the 1992 Regulations.

### **Duration of entitlement to a general medical services contract**

6.—(1) Subject to paragraphs (2) to (5), a person who is entitled to enter into a general medical services contract under articles 3 or 5 and who has not entered into such a contract on or before 31st March 2004, shall only continue to be so entitled if —

- (a) he has entered into a default contract with the Primary Care Trust and article 7 does not apply;
- (b) in the case of a person who is entitled to a contract under article 5, he has remained a party to that default contract up to the date of signing of the general medical services contract; and

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(25) Regulation 18F(1) was substituted by S.I. 1998/2838 and amended by S.I. 2001/3742 and 2002/554 and 2469.

(c) he, or in the case of a person practising in partnership, a partner or partners of his, has or have signed the general medical services contract—

(i) on or before 30th September 2004, or

(ii) in a case where the default contract has been extended pursuant to article 14(2), within the period of 28 days from the date on which the parties were notified of determination of the dispute relating to the default contract or, as the case may be, relating to the terms of the general medical services contract or that dispute was withdrawn,

unless article 11 applies.

(2) Where a person has been refused a general medical services contract because the Primary Care Trust is not satisfied as to the matters specified in article 3(3), that person shall, subject to articles 7 and 12, only continue to be entitled to enter into such a contract (whether following a default contract or not) until—

(a) the end of the period of six weeks after the suspension which gave rise to that refusal has ended other than in removal from the Medical Register or a medical performers list; or

(b) in a case where either party has, before the end of the period of six weeks referred to in subparagraph (a), referred the terms of the general medical services contract to the Secretary of State to consider and determine under section 4(4) of the 1990 Act or regulation 9 of the 2004 Regulations but that dispute has not been determined or withdrawn, the end of the period of 28 days from the date on which the parties were notified of the determination of that dispute or the dispute was withdrawn,

unless article 11 applies.

(3) Where a person has been refused a general medical services contract because the Primary Care Trust is not satisfied as to the matter specified in article 3(6), and, before 31st March 2005, the Primary Care Trust is satisfied, after consultation with the Local Medical Committee, that he is able to provide services under a general medical services contract, that person shall, subject to articles 7 and 12, only continue to be entitled to enter into such a contract (whether following a default contract or not) until—

(a) the end of the period of six weeks after the date on which the Primary Care Trust was so satisfied; or

(b) in a case where either party has, before the end of the period of six weeks referred to in subparagraph (a), referred the terms of the general medical services contract to the Secretary of State to consider and determine under section 4(4) of the 1990 Act or regulation 9 of the 2004 Regulations but that dispute has not been determined or withdrawn, the end of the period of 28 days from the date on which the parties were notified of the determination of that dispute or the dispute was withdrawn,

unless article 11 applies.

(4) Where a person has been refused a general medical services contract because the Primary Care Trust is not satisfied as to the matter specified in article 3(6), and paragraph (3) does not apply, that person shall, subject to article 12, only continue to be entitled to enter into such a contract until 31st March 2005, unless article 11 applies.

(5) Where a person who is entitled to enter into a general medical services contract under article 3(1) has been unable to do so before 30th September 2004 (whether following a default contract or not) because he is performing relevant service, his entitlement shall, subject to articles 7 and 12, continue until —

(a) the end of the period of 6 weeks after the date on which he ceased to perform relevant service; or



- (b) in a case where either party has, before the end of the period of six weeks referred to in subparagraph (a), referred the terms of the general medical services contract to the Secretary of State to consider and determine under section 4(4) of the 1990 Act or regulation 9 of the 2004 Regulations but that dispute has not been determined or withdrawn, the end of the period of 28 days from the date on which the parties were notified of the determination of that dispute or the dispute was withdrawn,

unless article 11 applies.

(6) Nothing in articles 3 and 5 or this article shall require a Primary Care Trust to enter into a general medical services contract with any person (whether as an individual or as a member of a partnership) on more than one occasion.

### **Effect of termination of a default contract on entitlement to enter into a general medical services contract under articles 3 or 5**

7.—(1) Any entitlement which a person may have under articles 3 or 5 to enter into a general medical services contract with a Primary Care Trust after 31st March 2004 shall be extinguished if any default contract with that Primary Care Trust to which he was a party (whether as an individual medical practitioner or as one of two or more individuals practising in partnership) has been terminated other than in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that the default contract has been terminated by agreement between the parties in order to enable those parties to enter into a general medical services contract.

(3) Where—

- (a) a person has lost his entitlement to enter into a general medical services contract under paragraph (1);
- (b) the default contractor has, within 28 days of the date of the notice of termination served on him by the Primary Care Trust, referred the termination of the default contract to the Secretary of State to consider and determine under the dispute resolution procedure contained in the default contract; and
- (c) the Secretary of State has determined that the Primary Care Trust should not have terminated the default contract,

that person's entitlement to enter into a general medical services contract shall be restored as if the default contract had not been terminated.

(4) A person to whom paragraph (3) applies shall be entitled to exercise his entitlement to enter into a general medical services contract until—

- (a) the end of the period of 6 weeks after the date on which he was notified of the Secretary of State's determination that the Primary Care Trust should not have terminated the default contract; or
- (b) in a case where either party has, before the end of the period of six weeks referred to in subparagraph (a), referred the terms of the general medical services contract to the Secretary of State to consider and determine under section 4(4) of the 1990 Act or regulation 9 of the 2004 Regulations but that dispute has not been determined or withdrawn, the end of the period of 28 days from the date on which the parties were notified of the determination of that dispute or the dispute was withdrawn,

unless article 11 applies.

### **Entitlement to a general medical services contract of persons nominated under regulation 18C of the 1992 Regulations**

8.—(1) Where, on 31st March 2004, a Primary Care Trust has nominated a medical practitioner for a vacancy under regulation 18C of the 1992 Regulations but has not yet entered his name on its medical list in accordance with regulation 18F(1) of those Regulations, that person shall, unless a medical practitioner who was not nominated for that vacancy makes a successful appeal under article 9—

- (a) be added to the medical performers list of the Primary Care Trust, unless he is already on the medical performers list of another Primary Care Trust and is not withdrawing from that list; and
- (b) subject to paragraph (2), be entitled to enter into a general medical services contract as an individual medical practitioner from—
  - (i) 31st March 2004,
  - (ii) expiry of the period for bringing an appeal pursuant to article 9, or
  - (iii) final determination or withdrawal of any appeal dealt with under article 9,
 whichever is the later.

(2) A person who is entitled to enter into a general medical services contract under paragraph (1) shall, subject to article 12, only continue to be so entitled—

- (a) until 30th June 2004; or
- (b) in a case where an appeal falls to be dealt with under article 9, until the end of the period of six weeks after the final determination or withdrawal of that appeal,

unless article 11 applies.

### **Appeals under regulations 18G and 18GG of the 1992 Regulations**

9.—(1) Where, on 31st March 2004, a Primary Care Trust has decided not to nominate an applicant for a vacancy under regulation 18C of the 1992 Regulations but it has not notified him in writing of its decision in accordance with paragraph (6) of that regulation, it shall so notify him within seven days of the date on which it made its decision and any right of appeal which the applicant would have had under regulation 18G or 18GG of the 1992 Regulations<sup>(26)</sup> shall continue as if those regulations had not been revoked.

(2) Where—

- (a) an applicant for a vacancy under regulation 18C of the 1992 Regulations—
  - (i) has been notified on or before 31st March 2004 that the Primary Care Trust has not nominated him for the vacancy, or
  - (ii) is so notified under paragraph (1); and
- (b) he has (or, under paragraph (1), is deemed to have) a right of appeal under regulations 18G or 18GG of the 1992 Regulations and the time for appealing has not yet expired,

the time for appealing shall continue as if those regulations had not been revoked.

(3) Where an unsuccessful applicant for a vacancy under regulation 18C of the 1992 Regulations—

- (a) has, on or before 31st March 2004, given notice of appeal to the FHSAA under regulation 18G or 18GG of the 1992 Regulations but that appeal has not yet been determined; or

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(26) Regulation 18G was substituted by S.I. 1998/2838 and amended by S.I. 2001/3742 and 2002/554 and 2469; regulation 18GG was inserted by S.I. 2001/3742 and amended by S.I. 2002/2469.

(b) has given notice of such an appeal after 31st March 2004 pursuant to paragraph (2), that appeal shall continue to be dealt with as if regulation 18G or, as the case may be, 18GG of the 1992 Regulations had not been revoked.

### **Entitlement to a general medical services contract following appeal under article 9**

**10.**—(1) Where, following an appeal dealt with under article 9, the FHSAA determines that a medical practitioner who was the only applicant for a vacancy under regulation 18C of the 1992 Regulations should have been nominated for that vacancy by the Primary Care Trust, that medical practitioner shall—

- (a) be added to the medical performers list of the Primary Care Trust, unless he is already on the medical performers list of another Primary Care Trust and is not withdrawing from that list; and
- (b) subject to paragraph (2), be entitled to enter into a general medical services contract with the Primary Care Trust as an individual medical practitioner.

(2) A person who is entitled to enter into a general medical services contract under paragraph (1) shall, subject to article 12, only continue to be so entitled until—

- (a) the end of the period of six weeks after receiving notice of the success of his appeal; or
- (b) in a case where either party has, before the end of the period of six weeks referred to in subparagraph (a), referred the terms of the general medical services contract to the Secretary of State to consider and determine under section 4(4) of the 1990 Act or regulation 9 of the 2004 Regulations but that dispute has not been determined or withdrawn, the end of the period of 28 days from the date on which the parties were notified of the determination of that dispute or the dispute was withdrawn,

unless article 11 applies.

### **Appeal against failure of a Primary Care Trust to enter into a general medical services contract**

**11.**—(1) This article applies where a medical practitioner has—

- (a) offered to enter into a general medical services contract under article 3, 5, 7, 8 or 10; and
- (b) as a result of a failure to act by the Primary Care Trust, been unable to sign such a contract before his entitlement to enter into such a contract expires pursuant to article 6, 7(4), 8(2) or 10(2).

(2) In a case to which this article applies, the prospective contractor must, if he wishes to enter into a general medical services contract, apply in writing to the Secretary of State within the period of 14 days of the expiry of his entitlement.

(3) An application under paragraph (2) shall specify—

- (a) the names and addresses of the parties to the dispute;
- (b) the grounds on which the applicant claims to be entitled to enter into a general medical services contract; and
- (c) the grounds for alleging default by the Primary Care Trust.

(4) Paragraphs (3) to (16) of article 4 shall apply to an application made under paragraph (2), subject to the modification that the references in paragraphs (4) and (5) of that article to a notice of appeal shall be read as references to an application under paragraph (2) of this article.

### **Effect of events taking place after 31st March 2004 on entitlement to enter into a general medical services contract**

12. Where an individual medical practitioner who is entitled to enter into a general medical services contract after 31st March 2004 under article 3, 8 or 10 has not entered into a default contract with a Primary Care Trust, his entitlement to enter into a general medical services contract with that Primary Care Trust shall be extinguished if, after 31st March 2004, he falls within paragraph 113(2) of Schedule 6 to the 2004 Regulations unless—

- (a) the Primary Care Trust is satisfied of the matters in sub-paragraphs (3) or (5) of that paragraph; or
- (b) he falls within sub-paragraph (2)(d) of that Schedule and the period specified in sub-paragraph (4) of that Schedule has not expired.

### **Entitlement to a contract under section 176(3) of the Act**

13.—(1) For the purposes of section 176(3) of the Act, the circumstances in which a Primary Care Trust must enter into a contract for the provision of medical services (in this Order referred to as a default contract) are those set out in this article.

(2) Subject to paragraphs (5) and (6), a Primary Care Trust must, if a person so wishes, enter into a default contract with him as an individual medical practitioner if he—

- (a) is, on 31st March 2004, entitled to enter into a general medical services contract under article 3(1); and
- (b) on or before 31st March 2004—
  - (i) has not entered into a general medical services contract with that Primary Care Trust as an individual medical practitioner or as one of two or more individuals practising in partnership, or
  - (ii) is not a legal and beneficial shareholder in a company which has entered into such a contract with that Primary Care Trust.

(3) A Primary Care Trust must, if a person so wishes, enter into a default contract with him as one of two or more individuals practising in partnership if he—

- (a) is, on 31st March 2004, entitled to enter into a general medical services contract under article 5; and
- (b) on or before 31st March 2004—
  - (i) has not entered into a general medical services contract with that Primary Care Trust as an individual medical practitioner or one of two or more individuals practising in partnership, or
  - (ii) is not a legal and beneficial shareholder in a company which has entered into such a contract with that Primary Care Trust.

(4) A contract entered into pursuant to paragraph (2) or (3) must—

- (a) commence on 1st April 2004 or within 14 days of determination of an appeal under paragraph (9); and
- (b) be on the terms set out, or agreed in accordance with any options set out, in the Default Contract 2004 dated 18th February 2004<sup>(27)</sup>.

(5) A Primary Care Trust shall only be required to enter into a default contract under paragraph (2) with a person for whom, on 31st March 2004 (or on the date on which the contract is to be signed if

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(27) The Default Contract 2004 is published by the Department of Health. It is available on their web site at [www.dh.gov.uk/PolicyAndGuidance/HumanResourcesAndTraining/ModernisingPay/GPContracts](http://www.dh.gov.uk/PolicyAndGuidance/HumanResourcesAndTraining/ModernisingPay/GPContracts) or a copy can be obtained by writing to the Department of Health, Room 3E46, Quarry House, Quarry Hill, Leeds LS2 7UE.

earlier) it has in place temporary arrangements under regulation 25(6) of the 1992 Regulations<sup>(28)</sup>, if it is satisfied, on the date that the contract is to be signed, that he is able to provide (but not perform) services under the contract.

(6) A Primary Care Trust shall only be required to enter into a default contract under paragraph (2) with a person who is, on 31st March 2004 (or on the date on which the contract is to be signed if earlier) suspended from the Medical Register in the circumstances specified in article 3(4) or suspended from its medical list, if it is satisfied, on the date that the contract is to be signed, that—

- (a) in the case of a suspension on grounds relating to the practitioner's physical or mental health, he is able to provide (but not perform) services under the contract;
- (b) having regard to the grounds of suspension, the letting of the contract would not—
  - (i) put at risk the safety of the contractor's patients, or
  - (ii) be prejudicial to the efficiency of the provision of primary medical services in the area of the Primary Care Trust; and
- (c) the practitioner has in place adequate arrangements for the provision of services under the contract during the period of his suspension.

(7) Whenever a Primary Care Trust is considering refusing to enter into a default contract under paragraph (5) or (6) it shall consult the Local Medical Committee (if any) for its area before making its decision.

(8) Where a Primary Care Trust is refusing to enter into a default contract pursuant to paragraph (5) or (6) it shall notify the prospective contractor in writing of its decision, its reasons for that decision and of the practitioner's right of appeal.

(9) Article 4 (appeal against refusal of a contract) shall apply to a refusal of a default contract by a Primary Care Trust under this article subject to the modifications that—

- (a) the references to notification under article 3(8) in paragraphs (1) and (2) shall be read as references to notification under paragraph (8) of this article; and
- (b) the reference to a general medical services contract in paragraph (12) shall be read as a reference to a default contract.

#### **Duration of a default contract**

**14.—**(1) A default contract entered into pursuant to article 13 shall not subsist beyond 30th September 2004, except in the circumstances specified in paragraphs (2) to (5).

(2) Where, on 30th September 2004—

- (a) any dispute arising out of or in connection with the default contract has been referred to the Secretary of State in accordance with the dispute resolution procedure contained in the contract but that dispute has not been determined or withdrawn; or
- (b) either party to the default contract has referred the terms of their proposed general medical services contract to the Secretary of State to consider and determine under section 4(4) of the 1990 Act or regulation 9 of the 2004 Regulations but that dispute has not been determined or withdrawn,

the default contract shall, unless it is terminated before that date in accordance with the terms of the default contract, continue until whichever is the later of the dates specified in paragraph (3).

(3) The dates referred to in paragraph (2) are—

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(28) Regulation 25(6) was amended by S.I. [2002/2469](#).

- (a) the end of the period of 28 days from the date on which the parties were notified of the determination of the dispute relating to the default contract or that dispute was withdrawn; or
  - (b) the end of the period of 28 days from the date on which the parties were notified of the determination of the dispute relating to the terms of the general medical services contract or that dispute was withdrawn.
- (4) Where the default contract is with an individual medical practitioner—
- (a) with whom the Primary Care Trust has refused to enter into a general medical services contract because it is not satisfied as to the matters specified in article 3(3) or (6); or
  - (b) who has been unable to enter into a general medical services contract on or before 30th September 2004 because he was performing relevant service,
- the default contract shall, unless it is terminated before that date in accordance with the terms of the contract, continue for as long as he remains entitled to enter into a general medical services contract under article 6.
- (5) Where the default contract is with a medical practitioner who has made an application under article 11 (appeal against failure of a Primary Care Trust to enter into a general medical services contract), the default contract shall, unless it is terminated before that date in accordance with the terms of the contract, continue until—
- (a) the end of the period of 14 days after that application has been determined; or
  - (b) if the application was successful and he intends to enter into a general medical services contract, the end of the day immediately before the day on which he is required to start providing services under the general medical services contract which he has entered into with the Primary Care Trust.

## PART 3

### ARRANGEMENTS UNDER REGULATION 25

#### Temporary arrangements under regulation 25 of the 1992 Regulations

##### 15.—(1) Where—

- (a) on 31st March 2004 a Primary Care Trust is making arrangements under—
  - (i) regulation 25(2) of the 1992 Regulations<sup>(29)</sup> in the case of a medical practitioner who has been suspended, or
  - (ii) regulation 25(6) of the 1992 Regulations;
- (b) no notice of termination of those arrangements has been given under regulation 25(11)<sup>(30)</sup> which takes effect on 1st April 2004; and
- (c) the Primary Care Trust has not entered into—
  - (i) a general medical services contract pursuant to article 3 on or before 31st March 2004, or
  - (ii) a default contract,

with the medical practitioner on whose behalf it is making those arrangements, paragraph (2) shall apply.

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<sup>(29)</sup> Regulation 25(2) was amended by S.I. 1995/3093, 1998/682, 2001/3742 and 2002/2469.

<sup>(30)</sup> Regulation 25(11) was amended by S.I. 2002/2469.

(2) In the circumstances specified in paragraph (1), the Primary Care Trust shall, if the medical practitioner or medical practitioners with whom the temporary arrangements were made so wishes (or so wish), make contractual arrangements with him or them, with effect from 1st April 2004, for the provision of such primary medical services as he was or they were providing under those arrangements to the patients to whom he was or they were providing those services.

(3) A contract entered into by a Primary Care Trust pursuant to paragraph (2) shall be for such period as the Primary Care Trust may agree with the contractor but may not continue beyond the date on which the medical practitioner for whom the contractual arrangements are in place ceases to be entitled to enter into a general medical services contract with that Primary Care Trust.

(4) The contractor's list, or lists, of patients for the purpose of the contractual arrangements made pursuant to paragraph (2) shall, at the start of those arrangements, consist of the persons who, on 31st March 2004, were—

- (a) temporarily assigned to other medical practitioners under paragraph (14A) of regulation 25(31); or
- (b) included on the list of the medical practitioner for whom the temporary arrangements were in place.

(5) Where the contractual arrangements are made with a person who has his or its own list of patients, the contractual arrangements shall require the lists to be kept separate.

## PART 4

### CONTRACT TERMS

#### **Additional services in default contracts**

**16.—**(1) A default contract must require the contractor to provide in core hours to its registered patients and persons accepted by it as temporary residents all of the additional services, except those which fall within paragraph (2).

(2) An additional service falls within this paragraph if—

- (a) on 31st March 2004 (or on the date on which the default contract is signed, if earlier) the equivalent of that service is not or was not being provided to his or their patients by—
  - (i) the medical practitioner who has entered into the default contract; or
  - (ii) in the case of a default contract with two or more medical practitioners practising in partnership, all of those medical practitioners; and
- (b) the default contractor does not wish to provide that service to its patients under a general medical services contract which it intends to enter into after 31st March 2004 pursuant to article 3 or 5.

#### **Additional services in general medical services contracts under article 8 or 10**

**17.—**(1) A general medical services contract which is entered into with a person who is entitled to enter into such a contract under article 8 or 10 must, subject to any right to opt out of such services included in the contract pursuant to regulation 17 of the 2004 Regulations, provide for the contractor to provide in core hours to—

- (a) the contractor's registered patients; and
- (b) persons accepted by it as temporary residents,

such of the additional services as are equivalent to the services specified in paragraph (2), unless, prior to the signing of the contract, the Primary Care Trust which is a prospective party to the contract has accepted in writing a written request from the contractor that the contract should not require it to provide all or any of those additional services.

- (2) The services referred to in paragraph (1) are—
- (a) the services which were specified in the notice of the vacancy published under regulation 18D of the 1992 Regulations<sup>(32)</sup>; or
  - (b) in a case in which the services required were not so specified, the services which the medical practitioner whose death or withdrawal or removal from the Primary Care Trust's medical list led to the declaration of the vacancy was providing to his patients immediately prior to his death or withdrawal or removal from the list.

#### **Additional services in general medical services contracts entered into following a default contract**

18. Where, after 31st March 2004, a Primary Care Trust enters into a general medical services contract pursuant to article 3 or 5 with a person or persons who, immediately before the coming into force of that general medical services contract, is or are a party to a default contract with that Primary Care Trust, that general medical services contract must require the contractor to provide in core hours to its registered patients and persons accepted by it as temporary residents such of the additional services as were required to be provided under the default contract, except to the extent that, prior to the signing of the general medical services contract, the Primary Care Trust which is a prospective party to that contract has accepted in writing a written request from the contractor that the general medical services contract should not require it to provide all or any of those additional services.

#### **Out of hours services in default contracts**

19.—(1) Subject to paragraph (6), a default contract must require the contractor to provide the services specified in paragraph (2) throughout the out of hours period unless the contract is, at the date on which it is signed, with—

- (a) a medical practitioner who is, or was, on 31st March 2004, relieved of responsibility for providing services to his patients under paragraph 18(2) of Schedule 2 to the 1992 Regulations<sup>(33)</sup>; or
  - (b) a partnership in which all of the partners who are general medical practitioners are, or were on 31st March 2004, relieved of responsibility for providing services to their patients under that paragraph.
- (2) The services referred to in paragraph (1) are—
- (a) services which would be essential services if provided in core hours; and
  - (b) such additional services as are included in the contract pursuant to article 16.
- (3) Where a default 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 (4); or
  - (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 to such patients,

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<sup>(32)</sup> Regulation 18D was substituted by S.I. 1998/2838 and amended by S.I. 2002/554 and 2469.

<sup>(33)</sup> Paragraph 18(2) was amended by S.I. 2002/2469.



that default contract must require the contractor to continue to provide such services to the patients of the exempt contractor for as long as the default contract subsists.

- (4) The requirements referred to in paragraph (3)(a) are that—
- (a) the medical practitioner was relieved of responsibility for providing services to his patients under paragraph 18(2) of Schedule 2 to the 1992 Regulations; and
  - (b) he—
    - (i) has entered or intends to enter into a default or general medical services contract which does not include out of hours services pursuant to paragraph (1)(a) or regulation 30(1)(b)(i) of the 2004 Regulations,
    - (ii) is one of two or more individuals practising in partnership who have entered or intends to enter into a default or general medical services contract which does not include out of hours services pursuant to paragraph (1)(b) or regulation 30(1)(b)(ii) of the 2004 Regulations, or
    - (iii) is a legal and beneficial shareholder in a company which has entered or intends to enter into a general medical services contract which does not include out of hours services pursuant to regulation 30(1)(b)(iii) of the 2004 Regulations.

(5) In this article “exempt contractor” means a contractor who is exempt from providing out of hours services pursuant to paragraph (1)(a) or (b) or regulation 30(1)(b) of the 2004 Regulations.

(6) Nothing in this article shall require a default contractor to provide out of hours services if, in the reasonable opinion of the 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.

**Out of hours services in general medical services contracts to patients of exempt contractors who have entered into a default contract**

- 20.—(1) Where a general medical services 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 to such patients; 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 to such patients,

the general medical services contract with that contractor must require it 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—
- (a) the medical practitioner was relieved of responsibility for providing services to his patients under paragraph 18(2) of Schedule 2 to the 1992 Regulations; and
  - (b) he—
    - (i) has entered or intends to enter into a default contract which does not include out of hours services pursuant to article 19(1)(a), or
    - (ii) is one of two or more individuals practising in partnership who have entered or intends to enter into a default contract which does not include out of hours services pursuant to article 19(1)(b).

- (3) The events referred to in paragraph (1) are—
- (a) the exempt contractor’s default contract has come to an end and not been succeeded by a general medical services contract which does not include out of hours services pursuant to regulation 30(1)(b) of the 2004 Regulations;
  - (b) the general medical services contractor has opted out of the provision of out of hours services in accordance with paragraph 4 or 5 of Schedule 3 to the 2004 Regulations; or
  - (c) the Primary Care Trust (and, if it is different, the Primary Care Trust with whom the exempt contractor holds its contract) has or have agreed in writing that the general medical services contractor need no longer provide some or all of those services to some or all of those patients.
- (4) In this article “exempt contractor” means a contractor who is exempt from providing out of hours services pursuant to article 19(1)(a) or (b).

**Modification of certain out of hours provisions in the 2004 Regulations during the existence of default contracts**

- 21.** For as long as default contracts exist—
- (a) paragraph 70(2)(a) of Schedule 6 to the 2004 Regulations (sub-contracting of out of hours services) shall be read as if the reference to a general medical services contract included a reference to a default contract; and
  - (b) Schedule 7 to those Regulations (out of hours services) shall be read as if—
    - (i) the reference to a general medical services contract in paragraph 1(5)(b) included a reference to a default contract, and
    - (ii) in paragraph 6(1)(b), after “general medical services contract” there were included “or, as the case may be, default contract”.

**Modification of certain out of hours provisions in the 2004 Regulations during the existence of contractual arrangements made under article 15**

- 22.** For as long as contractual arrangements made under article 15 exist—
- (a) paragraph 70(2) of Schedule 6 to the 2004 Regulations (sub-contracting of out of hours services) shall be read as if, after paragraph (b), there were inserted—
    - “(bb) a person who is a party to contractual arrangements made under article 15 of the General Medical Services Transitional and Consequential Provisions Order 2004;”;
  - (b) Schedule 7 to those Regulations (out of hours services) shall be read as if—
    - (i) in paragraph 1(5)(b), after “general medical services contract” there were included “,or who is a party to contractual arrangements made under article 15 of the General Medical Services Transitional and Consequential Provisions Order 2004,”; and
    - (ii) in paragraph 6(1)(b), after “general medical services contract” (or, if article 20(b)(ii) applies, after “default contract”) there were included “or to be a party to contractual arrangements made under article 15 of the General Medical Services Transitional and Consequential Provisions Order 2004,”.

**Effect on a general medical services contract of approval of an out of hours arrangement made by a default contractor**

- 23.—(1)** Where, under the terms of the default contract which are equivalent to Schedule 7 to the 2004 Regulations, a Primary Care Trust has approved an out of hours arrangement made by a

default contractor with a person who holds a general medical services contract, the Primary Care Trust with whom that person holds his general medical services contract and that general medical services contractor shall be deemed to have agreed a variation of their contract which has the effect of including in it, from the date on which the out of hours arrangement commences, and for so long as that arrangement is not suspended or terminated, the services covered by that arrangement.

(2) The term of the general medical services contract which gives effect to paragraph 104(1) of Schedule 6 to the 2004 Regulations shall not apply to a variation made under paragraph (1).

(3) In this article, “out of hours arrangement” means an arrangement made under the term of the default contract which is equivalent to paragraph 1(2) of Schedule 7 to the 2004 Regulations.

### **Services to patients not registered with the contractor in default contracts and general medical services contracts entered into on or before 31st March 2004**

**24.**—(1) Where a medical practitioner who meets the requirements in paragraph (2)—

(a) on or before 31st March 2004, enters into—

(i) a default contract, or

(ii) a general medical services contract,

whether as an individual medical practitioner or as one of two or more individuals practising in partnership; or

(b) is a legal and beneficial shareholder in a company which enters into a general medical services contract on or before 31st March 2004,

that contract must require the contractor to provide such of the additional services as are equivalent to those of the services listed in paragraph (2)(a) to (c), to the patients to whom the medical practitioner was providing those services on the date on which the contract was signed, except, in the case of a general medical services contract, to the extent that the contractor is not required to provide the additional service concerned to its registered patients under regulation 29 of the 2004 Regulations.

(2) The requirements referred to in paragraph (1) are that, on 31st March 2004 (or on the date on which the contract is signed, if earlier) the medical practitioner is providing, as part of general medical services under section 29 of the 1977 Act<sup>(34)</sup>, to a patient who is not recorded as being on his list of patients—

(a) child health surveillance services under regulation 28 of the 1992 Regulations<sup>(35)</sup>;

(b) contraceptive services under regulation 29 of those Regulations<sup>(36)</sup>; or

(c) maternity medical services under regulation 31 of those Regulations<sup>(37)</sup>.

(3) The services required to be provided under this article are in addition to any additional services which are required to be provided to the contractor’s registered patients—

(a) in a default contract under article 16; or

(b) in a general medical services contract under regulation 29 of the 2004 Regulations.

(4) Nothing in this article shall prevent a contractor from subsequently terminating its responsibility for a patient not registered with the contractor under the term of its contract which

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<sup>(34)</sup> Section 29 was amended by the Health Services Act 1980 (c. 53), section 7, the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 6, paragraph 2, the Medical Act 1983 (c. 54), Schedule 5, paragraph 16(a), the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 18, the Medical (Professional Performance) Act 1995 (c. 51), Schedule, paragraph 28(b), the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 8, the 2001 Act, sections 17 and 23, the 2002 Act, Schedule 2, paragraph 3 and Schedule 8, paragraph 2 and S.I. 1985/39 and 2002/3135. It is to be repealed from 1st April 2004 by section 175(2) of the 2003 Act.

<sup>(35)</sup> Regulation 28 was amended by S.I. 2002/2469.

<sup>(36)</sup> Regulation 29 was amended by S.I. 1998/682.

<sup>(37)</sup> Regulation 31 was amended by S.I. 1998/682 and 2002/2469.

gives effect to paragraph 28 of Schedule 6 to the 2004 Regulations (or the equivalent term of a default contract).

(5) A requirement in a general medical services contract to provide any additional services under this article to patients not registered with the contractor shall cease on the date on which any opt out of that additional service in respect of the contractor's own registered patients commences pursuant to the terms of the general medical services contract which give effect to Schedule 3 to the 2004 Regulations.

(6) Where paragraph (5) 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 3 to the 2004 Regulations shall apply to the patients to whom services are provided pursuant to this paragraph as it applies to the contractor's own registered patients.

**Services to patients not registered with the contractor in general medical services contracts entered into following a default contract**

**25.—**(1) Where, after 31st March 2004, a Primary Care Trust enters into a general medical services contract pursuant to articles 3 or 5 with a person or persons who, immediately before the coming into force of that contract, is or are a party to a default contract, that general medical services contract shall require the contractor to provide to patients who are not included on the contractor's list of patients such of the additional services as were provided to those patients under that default contract, except to the extent that the contractor is not required to provide the additional service concerned to its registered patients under article 18.

(2) The services required to be provided under this article are in addition to any additional services which are required to be provided to the contractor's registered patients under article 18.

(3) Paragraphs (4) to (6) of article 24 shall apply to additional services included in a general medical services contract pursuant to this paragraph.

**Premises for the purposes of default contracts and general medical services contracts entered into on or before 31st March 2004**

**26.—**(1) Where a medical practitioner who, on 31st March 2004, is providing general medical services under section 29 of the 1977 Act—

(a) on or before 31st March 2004, enters into—

(i) a default contract, or

(ii) a general medical services contract,

whether as an individual medical practitioner or as one of two or more individuals practising in partnership; or

(b) is a legal and beneficial shareholder in a company which enters into a general medical services contract on or before 31st March 2004,

the practice premises specified in that contract at its commencement must, unless the Primary Care Trust agrees otherwise in writing, be those specified in paragraph (2).

(2) The premises referred to in paragraph (1) are—

(a) in the case of a contract with an individual medical practitioner, all the premises which, on 31st March 2004 (or on the date on which the contract was signed, if earlier), were approved (whether with or without conditions) by the Primary Care Trust or the Secretary

of State under paragraphs 29 or 29A of Schedule 2 to the 1992 Regulations<sup>(38)</sup> in respect of that practitioner and whose approval had not been withdrawn;

- (b) in the case of a contract with two or more medical practitioners practising in partnership, all the premises which, on 31st March 2004 (or on the date on which the contract was signed, if earlier), were approved (whether with or without conditions) by the Primary Care Trust or the Secretary of State under paragraph 29 or 29A of Schedule 2 to the 1992 Regulations in respect of any of those practitioners and whose approval had not been withdrawn; or
- (c) in the case of a contract with a company, all the premises which, on 31st March 2004 (or on the date on which the contract was signed, if earlier), were approved (whether with or without conditions) by the Primary Care Trust or the Secretary of State under paragraph 29 or 29A of Schedule 2 to the 1992 Regulations in respect of any of the medical practitioners who are legal and beneficial shareholders in that company and whose approval had not been withdrawn.

(3) The inclusion of any particular practice premises in a default or general medical services contract pursuant to paragraph (1) is without prejudice to the contract also including a plan in respect of those premises pursuant to regulation 18(3) of the 2004 Regulations.

#### **Practice area for the purposes of default contracts**

27. The area specified at its commencement in a default contract as 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 register with the contractor or seek acceptance by it as a temporary resident must be—

- (a) in the case of a default contract with an individual medical practitioner, the area which was that practitioner's practice area on 31st March 2004 (or on the date on which the contract is signed, if earlier) for the purposes of his arrangements under section 29 of the 1977 Act; or
- (b) in the case of a default contract with two or more medical practitioners practising in partnership, the area which covers all of the areas which were those practitioners' practice areas on 31st March 2004 (or on the date on which the contract is signed, if earlier) for the purposes of their arrangements under section 29 of the 1977 Act.

#### **Lists of patients for default contracts and general medical services contracts entered into on or before 31st March 2004**

28.—(1) Subject to article 30(1), where a medical practitioner who, on 31st March 2004 is providing general medical services under section 29 of the 1977 Act—

- (a) on or before 31st March 2004, enters into—
  - (i) a default contract, or
  - (ii) a general medical services contract,whether as an individual medical practitioner or as one of two or more individuals practising in partnership; or
- (b) is a legal and beneficial shareholder in a company which enters into a general medical services contract on or before 31st March 2004,

the Primary Care Trust must include on the contractor's list of patients for the purposes of that contract the persons specified in paragraph (2).

- (2) The persons referred to in paragraph (1) are the patients who, on 31st March 2004—

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<sup>(38)</sup> Regulation 29 was amended by S.I. 2002/554 and 2469; regulation 29A was inserted by S.I. 1995/80 and amended by S.I. 2002/554 and 2469.

- (a) were recorded by the Primary Care Trust pursuant to regulation 19 of the 1992 Regulations<sup>(39)</sup> as being on the list of—
- (i) the contractor where he is an individual medical practitioner,
  - (ii) any of the two or more medical practitioners practising in partnership who have entered into the contract; or
  - (iii) any of the medical practitioners who are legal and beneficial shareholders in the company which has entered into the contract,
- unless, in the case of a general medical services contract, they live outside the practice area as specified in that contract and were not included on the medical practitioner's list of patients by virtue of an assignment under regulation 4 of the Choice Regulations<sup>(40)</sup>; and
- (b) had been assigned to the contractor or to any of the persons listed in paragraph (2)(a)(ii) or (iii) under regulation 4 of the Choice Regulations but not yet included in the list referred to in sub-paragraph (a).

#### **Lists of patients for general medical services contracts entered into following a default contract**

**29.** Where, after 31st March 2004, a Primary Care Trust enters into a general medical services contract pursuant to article 3 or 5 with a person or persons who, immediately before the coming into force of that general medical services contract, is or are a party to a default contract, it must include on the contractor's list of patients, for the purposes of that general medical services contract—

- (a) all the patients who, on the date immediately before the coming into force of the general medical services contract, were on the contractor's list of patients for the purposes of the default contract, unless they live outside the practice area as specified in the general medical services contract and were not included on the list of patients by virtue of an assignment under regulation 4 of the Choice Regulations or under the default contract; and
- (b) any patient who had been assigned to the default contractor in accordance with the terms of the default contract but not yet included in the list referred to in sub-paragraph (a).

#### **Lists of patients for default contracts and general medical services contracts entered into following arrangements under regulation 25 of the 1992 Regulations or article 15**

**30.**—(1) Where, on or before 31st March 2004, a Primary Care Trust enters into a default contract or a general medical services contract pursuant to article 3 with an individual medical practitioner for whom, immediately prior to the commencement of that contract, it had in place temporary arrangements under regulation 25(2) or (6) of the 1992 Regulations<sup>(41)</sup>, it must include on the contractor's list of patients at the start of that default, or, as the case may be, general medical services contract, all of the patients who, on the date on which the temporary arrangements came to an end were—

- (a) temporarily assigned to other medical practitioners under paragraph (14A) of regulation 25; or
- (b) included on the list of the medical practitioner for whom the temporary arrangements were in place,

apart from, in the case of a general medical services contract, any such patient who lives outside the practice area as specified in that contract and who became registered with either the medical practitioner for whom the temporary arrangements are in place, or the medical practitioner or

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<sup>(39)</sup> Regulation 19 was amended by S.I. 1994/633, 1998/682 and 2002/2469.

<sup>(40)</sup> Regulation 4 was amended by S.I. 1999/3179 and 2002/2469.

<sup>(41)</sup> Regulation 25(2) was amended by S.I. 1995/3093, 1998/682, 2001/3742 and 2002/2469; regulation 25(6) was amended by S.I. 2002/2469.

practitioners providing the temporary arrangements, otherwise than as the result of an assignment under regulation 4 of the Choice Regulations.

(2) Where, after 31st March 2004, a Primary Care Trust enters into a general medical services contract pursuant to article 3 with an individual medical practitioner for whom, immediately prior to the commencement of that contract, it had in place contractual arrangements under article 15, it must include on the contractor's list of patients at the start of that general medical services contract all of the patients who were, on the date on which those contractual arrangements came to an end, on the list or lists of patients prepared and maintained by the Primary Care Trust for the purpose of those contractual arrangements, apart from any such patient who lives outside the practice area as specified in the general medical services contract and whose inclusion in the list of patients did not result from an assignment under regulation 4 of the Choice Regulations or under the contractual arrangements under article 15.

### **Status of contractor's list of patients for default contracts**

**31.**—(1) The contractor's list of patients for the purposes of a default contract shall, for as long as that contract subsists, be open to applications from patients in accordance with the terms of the default contract, except in the circumstances specified in paragraph (2).

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

(a) on 31st March 2004, or on the date on which the contract is signed if earlier—

(i) in the case of a contract with an individual medical practitioner, that practitioner is or was exempt from the liability to have persons (other than a specified person) assigned to him under regulation 4(8) of the Choice Regulations<sup>(42)</sup>, or

(ii) in the case of a contract with two or more individuals practising in partnership, all those individuals are or were exempt from such liability; and

(b) the Primary Care Trust has determined, in the light of the circumstances in which it granted the exemption or exemptions referred to in paragraph (a), that the contractor's list of patients should, from the commencement of the default contract, be closed to applications for inclusion in the list other than from the immediate family members of registered patients.

(3) Where a contractor's list of patient is to be closed pursuant to paragraph (2), the default contract with that contractor shall contain terms which have the same effect as paragraphs (4) and (5).

(4) The contractor's list of patients shall remain closed for as long as the contract subsists unless the contractor notifies the Primary Care Trust in writing of its intention to re-open the list before the end of that period and of the date on which it will re-open.

(5) A contractor which has re-opened its list under paragraph (4) shall not be entitled to close it again during the subsistence of the default contract.

### **Status of contractor's list of patients for general medical services contracts**

**32.**—(1) Where a medical practitioner who, on 31st March 2004 is providing general medical services under section 29 of the 1977 Act—

(a) on or before 31st March 2004, enters into a general medical services contract, whether as an individual medical practitioner or as one of two or more individuals practising in partnership; or

(b) is a legal and beneficial shareholder in a company which enters into a general medical services contract on or before 31st March 2004,

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(42) Regulation 4(8) was amended by S.I. [2002/2469](#).

the contractor's list of patients for the purposes of that contract shall, on the date on which the contract comes into force, be open to applications from patients in accordance with the term of the contract which gives effect to paragraph 15 of Schedule 6 to the 2004 Regulations except in the circumstances specified in paragraph (2).

- (2) The circumstances referred to in paragraph (1) are that—
- (a) on 31st March 2004, or on the date on which the contract is signed if earlier—
    - (i) in the case of a contract with an individual medical practitioner, that practitioner is exempt from the liability to have persons (other than a specified person) assigned to him under regulation 4(8) of the Choice Regulations,
    - (ii) in the case of a contract with two or more individuals practising in partnership, all those individuals who are medical practitioners are exempt from such liability,
    - (iii) in the case of a contract with a company, all of the medical practitioners who are legal and beneficial shareholders in that company are exempt from such liability; and
  - (b) the Primary Care Trust has determined, in the light of the circumstances in which it granted the exemption or exemptions referred to in paragraph (a), that the contractor's list of patients should, from the commencement of the contract, be closed to applications for inclusion in the list other than from the immediate family members of registered patients.
- (3) Where a contractor's list of patients is to be closed pursuant to paragraph (2), the general medical services contract with that contractor shall contain terms which have the same effect as paragraphs (4) and (5).
- (4) The contractor's list of patients shall remain closed for the period of 12 months from the date on which the contract comes into force unless the contractor notifies the Primary Care Trust in writing of its intention to re-open the list before the end of that period and of the date on which it will re-open.
- (5) A contractor which has re-opened its list under paragraph (4) shall not be entitled to close it again during the period of 12 months referred to in paragraph (4) except under the term of its general medical services contract which gives effect to paragraph 29 of Schedule 6 to the 2004 Regulations.

#### **Dispute resolution procedures for default contracts**

**33.**—(1) Any dispute arising out of or in connection with the default contract, except matters dealt with under the complaints procedure contained in that contract, may be referred for consideration and determination to the Secretary of State, if —

- (a) the Primary Care Trust so wishes and the contractor has agreed in writing; or
- (b) the contractor so wishes (even if the Primary Care Trust does not agree).

(2) In the case of a dispute referred to the Secretary of State under sub-paragraph (1), the procedure to be followed is that specified in paragraphs 101(3) to (14) and 102 of Schedule 6 to the 2004 Regulations, subject to the modification that the references in paragraph 102(2) and (3) to paragraph 100(1) shall be read as references to paragraph (1) of this article.

#### **Additional ground for termination of a general medical services contract**

- 34.** Where a Primary Care Trust has entered into a general medical services contract—
- (a) following a default contract; or
  - (b) pursuant to an entitlement under Part 2 of this Order, after 31st March 2004 other than following a default contract,



paragraph 113 of Schedule 6 to the 2004 Regulations shall apply to that contract as if it enabled the Primary Care Trust to serve notice of termination on the contractor on the grounds of a person falling within sub-paragraph (2)(d) at any time after 31st March 2004.

## PART 5

### FINANCIAL ARRANGEMENTS

#### Interpretation of this Part

**35.** In this Part—

- (a) “contractor” means a person entering into, or who has entered into, a default contract with a Primary Care Trust;
- (b) “Premises Costs Directions” means the National Health Service (General Medical Services – Premises Costs) (England) Directions 2004, given by the Secretary of State under section 17 of the 1977 Act(43), and expressions used both in article 36(7) and in the Premises Costs Directions, unless they are defined elsewhere in this Order, have the same meaning as in the Premises Costs Directions;
- (c) “Statement of Fees and Allowances” means the statement determined and published by the Secretary of State under regulation 34 of the 1992 Regulations(44), as that statement had effect on 31st March 2004; and
- (d) “Statement of Financial Entitlements” means any directions given by the Secretary of State under section 28T of the 1977 Act(45), and expressions used both in article 36(2) to (6) and in the Statement of Financial Entitlements, unless they are defined elsewhere in this Order, have the same meaning as in the Statement of Financial Entitlements.

#### Payments under default contracts

**36.—**(1) Subject to the following provisions of this Part, where a Primary Care Trust enters into a default contract, the only payments that are to be made by the Primary Care Trust to the contractor under that default contract are the payments mentioned in this article (although this is without prejudice to any powers that the Primary Care Trust has to make payments to the contractor under other arrangements).

(2) In respect of each complete month for which a default contract has effect, the Primary Care Trust must pay to a contractor under its default contract a reasonable approximation of one twelfth of what would have been the contractor’s final global sum equivalent if—

- (a) it had entered into a general medical services contract with the Primary Care Trust on or before 31st March 2004; and
- (b) a calculation had, as a consequence, been made of its final global sum equivalent by the Primary Care Trust in accordance with Part 1 of the Statement of Financial Entitlements (global sum and minimum practice income guarantee),

minus, if appropriate, a monthly deduction in respect of superannuation.

(3) If, while it has a default contract—

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(43) Section 17 is as substituted by the Health Act 1999 (c. 8), section 12(1), and thereafter amended by the Health and Social Care Act 2001 (c. 15), Schedule 5, paragraph 5(3), and National Health Service Reform and Health Care Professions Act 2002 (c. 17), Schedule 1, paragraph 7.

(44) Regulation 34 was amended by S.I. 1993/540, 1997/2468, 2000/601 and 2002/2469.

(45) Section 28T was inserted into the 1977 Act by section 175 of the Health and Social Care (Community Health and Standards) Act 2003.

- (a) a contractor engages a locum to cover for the absence of a GP performer; and
- (b) had the contractor entered into a general medical services contract with the Primary Care Trust on or before 31st March 2004, the Primary Care Trust would have been required to pay for, or to contribute towards the cost of, that locum by virtue of Part 4 of the Statement of Financial Entitlements (payments for specific purposes),

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

(4) In respect of each complete quarter of the financial year for which a default contract has effect, the Primary Care Trust must pay to a contractor under its default contract a reasonable approximation of any quarterly seniority payment that would have been payable, at the end of that quarter, in respect of any GP provider who is a partner in the contractor if—

- (a) the contractor had entered into a general medical services contract with the Primary Care Trust on or before 31st March 2004; and
- (b) a calculation had, as a consequence, been made of a reasonable approximation of the quarterly seniority payment in accordance with Parts 4 and 6 of the Statement of Financial Entitlements (payments for specific purposes, and supplementary provisions).

(5) If, in the period during which a default contract has effect, the contractor claims from a Primary Care Trust a payment in respect of—

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

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

(6) If, in the period during which a default contract has effect, the contractor claims from a Primary Care Trust a payment—

- (a) towards the cost of building new premises to be used for providing medical services;
- (b) towards the cost of purchasing premises to be used for providing medical services;
- (c) towards the cost of the development of premises which are used, or are to be used, for providing medical services;
- (d) in the form of, or in the form of part of, a premises improvement grant; or
- (e) representing the reasonable costs of information technology maintenance or minor upgrades,

to which the contractor would have been entitled under Part 5 of the Statement of Financial Entitlements (certain premises and I.T. costs), had the contractor entered into a general medical services contract with the Primary Care Trust on or before 31st March 2004, and which would,

in those circumstances, have fallen due by virtue of that Part, the Primary Care Trust must pay to the contractor under the default contract the amount that the Primary Care Trust would have been required to pay to it by virtue of Part 5 of the Statement of Financial Entitlements, had the contractor entered into a general medical services contract with the Primary Care Trust on or before 31st March 2004.

(7) If, in the period during which a default contract has effect, the contractor claims from a Primary Care Trust, in respect of its recurring premises costs—

- (a) payments in respect of the current market rent or actual lease rent of practice premises;
- (b) payments in respect of the lease costs of equipment, furniture or furnishings;
- (c) payments in respect of borrowing costs relating to practice premises;
- (d) notional rent payments or notional rent supplements in respect of practice premises; or
- (e) payments in respect of business rates, water and sewage charges, charges in respect of the collection and disposal of clinical waste or utilities and services charges,

in circumstances where the Primary Care Trust must, by virtue of Part 6 of the Premises Costs Directions (supplementary provisions), continue to provide financial assistance to the contractor by way of meeting or contributing towards the recurring premises costs relating to which the claim for payment is made, the Primary Care Trust must pay to the contractor under its default contract any payment it is required to pay pursuant to the Premises Costs Directions, to meet or contribute towards those recurring premises costs.

(8) If, in the period during which a default contract has effect, the contractor claims from a Primary Care Trust a payment in respect of patients who are not registered patients but in relation to whom the contractor—

- (a) was (or a partner in the contractor was), on 31st March 2004, providing the following services—
  - (i) child health surveillance services,
  - (ii) contraceptive services,
  - (iii) maternity medical services, or
  - (iv) out of hours services;
- (b) was, (or a partner in the contractor was), on 31st March 2004, entitled to receive payments for providing those services from the Primary Care Trust under the Statement of Fees and Allowances; and
- (c) is required, by virtue of this Order, to continue to provide those services under its default contract,

the Primary Care Trust must pay to the contractor under its default contract a reasonable amount in respect of those services.

### **Due dates for payments under a default contract**

**37.** Payments under—

- (a) article 36(2) are to fall due on the last day of the month to which they relate;
- (b) article 36(3) are to fall due—
  - (i) fourteen days after the end of the month in respect of which the locum costs were incurred, or
  - (ii) fourteen days after the claim in respect of the locum costs is submitted,whichever is the later;
- (c) article 36(4) are to fall due on the last day of the quarter to which they relate;

- (d) article 36(5) or (6) are to fall due on the date on which they would have fallen due by virtue of Part 4 of the Statement of Financial Entitlements (payments for specific purposes), had the contractor entered into a general medical services contract with the Primary Care Trust on or before 31st March 2004;
- (e) article 36(7) are to fall due on the date on which they fall due under the arrangements made, pursuant to the Premises Costs Directions, to make the payments;
- (f) article 36(8) are to fall due on the date that the Primary Care Trust sets (having regard to the frequency with which equivalent payments were made under the Statement of Fees and Allowances) for making the payments,

but the Primary Care Trust may make payments on account in respect of any of those payments before they fall due.

#### **Part payment of periodic payments where a contractor does not enter into a general medical services contract**

**38.** If a contractor does not enter into a general medical services contract which takes effect immediately after its default contract ceases to have effect, and—

- (a) its default contract terminates on a day other than the last day of a month, the Primary Care Trust must pay to the contractor a proportion of any payment that would have been payable to the contractor under—
  - (i) article 36(2), or
  - (ii) article 36(5) to (7), in the case of periodic payments under article 36(5) to (7) that fall due monthly,

had the contract terminated on the last day of a month, and that proportion is to be calculated by multiplying that payment by the fraction produced by dividing the number of days in the month during which the contractor was providing services under the default contract by the total number of days in the month;

- (b) its default contract terminates on any day other than the last day of a quarter of the financial year, the Primary Care Trust must pay to the contractor a proportion of any payment that would have been payable to the contractor under—
  - (i) article 36(4), or
  - (ii) article 36(5) to (7), in the case of periodic payments under article 36(5) to (7) that fall due quarterly,

had the contract terminated on the last day of a quarter of the financial year, and that proportion is to be calculated by multiplying that payment by the fraction produced by dividing the number of days in the quarter during which the contractor was providing services under the default contract by the total number of days in the quarter.

#### **Conditions, set offs etc. relating to payments under a default contract**

**39.**—(1) Payments are only payable under article 36 or 38 in circumstances where the contractor has made available to the Primary Care Trust any information which the Primary Care Trust does not have but needs, and which the contractor either has or could reasonably be expected to provide, in order for the Primary Care Trust to be able to calculate the payment.

(2) The obligations to make payments under article 36 and 38 are subject to any right that the Primary Care Trust may have to set off against any amount payable to the contractor under the default contract any amount—

- (a) that is owed by the contractor to the Primary Care Trust under the default contract; or

- (b) that the Primary Care Trust may withhold or deduct as a contract sanction, in accordance with the terms of the default contract.
- (3) A Primary Care Trust may—
  - (a) require repayment of any amount that has been paid to a contractor under its default contract but to which the contractor was not entitled; and
  - (b) set off against any amount payable under a default contract an amount that has been paid to a contractor under its default contract but to which the contractor was not entitled.

#### **Effect of contractors entering into a general medical services contract**

**40.** If a contractor who has entered into a default contract thereafter enters into a general medical services contract which takes effect immediately after its default contract ceases to have effect, the Primary Care Trust that is a party to the general medical services contract must ensure that the general medical services contract—

- (a) contains a condition to the effect that all rights to further payments under the default contract are surrendered (they are hereby extinguished);
- (b) takes effect, for payment purposes, on 1st April 2004;
- (c) contains a condition to the effect that any payment that has been made under the default contract that could have been made, had the contractor entered into a general medical services contract on or before 31st March 2004—
  - (i) as a payment on account under the general medical services contract, shall be treated as a payment on account under the general medical services contract (and for these purposes any payment of one twelfth of a final global sum equivalent under the default contract shall be treated as a payment on account in respect of a payable global sum monthly payment),
  - (ii) as a payment under the general medical services contract, shall be treated as a payment under the general medical services contract,

and accordingly any condition that attaches, or is to be attached, to such a payment, when made under a general medical services contract, by virtue of the Statement of Financial Entitlements or the Premises Costs Directions, is attached to that payment; and

- (d) where appropriate, contains a condition to the effect that any payment that has been made under the default contract pursuant to article 36(8) is set off, equitably, against any payment for equivalent services provided under the general medical services contract.

#### **Persons not able to enter into a default contract**

**41.—(1)** Where a person to whom article 13(2) or (3) applies is unable to enter into a default contract because the Primary Care Trust with whom he would have entered into a default contract is not satisfied of the matters specified in paragraphs (5) or (6) of that article or because he is performing relevant service, that Primary Care Trust may pay to that person any payment that he would have been entitled to receive under the default contract, had he been able to enter into a default contract, or may pay him a proportion thereof (having regard, amongst other matters, to the cost of any temporary arrangements made by the Primary Care Trust for the provision of primary medical services to his patients) for as long as he is not able to enter into—

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

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

(2) Where a person to whom payments have been made by a Primary Care Trust by virtue of paragraph (1) enters into a default contract or a general medical services contract, the Primary Care Trust that is a party to the contract must ensure that the contract—

- (a) contains a condition to the effect that all rights to further payments under paragraph (1) are surrendered (they are hereby extinguished);
- (b) takes effect, for payment purposes, on 1st April 2004;
- (c) in the case of a general medical services contract, contains a condition to the effect that any payment that has been made under paragraph (1) that could have been made—
  - (i) as a payment on account under the general medical services contract, shall be treated as a payment on account under the general medical services contract (and for these purposes any payment of one twelfth of a final global sum equivalent made under paragraph (1) shall be treated as a payment on account in respect of a payable global sum monthly payment),
  - (ii) as a payment under the general medical services contract, shall be treated as a payment under the general medical services contract,

and accordingly any condition that attaches, or is to be attached, to such a payment, when made under a general medical services contract, by virtue of the Statement of Financial Entitlements or the Premises Costs Directions, is attached to that payment; and

- (d) in the case of a default contract, contains a condition to the effect that any payment that has been made under paragraph (1) that could have been made as a payment under the default contract, had the contractor entered into the default contract on or before 31st March 2004, shall be treated as a payment under the default contract, and accordingly any condition attached to such a payment by virtue of this Order is attached to that payment.

### **Claims under the Statement of Fees and Allowances**

**42.**—(1) Notwithstanding the repeal of the 1992 Regulations, claims may still be made for payments under the Statement of Fees and Allowances by any person who may be entitled to such a payment, provided that the claim is made within any period stipulated in the Statement of Fees and Allowances as being the period during which a claim for the payment is to be made.

(2) If a claim is made outside that stipulated period, the Primary Care Trust may extend that period for up to six years from the date on which the circumstances which gave rise to the claim first arose.

(3) If the Primary Care Trust refuses the claim, or considers that the amount to be paid out in respect of the claim is significantly lower than the amount claimed, the arrangements for appeals set out in paragraph 80 of the Statement of Fees and Allowances are to apply.

## **PART 6**

### **MISCELLANEOUS**

#### **Modification of section 4(5) of the National Health Service and Community Care Act 1990**

**43.** For the purposes of disputes relating to—

- (a) general medical services contracts; or
- (b) personal medical services agreements under section 28C of 1977 Act,

which are referred to the Secretary of State under section 4(3) or (4) of the 1990 Act (NHS contracts), section 4(5) of that Act shall be read as if after “appoint a person” there were included “or persons”.

Signed by authority of the Secretary of State

23rd February 2004

*John Hutton*  
Minister of State,  
Department of Health

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order sets out transitional arrangements to cover the replacement of arrangements for general medical services under section 29 of the National Health Service Act 1977 with general medical services contracts under section 28Q of that Act (as inserted by section 175(1) of the Health and Social Care (Community Health and Standards) Act 2003 (“the Act”).

Part 2 of the Order sets out the circumstances in which those currently providing general medical services will be entitled to enter into a general medical services contract and, if they are unable to enter into such a contract on or before 31st March 2004, a default contract under section 176(3) of the Act. It also sets out the arrangements for medical practitioners who are suspended, unable to provide services under a contract on grounds of physical or mental ill-health or performing relevant service. Articles 4, 11 and 13 provide a right of appeal to the Secretary of State where a Primary Care Trust refuses to enter into a general medical services or a default contract because it is not satisfied that the criteria relating to suspended or unfit medical practitioners are met or where the Primary Care Trust has failed to enter into a general medical services contract by the time a person’s entitlement to such a contract expires.

Part 3 provides for the continuation of arrangements by the Primary Care Trust to provide primary medical services to the patients of medical practitioners who are suspended or unable to perform services on the grounds of physical or mental ill-health.

Articles 16 to 25 specify the services which must be provided in default contracts and certain types of general medical services contracts. Articles 26 and 27 prescribe the premises which must be specified in default and general medical services contracts entered into on or before 31st March 2004 and the practice area which must be specified in default contracts. Articles 28 to 32 specify who must be included in the list of patients for default contracts and certain types of general medical services contracts and whether that list must be open or closed to applications from patients. Article 33 deals with the procedure for dispute resolution in default contracts. Article 34 provides for certain types of general medical services contracts to be capable of termination on the basis of a dismissal from employment which occurred between 31st March 2004 and the commencement of the general medical services contract.

Part 5 sets out the financial arrangements for default contracts, for general medical services contracts which follow default contracts and for persons unable to enter into default contracts.

Part 6 contains a modification to section 4 of the National Health Service and Community Care Act 1990.