
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 142

The General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004

PART 2

ENTITLEMENT TO ENTER INTO GMS CONTRACTS

Entitlement to a GMS contract

2. A Health Board must enter into a GMS contract with a person who, on 31st March 2004, is providing general medical services under section 19 of the 1978 Act (arrangements and regulations for general medical services)(**1**) in the circumstances specified in articles 3 to 12.

Entitlement to a GMS contract as an individual medical practitioner

3.—(1) This article applies to a person who, on 31st March 2004,

- (a) is included in the medical list of that Health Board by virtue of regulation 4(1)(a) of the 1995 Regulations(**2**);
- (b) is practising as a medical practitioner.

(2) Subject to paragraphs (4) and (7) and articles 6 and 12, a person to whom paragraph (1) applies shall, on and after 1st April 2004, be entitled to enter into a GMS contract with that Health Board as an individual medical practitioner and that Health Board must, on or after that date and if that person so wishes, enter into such a contract with that person.

(3) A person shall be regarded as practising on 31st March 2004 for the purposes of paragraph (1) (b) if that person would have been so practising on that date except for the fact that, on that date—

- (a) that person is suspended from the Medical Register in the circumstances specified in paragraph (5) or suspended by the Tribunal from the Health Board's medical list; or
- (b) the Health Board has in place for that person's temporary arrangements under regulation 24(7) of the 1995 Regulations(**3**).

(4) Where a person is suspended from the Medical Register in the circumstances specified in paragraph (5), or suspended by the Tribunal from the Health Board's medical list or primary medical services performers list, a Health Board shall only be required under paragraph (2) to enter into a GMS contract with that person during the period of that suspension if it is satisfied that—

(1) Section 19 was amended by the Health and Medicines Act 1980 (c. 53), section 7, the Health and Social Security Adjudications Act 1983 (c. 41), Schedule 7, paragraph 2, the Medical Act 1983 (c. 54), Schedule 5, paragraph 17, the National Health Service and Community Care Act 1990 (c. 19), section 37, the Medical (Professional Performance) Act 1995 (c. 51), schedule, paragraph 29, the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 39 and S.I.2002/3135. It was extended by the Health and Medicines Act 1988 (c. 49), section 17(1). It is to be repealed from 1st April 2004 by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), schedule, paragraph 1(7).

(2) Regulation 4 was amended by S.I. 1996/842 and S.S.I. 1999/54.

(3) Regulation 24 was amended by S.I. 1995/3199, S.I. 1998/660 and S.S.I. 1999/54.

- (a) in the case of a suspension on grounds relating to the practitioner's physical or mental health, that practitioner is able to provide (but not perform) services under the contract;
- (b) having regard to the grounds of suspension, entering into 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; and
- (c) the practitioner has in place adequate arrangements for the provision of services under the contract during the period of the practitioner's suspension.
- (5) The circumstances referred to in paragraphs (3)(a) and (4) 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 under rules made under paragraph 5A(3) of Schedule 4 (proceedings before professional conduct, health and preliminary proceedings committees) to that Act(4);
 - (b) by the Health Committee of the General Medical Council under section 37 (unfitness to practise through illness etc.)(5) or 38(1) of the 1983 Act; or
 - (c) under section 41A (interim orders) of the 1983 Act(6).
- (6) 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(7), sub paragraphs (a) and (b) of paragraph (5) 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.
- (7) A Health Board shall not be required under paragraph (2) to enter into a GMS contract with a person for whom it has in place—
- (a) on 31st March 2004, temporary arrangements under regulation 24(7) of the 1995 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, that person is able to provide (but not perform) services under the contract.
- (8) Whenever a Health Board is considering refusing to enter into a GMS contract under paragraph (4) or (7), it shall consult the area medical committee (if any) before making its decision and, in a case where it is considering refusal under paragraph (7), it shall have regard to any written report made to it by the area medical committee (if any) under regulation 24(11) of the 1995 Regulations(8).

(4) 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.

(5) 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.

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

(7) S.I. 2002/3135. This Order substitutes the sections referred to in article 3(5).

(8) Regulation 24(11) was amended by S.I. 1995/3199, 1998, 660 and S.S.I. 1999/54.

(9) Where a Health Board refuses to enter into a GMS contract pursuant to paragraph (4) or (7) it shall notify the prospective contractor in writing of its decision, its reasons for that decision and of the prospective contractor's right of appeal under article 5.

Entitlement to a GMS contract as a partnership

4.—(1) This paragraph applies to a partnership where, on 31st March 2004, all the partners in that partnership are—

- (a) included in the medical list of the Health Board by virtue of regulation 4(1)(a) of the 1995 Regulations, and
- (b) practising as partners in that partnership.

(2) Subject to paragraphs (4) and (7) and articles 6 and 12, a partnership to which paragraph (1) applies shall, on and after 1st April 2004, be entitled to enter into a GMS contract with that Health Board and that Health Board must, on or after that date and if that partnership so wishes, enter into such a contract with that partnership.

(3) A person shall be regarded as practising on 31st March 2004 for the purposes of paragraph (1) (b) if that person would have been so practising on that date except for the fact that on that date—

- (a) that person is suspended from the Medical Register in the circumstances specified in paragraph (5) or suspended by the Tribunal from the Health Board's medical list; or
- (b) the Health Board has in place for that person's temporary arrangements under regulation 24(7) of the 1995 Regulations.

(4) Where a person is suspended from the Medical Register in the circumstances specified in paragraph (5), or suspended by the Tribunal from the Health Board's medical list or primary medical services performers list, a Health Board shall only be required under paragraph (2) to enter into a GMS contract with the partnership 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, that person is able to provide (but not perform) services under the contract;
- (b) having regard to the grounds of suspension, entering into 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; and
- (c) the practitioner has in place adequate arrangements for the provision of services under the contract during the period of the practitioner's suspension.

(5) The circumstances referred to in paragraphs (3)(a) and (4) 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 under rules made under paragraph 5A(3) of Schedule 4 (proceedings before professional conduct, health and preliminary proceedings committees) to that Act;
- (b) by the Health Committee of the General Medical Council under section 37 (unfitness to practise through illness etc.) or 38(1) of the 1983 Act; or
- (c) under section 41A (interim orders) of the 1983 Act.

(6) 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, sub paragraphs (a) and (b) of paragraph (5) 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.

(7) A Health Board shall not be required under paragraph (2) to enter into a GMS contract with a partnership where a Health Board has in place for a partner in that partnership—

(a) on 31st March 2004, temporary arrangements under regulation 24(7) of the 1995 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, that person is able to provide (but not perform) services under the contract.

(8) Whenever a Health Board is considering refusing to enter into a GMS contract under paragraph (4) or (7), it shall consult the area medical committee (if any) before making its decision and in a case where it is considering refusal under paragraph (7), it shall have regard to any written report made to it by the area medical committee (if any) under regulation 24(11) of the 1995 Regulations.

(9) Where a Health Board refuses to enter into a GMS contract pursuant to paragraph (4) or (7), it shall notify the partnership in writing of its decision, its reasons for that decision and of its right of appeal under article 5.

Appeal against refusal of a contract under article 3 or 4

5.—(1) A person who has been notified by a Health Board under article 3(9) or 4(9) of its refusal to enter into a GMS contract may appeal to the Scottish Ministers by giving notice in writing to the Scottish Ministers within a period of 28 days beginning on the day that the Health Board notified that person of the refusal.

(2) Any appeal referred to the Scottish Ministers in accordance with paragraph (1) shall be determined in accordance with—

(a) the NHS dispute resolution procedure, as if in Schedule 5 to 2004 Regulations—

(i) paragraph 91(1) and (2) were omitted;

(ii) in paragraph 91(3) “ a dispute as mentioned in sub-paragraph (1)” read “an appeal in accordance with article 5(1) of the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004”;

(iii) paragraph 91(3)(b) and (c) read—

“(b) a copy of the notification received from the Health Board under article 3(9) or 4(9) of the General Medical Services Transitional and Other Ancillary Provisions (Scotland) Order 2004;

(c) a brief statement of the grounds for appeal.”;

(iv) paragraphs 91(4) and 92(2) were omitted; and

(b) paragraph (3) of this article.

(3) The adjudicator may, when determining the appeal require the Health Board to enter into a GMS contract with the prospective contractor on terms to be agreed between the parties or, where necessary, determined under the pre-contract dispute resolution procedure under regulation 9 of the 2004 Regulations but may not require the prospective contractor to proceed with the contract.

Duration of entitlement to a GMS contract

6.—(1) Subject to paragraphs (2) to (5), a person, who is entitled to enter into a GMS contract on 1st April 2004 under article 3(2) or 4(2) but has not done so on that date, shall only continue to be so entitled after that date if—

- (a) that person has entered into a default contract with the Health Board and article 7 does not apply; and
- (b) that person has signed the GMS 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 GMS contract or that dispute was withdrawn,

unless article 11 applies.

(2) Where a person has been refused a GMS contract because the Health Board is not satisfied as to the matters specified in article 3(4) or 4(4) 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 primary medical services performers list; or
- (b) in a case where either party has, before the end of the period of 6 weeks referred to in sub paragraph (a), referred the terms of the GMS contract to the Scottish Ministers to consider and determine under 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 GMS contract because the Health Board is not satisfied as to the matter specified in article 3(7) or 4(7) and, before 31st March 2005, the Health Board is satisfied, after consultation with the area medical committee (if any), that that person (or, in the case of a partnership, the partner concerned) is able to provide services under a GMS 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 6 weeks after the date on which the Health Board was so satisfied; or
- (b) in a case where either party has, before the end of the period of 6 weeks referred to in sub paragraph (a), referred the terms of the GMS contract to the Scottish Ministers to consider and determine under 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 GMS contract because the Health Board is not satisfied as to the matter specified in article 3(7) or 4(7), 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 GMS contract under article 3(2) or 4(2), has been unable to do so before 30th September 2004 (whether following a default contract or not) because that person (or, in the case of a partnership, the partner concerned) is performing relevant

service in the armed forces, that person's entitlement shall, subject to articles 7 and 12, continue until—

- (a) the end of the period of 6 weeks after the date on which the person ceased to perform relevant service in the armed forces; or
- (b) in a case where either party has, before the end of the period of six weeks referred to in sub paragraph (a), referred the terms of the GMS contract to the Scottish Ministers to consider and determine under 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 4 or this article shall require a Health Board to enter into a GMS contract with—

- (a) any person on more than one occasion;
- (b) an individual and with a partnership of which the individual is a partner; or
- (c) a partnership and with another partnership of which some or all of the partners are the same.

Effect of termination of a default contract on entitlement to enter into a GMS contract under articles 3 or 4

7.—(1) Any entitlement which a person may have under articles 3 or 4 to enter into a GMS contract with a Health Board on and after 1st April 2004 shall be extinguished if any default contract with that Health Board to which that person was a party 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 GMS contract.

(3) Where—

- (a) a person has lost their entitlement to enter into a GMS contract under paragraph (1);
- (b) the default contractor has, within 28 days of the date of the notice of termination served on it by the Health Board, referred the termination of the default contract to the Scottish Ministers to consider and determine under the NHS dispute resolution procedure contained in the default contract; and
- (c) the adjudicator has determined that the Health Board should not have terminated the default contract,

that person's entitlement to enter into a GMS 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 that person's entitlement to enter into a GMS contract until—

- (a) the end of the period of 6 weeks after the date on which that person was notified of the adjudicator's determination that the Health Board 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 sub paragraph (a), referred the terms of the GMS contract to the Scottish Ministers to consider and determine under 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 GMS contract of persons selected under regulation 11 of the 1995 Regulations

8.—(1) This article applies where—

- (a) before 1st April 2004, a Health Board has selected an applicant (“the selected applicant”) for a vacancy (whether in the case where the applicant is the only one for the vacancy or as mentioned in regulation 11(4) of the 1995 Regulations or upon reconsideration following an appeal); but
- (b) the application has not been determined by the Medical Practices Committee before that date under regulation 14(2) of those Regulations.

(2) The selected applicant shall (unless another person, who was not selected for that vacancy, was selected upon reconsideration by the Health Board following a successful appeal under article 9)—

- (a) be added to the primary medical services performers list of that Health Board; and
- (b) subject to paragraph (3), be entitled to enter into a GMS contract as an individual medical practitioner or as a partner in a partnership from—
 - (i) 1st April 2004;
 - (ii) the expiry of the period for bringing an appeal pursuant to article 9;
 - (iii) the final determination or withdrawal of any appeal dealt with under article 9; or
 - (iv) if an appeal referred to in paragraph (iii) is successful, the notification of the determination of the Health Board following its reconsideration of the application pursuant to article 9,

whichever is the later.

(3) A person who is entitled to enter into a GMS contract under paragraph (2) 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 or, if the appeal is successful, the notification of the determination of the Health Board following its reconsideration of the application pursuant to article 9; or
- (c) in a case where either party has, before the end of the period referred to in sub paragraph (a) or (b), referred the terms of the GMS contract to the Scottish Ministers to consider and determine under 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.

Appeals under section 23(2A)(c) of the 1978 Act

9.—(1) Where—

- (a) before 1st April 2004, a Health Board has decided not to select an applicant (“the unsuccessful applicant”) for a vacancy—
 - (i) under regulation 11(4) of the 1995 Regulations(9); or

(9) Regulation 11 was amended by [S.S.I. 1999/54](#).

(ii) following the reconsideration of the application by the Health Board after an appeal under section 23(2A)(c) (distribution of general medical services) of the 1978 Act⁽¹⁰⁾ has been allowed; but

(b) it has not, by that date, notified that applicant in writing of its decision in accordance with regulation 11(6) of those Regulations,

it shall so notify that applicant within seven days from that date and any right of appeal which the applicant would have had under section 23(2A)(c) of the 1978 Act and, if that appeal is successful, any right to have the application reconsidered by the Health Board in terms of that section and under regulation 17(10) of the 1995 Regulations⁽¹¹⁾ shall continue as if that section had not been repealed and as if regulations 11 and 17 of the 1995 Regulations had not been revoked.

(2) Where—

- (a) before 1st April 2004, a Health Board has decided not to select an applicant (“the unsuccessful applicant”) for a vacancy—
- (i) under regulation 11(4) of the 1995 Regulations; or
 - (ii) following the reconsideration of the application by the Health Board after an appeal under section 23(2A)(c) of the 1978 Act has been allowed;
- (b) the unsuccessful applicant is notified of that fact—
- (i) before that date under regulation 11(6) of those Regulations; or
 - (ii) on or after that date under paragraph (1); and
- (c) the unsuccessful applicant has (or, under paragraph (1), is deemed to have) a right of appeal under section 23(2A)(c) of the 1978 Act and the time for appealing under regulation 17 of the 1995 Regulations has not yet expired,

the time for appealing shall continue as if that section had not been repealed and as if regulation 17 of the 1995 Regulations had not been revoked.

(3) Where an unsuccessful applicant—

- (a) has, before 1st April 2004, given notice to the Scottish Ministers under regulation 17 of the 1995 Regulations of an appeal under section 23(2A)(c) of the 1978 Act but that appeal has not been determined by that date; or
- (b) has given notice of such an appeal after 31st March 2004 pursuant to paragraph (2),

then, that appeal, and, if successful, any right to have the application reconsidered by the Health Board in terms of that section and under regulation 17(10) of those Regulations shall continue as if that section had not been repealed and as if regulations 11 and 17 of those Regulations had not been revoked.

Entitlement to a GMS contract following appeal under article 9

10.—(1) Where, following an appeal dealt with under article 9, the Health Board reconsider the application and determine that a medical practitioner should have been selected for that vacancy, that medical practitioner shall—

- (a) be added to the primary medical services performers list of the Health Board; and
- (b) subject to paragraph (2), be entitled to enter into a GMS contract with the Health Board as an individual medical practitioner or as a partner in a partnership.

⁽¹⁰⁾ Section 23(2A) was inserted by the National Health Service and Community Care Act 1990 (c. 19), section 30 and is repealed from 1st April 2004 by the Primary Medical Services (Scotland) Act 2004, schedule, paragraph 1(7).

⁽¹¹⁾ Regulation 17 was amended by S.S.I 1999/54.

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

- (a) the end of the period of 6 weeks after receiving notice of the determination of the Health Board following its reconsideration of the application; or
- (b) in a case where either party has, before the end of the period of 6 weeks referred to in sub paragraph (a), referred the terms of the GMS contract to the Scottish Ministers to consider and determine under 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 Health Board to enter into a GMS contract

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

- (a) offered to enter into a GMS contract under article 3, 4, 7, 8 or 10; and
- (b) as a result of a failure to act by the Health Board, been unable to sign such a contract before its entitlement to enter into such a contract expires pursuant to article 6, 7(4), 8(3) or 10(2).

(2) In a case to which this article applies, the prospective contractor must, if it wishes to enter into a GMS contract, apply in writing to the Scottish Ministers within the period of 14 days of the expiry of its entitlement.

(3) Any application referred to the Scottish Ministers in accordance with paragraph (2) shall be determined in accordance with—

- (a) the NHS dispute resolution procedure, as if in Schedule 5 to the 2004 Regulations—
 - (i) paragraph 91(1) and (2) were omitted;
 - (ii) in paragraph 91(3) “ a dispute as mentioned in sub-paragraph (1)” read “ a dispute arising in connection with an application under article 11(2) of the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004”;
 - (iii) paragraph 91(3)(b) and (c) read—
 - “(b) the grounds on which the applicant claims to be entitled to enter into a general medical services contract;
 - (c) the grounds for alleging default by the Health Board.”;
 - (iv) paragraphs 91(4) and 92(2) were omitted; and
- (b) paragraph (4) of this article.

(4) The adjudicator may, when determining the application require the Health Board to enter into a GMS contract with the prospective contractor on terms to be agreed between the parties or, where necessary, determined under the pre-contract dispute resolution procedure under regulation 9 of the 2004 Regulations but may not require the prospective contractor to proceed with the contract.

Effect of events taking place on or after 1st April 2004 on entitlement to enter into a GMS contract

12. Where a person, who is entitled to enter into a GMS contract on and after 1st April 2004 under article 3, 4, 8 or 10, has not entered into a default contract with a Health Board, that person’s entitlement to enter into a GMS contract with that Health Board shall be extinguished if, on or after 1st April 2004, that person (or, in the case of a partnership, any partner in that partnership) falls within paragraph 101(2) of Schedule 5 to the 2004 Regulations unless—

- (a) the Health Board is satisfied of the matters in sub paragraphs (3) or (5) of that paragraph; or

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- (b) that person falls within sub paragraph (2)(d) of that paragraph and the period specified in sub paragraph (4) of that paragraph has not expired.