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WELSH STATUTORY INSTRUMENTS

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**2004 No. 1016**

**The General Medical Services Transitional and  
Consequential Provisions (Wales) (No. 2) Order 2004**

**PART 1**

**GENERAL**

**Citation, commencement, application and interpretation**

**1.**—(1) This Order may be cited as the General Medical Services Transitional and Consequential Provisions (Wales) (No. 2) Order 2004 and shall come into force on 1st April 2004.

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

(3) In this Order—

“the 1990 Act” means the National Health Service and Community Care Act 1990(1);

“the 1992 Regulations” means the National Health Service (General Medical Services) Regulations 1992(2);

“the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003;

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(3);

“the 2004 Regulations” means the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004(4);

“additional services” has the same meaning as in the 2004 Regulations;

“the Assembly” means the National Assembly for Wales;

“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(5);

“the Choice Regulations” means the National Health Service (Choice of Medical Practitioner) Regulations 1998(6);

“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 under article 13 of the Transitional Order and “default contractor” shall, except in Part 3, where it has the meaning given in article 40(3), be construed accordingly;

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(1) 1990 c. 19.

(2) S.I. 1992/635.

(3) S.I. 2003/1250.

(4) S.I. 2004/478 (W.48).

(5) 1971 c. 80.

(6) S.I. 1998/668 as amended by S.I. 1999/3179 and 2000/1708 (W.115).

“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 1977 Act(7);

“general medical services contract” means a contract under section 28Q of the 1977 Act and general medical services contractor shall, except in Part 3, where it has the meaning given in article 40(3), be construed accordingly;

“list of patients” means—

- (a) in relation to a person providing general medical services under section 29 of the 1977 Act(8), the list of patients of a medical practitioner prepared by the Local Health Board under regulation 19 of the 1992 Regulations; and
- (b) in relation to a general medical services contractor or a default contractor, the list prepared and maintained by the Local Health Board 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;

“Local Medical Committee” means—

- (a) until 1st April 2004, a committee recognised under section 44 of the 1977 Act(9);
- (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 Local Health Board under regulations made under section 29(2)(a) of the 1977 Act(11);

“medical performers list” means a list of medical practitioners prepared and published pursuant to regulation 3(1) of the Performers Lists Regulations;

“the NHS dispute resolution procedure” means, except in Part 4, the procedure for resolution of disputes specified in paragraphs 99 and 100 of Schedule 6 to the 2004 Regulations;

“Performers Lists Regulations” means the National Health Service (Performers Lists) (Wales) Regulations 2004(12);

“practice premises”, in relation to a person providing services under section 29 of the 1977 Act has the same meaning as in regulation 2(1) of the 1992 Regulations and, in relation to a general medical services contractor or a default contractor, has the same meaning as in regulation 2(1) of the 2004 Regulations;

“registered patient” means—

- (a) a person who is recorded by the Local Health Board as being on the list of patients of a default contractor or a general medical services contractor, or

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(7) 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”).

(8) 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) (“the 1995 Act”), 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 Health and Social care Act 2001 (c. 15), sections 17 and 23, the National Health Service Reform and Health Care Professions Act 2002 (c. 17) Schedule 2, paragraph 3 and Schedule 8, paragraph 2 and S.I.s 1985/39 and 2002/3135. It is to be repealed from 1st April 2004 by section 175(2) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (“the 2003 Act”).

(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 1995 Act, Schedule 1, paragraph 32(a), the Health Act 1999 (c. 8), section 11, the 2001 Act, section 5 and by the 2003 Act, Schedule 11, Paragraph 21.

(10) Section 45A was inserted into the 1977 Act by paragraph 23 of Schedule 11 to the 2003 Act.

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

(12) S.I. 2004/1020 (W.117).

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

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

“the Transitional Order” means the General Medical Services Transitional and Consequential Provisions (Wales) Order 2004(13).

## PART 2

### TRANSITIONAL PROVISIONS RELATING TO GENERAL MEDICAL SERVICES

#### Application and interpretation of this Part

2.—(1) In this Part—

- (a) articles 3 to 31 apply to a default contract or a general medical services contract entered into on or before 31st March 2004 with—
- (i) an individual medical practitioner who has entered into the general medical services contract pursuant to an entitlement under article 3 of the Transitional Order or the default contract pursuant to article 13 of that Order,
  - (ii) two or more individuals practising in partnership who have entered into the general medical services contract pursuant to an entitlement under article 5 of that Order or the default contract pursuant to article 13 of that Order, or
  - (iii) a company in which one or more of the legal and beneficial shareholders is, on the date on which the general medical services contract is signed, providing services under section 29 of the 1977 Act;
- (b) articles 29 and 30 apply to the contracts specified in sub-paragraph (a) and to a general medical services contract which takes effect immediately after a default contract with the same parties ceases to have effect; and
- (c) article 31 applies to all general medical services contracts and default contracts entered into before 1st April 2005.

(2) Unless it is entered into with a person to whom the particular article does not apply, a general medical services contract or a default contract which falls within paragraph (1) shall include, or be deemed to include, terms which have the effect specified in articles 3 to 34.

(3) In this Part—

“relevant medical practitioner” means a medical practitioner who—

- (a) on 31st March 2004, or on the date on which a default contract or a general medical services contract is entered into, if earlier, is providing services under section 29 of the 1977 Act; and
- (b) on or before 31st March 2004—

- (i) has entered into a default contract or a general medical services contract as an individual medical practitioner or as one of two or more individuals practising in partnership, or
- (ii) is a legal and beneficial shareholder in a company which has entered into a general medical services contract;

“succeeding contractor” means the default contractor which is a party to the default contract or the general medical services contractor which is a party to the general medical services contract which—

- (a) a relevant medical practitioner has entered into either as an individual medical practitioner or as one of two or more individuals practising in partnership; or
- (b) has been entered into by a company in which a relevant medical practitioner is a legal and beneficial shareholder.

### **Applications for inclusion in lists of patients**

**3.** Where, on or before 31st March 2004, a person had applied to a relevant medical practitioner for inclusion in his or her list of patients pursuant to regulation 2 or 3(1) of the Choice Regulations but on 31st March 2004 that application had not yet been determined, the application shall, on 1st April 2004, be regarded as if it had been made to the succeeding contractor under—

- (a) the term of its general medical services contract which gives effect to paragraph 15 of Schedule 6 to the 2004 Regulations; or
- (b) the equivalent term of its default contract.

### **Acceptance of applications for inclusion in lists of patients**

**4.—(1)** Where, on or before 31st March 2004, a relevant medical practitioner had agreed to accept a person on his or her list of patients pursuant to paragraph 6 of Schedule 2 to the 1992 Regulations<sup>(14)</sup> but on 31st March 2004 he or she had not yet sent the signed medical card or the application to the Local Health Board in accordance with sub-paragraph (3) of that paragraph, that acceptance shall be regarded on 1st April 2004 as an acceptance by the succeeding contractor and notification of that acceptance shall be sent by the succeeding contractor to the Local Health Board in accordance with—

- (a) the term of its general medical services contract which gives effect to paragraph 15(5) of Schedule 6 to the 2004 Regulations; or
- (b) the equivalent term of its default contract.

(2) In paragraph (1), “medical card” has the same meaning as in regulation 2(1) of the 2004 Regulations.

### **Removal from the list of patients at the request of the patient**

**5.** Where, on or before 31st March 2004, a Local Health Board had received notice from a patient under regulation 23(1)(a) of the 1992 Regulations<sup>(15)</sup> that he or she wished to be removed from a relevant medical practitioner’s list of patients but on 31st March 2004 that removal had not yet taken effect in accordance with regulation 23(1)(b) of those Regulations, the removal shall take effect as a removal from the list of patients of the succeeding contractor as if it were a removal pursuant to a request received by the Local Health Board in accordance with—

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<sup>(14)</sup> Paragraph 6 was amended by S.I. 1998/682, 2002/1896 (W.197) and 2002/916 (W.104).

<sup>(15)</sup> Regulation 23(1) was amended by S.I. 2002/1896 (W.197).

- (a) the term of the succeeding contractor's general medical services contract which gives effect to paragraph 19 of Schedule 6 to the 2004 Regulations, subject to the modification that the reference to the period of 14 days in the term which gives effect to paragraph 19(3)(b) shall be read as a reference to the period of 14 days after the date on which the request made under regulation 23(1)(a) of the 1992 Regulations was received by the Local Health Board; or
- (b) the equivalent term of its default contract subject to a modification to the same effect.

### **Removal from the list of patients at the request of the relevant medical practitioner**

6.—(1) Where, on or before 31st March 2004, a relevant medical practitioner had notified the Local Health Board that he or she wished to have a patient removed from his or her list of patients in accordance with paragraph 9 of Schedule 2 to the 1992 Regulations<sup>(16)</sup> but that removal had, on 31st March 2004, not yet taken effect, paragraph (2) shall apply.

(2) Except where paragraph (3) applies, the removal shall take effect as a removal from the list of patients of the succeeding contractor under—

- (a) the term of its general medical services contract which gives effect to paragraph 20(8) of Schedule 6 to the 2004 Regulations, subject to the modification that the reference in that term to the eighth day after the Local Health Board receives the notice shall be read as a reference to the eighth day after the Local Health Board received the notice sent under paragraph 9 of Schedule 2 to the 1992 Regulations; or
- (b) the equivalent term of its default contract, subject to a modification to the same effect.

(3) Where, on or before 31st March 2004, the Local Health Board had been—

- (a) informed by the relevant medical practitioner under paragraph 9(2) of Schedule 2 to the 1992 Regulations that he or she was treating the patient at intervals of less than seven days but had not yet been notified by him or her that the patient no longer needed such treatment; or
- (b) notified by the relevant medical practitioner under that paragraph that the person no longer needed treatment at intervals of less than seven days,

paragraph (4) shall apply.

(4) In a case which falls within paragraph (3), the removal shall take effect as a removal from the list of patients of the succeeding contractor on—

- (a) the date on which the Local Health Board receives notification of the registration of the person with another provider of essential services (or their equivalent);
- (b) the eighth day after the Local Health Board received notice from the relevant medical practitioner that the person no longer needed treatment at intervals of less than seven days; or
- (c) the eighth day after the Local Health Board receives notice from the succeeding contractor that the patient no longer needs treatment at intervals of less than seven days,

whichever is the sooner.

### **Removals from the list of patients who are violent**

7.—(1) This article applies where, on or before 31st March 2004, a person had been removed from a relevant medical practitioner's list of patients with immediate effect pursuant to paragraph 9A of Schedule 2 to the 1992 Regulations<sup>(17)</sup> but—

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<sup>(16)</sup> Paragraph 9 was amended by S.I. 1994/633, 1998/682 and 2002/1896 (W.197).

<sup>(17)</sup> Paragraph 9A was inserted by S.I. 1994/633 and amended by S.I. 2002/1896 (W.197).

- (a) confirmation in writing had not yet been given to the Local Health Board under paragraph 9A(2);
- (b) reasonable steps had not yet been taken by the relevant medical practitioner under paragraph 9A(4) to inform the person whose name had been removed; or
- (c) written notice of the removal had not yet been given to the person by the Local Health Board under regulation 19(6B) of the 1992 Regulations<sup>(18)</sup>.

(2) In a case to which paragraph (1)(a) applies written confirmation of the request for removal shall be given to the Local Health Board by the succeeding contractor within 7 days from the date on which notification was given under paragraph 9A(1).

(3) In a case to which paragraph (1)(b) applies, reasonable steps shall be taken by the succeeding contractor to inform the patient of the request for removal.

(4) In a case to which paragraph (1)(c) applies, the Local Health Board shall send written notice of the removal to the patient.

### **Removals from the list of patients who have moved**

**8.**—(1) Where, on or before 31st March 2004, a Local Health Board had informed a patient and a relevant medical practitioner, in accordance with regulation 23(2) of the 1992 Regulations<sup>(19)</sup>, that the medical practitioner was no longer obliged to visit and treat him or her but the 30 days referred to in that regulation had not yet expired, that information shall be regarded as if it had been given under—

- (a) the term of the succeeding contractor's general medical services contract which gives effect to paragraph 23 of Schedule 6 to the 2004 Regulations, subject to the modification that the reference to the period of 30 days in the term which gives effect to paragraph 23(1)(c) shall be read as a reference to 30 days from the date of the information given by the Local Health Board under regulation 23(2) of the 1992 Regulations; or
- (b) the equivalent term of its default contract subject to a modification to the same effect.

(2) Where, on or before 31st March 2004, a Local Health Board had given a relevant medical practitioner notice in writing, in accordance with regulation 23(4) of the 1992 Regulations<sup>(20)</sup>, that it intended to remove a person from the practitioner's list of patients but the six months referred to in that regulation had not yet expired, that notice shall be regarded as if it had been given to the succeeding contractor under—

- (a) the term of its general medical services contract which gives effect to paragraph 24 of Schedule 6 to the 2004 Regulations, subject to the modification that the reference to the period of six months in the term which gives effect to paragraph 24(a) shall be read as a reference to six months from the date of the notice given by the Local Health Board under regulation 23(4) of the 1992 Regulations; or
- (b) the equivalent term of its default contract subject to a modification to the same effect.

### **Removals not reflected in the list of patients on 31st March 2004**

**9.**—(1) This article applies where—

- (a) on or before 31st March 2004, the removal of a patient from a relevant medical practitioner's list of patients had taken effect under the 1992 Regulations; and

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<sup>(18)</sup> Paragraph (6B) was inserted into regulation 19 by S.I. 1994/633 and amended by S.I. 1998/682 and 2002/1896 (W.197).

<sup>(19)</sup> Regulation 23(2) was amended by S.I. 1997/730, and 2002/1896 (W.197).

<sup>(20)</sup> Regulation 23(4) was amended by S.I. 2001/3742 and 2002/1896 (W.197).

- (b) the Local Health Board had not, on 31st March 2004, reflected that removal in the list of patients of that medical practitioner which it maintained under regulation 19 of the 1992 Regulations.
- (2) In a case to which this article applies, the Local Health Board shall—
  - (a) remove the patient from the succeeding contractor's list of patients as soon as reasonably practicable after 1st April 2004; and
  - (b) if notification of the removal was required to be given to the medical practitioner or the patient under the provision of the 1992 Regulations relevant to the removal and had not been given on or before 31st March 2004, notify the succeeding contractor and the patient of the removal.

### **Applications for acceptance as a temporary resident**

**10.** Where, on or before 31st March 2004, a person had applied to a relevant medical practitioner for acceptance as a temporary resident under regulation 7 of the Choice Regulations but on 31st March 2004 that application had not yet been determined, the application shall be regarded as if it had been made to the succeeding contractor and shall be dealt with in accordance with—

- (a) the term of its general medical services contract which gives effect to paragraphs 16 and 17 of Schedule 6 to the 2004 Regulations; or
- (b) the equivalent terms of its default contract.

### **Acceptance of temporary residents**

**11.**—(1) This article applies where—

- (a) on or before 31st March 2004, a relevant medical practitioner had accepted a person as a temporary resident under paragraph 7(b) of Schedule 2 to the 1992 Regulations<sup>(21)</sup>; and
- (b) on 31st March 2004, his or her responsibility for that patient had not yet been terminated under paragraphs 9 and 10 of that Schedule<sup>(22)</sup> or the period for which the person was accepted as a temporary resident had not yet come to an end.

(2) In a case to which this article applies, the person shall, on 1st April 2004, be treated as if he or she had been accepted as a temporary resident by the succeeding contractor under—

- (a) the term of its general medical services contract which gives effect to paragraph 16 of Schedule 6 to the 2004 Regulations, subject to the modification that reference to a period of three months in that term shall be read as a reference to a period of three months starting with the date on which the person was accepted as a temporary resident by the relevant medical practitioner under paragraph 7 of Schedule 2 to the 1992 Regulations; or
- (b) the equivalent term of its default contract subject to a modification to the same effect.

### **Termination of responsibility for temporary residents**

**12.** Where, on or before 31st March 2004, a relevant medical practitioner had informed the Local Health Board in writing in accordance with paragraph 10 of Schedule 2 to the 1992 Regulations that he or she wished to terminate his or her responsibility for a temporary resident but, on 31st March 2004, that responsibility had not yet terminated under paragraph 9 of that Schedule, the responsibility of the succeeding contractor for that temporary resident shall terminate seven days after the date on which the information under paragraph 10 of Schedule 2 to the 1992 Regulations was given to the Local Health Board by the relevant medical practitioner.

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(21) Paragraph 7 was amended by [S.I. 1998/682](#).

(22) Paragraph 9 was amended by [S.I. 1994/633](#), [1998/682](#) and [2002/1896\(W.197\)](#); paragraph 10 was amended by [S.I. 2002/1896\(W.197\)](#).

### **Provision of immediately necessary treatment**

13. Where, on 31st March 2004, a relevant medical practitioner was responsible for providing immediately necessary treatment to any person under paragraph 4(4) of Schedule 2 to the 1992 Regulations<sup>(23)</sup>, the succeeding contractor shall continue to be responsible for providing such treatment to that person for the period for which the relevant medical practitioner would have been responsible if that paragraph had not been revoked.

### **Newly registered patients**

- 14.—(1) This article applies where, on 31st March 2004, a patient specified in paragraph (2)—
- (a) was entitled to be invited to participate in a consultation under paragraph 14(1) of Schedule 2 to the 1992 Regulations<sup>(24)</sup>; and
  - (b) had not been given such an invitation.
- (2) The patient referred to in paragraph (1) is a patient—
- (a) who, on or before 31st March 2004—
    - (i) had applied for inclusion in a relevant medical practitioner’s list of patients under regulation 2 or 3 of the Choice Regulations and whose application had been accepted, or
    - (ii) had been assigned to a relevant medical practitioner’s list under regulation 4 of the Choice Regulations; and
  - (b) in respect of whom a Local Health Board had not granted deferment of the obligation to invite him or her to participate in a consultation under paragraph 14 of Schedule 2 to the 1992 Regulations.
- (3) A patient to whom this article applies shall, on 1st April 2004, be regarded as a patient who falls within —
- (a) the term of the succeeding contractor’s general medical services contract which gives effect to paragraph 4 of Schedule 6 to the 2004 Regulations; or
  - (b) the equivalent term of its default contract.

### **Appointments system**

15. Where, on or before 31st March 2004, a relevant medical practitioner had notified a Local Health Board under paragraph 31 of Schedule 2 to the 1992 Regulations—

- (a) that he or she intended to operate an appointments system; or
- (b) of any proposal to discontinue such a system,

that notice shall be regarded as a notice given by the succeeding contractor to the Local Health Board for the purposes of the term of the general medical services contract which gives effect to paragraph 80(c) of Schedule 6 to the 2004 Regulations or the equivalent term of the default contract.

### **Qualifications of performers**

16.—(1) Where, on 1st April 2004, a succeeding contractor continues to employ or engage a person who on 31st March 2004 was employed or engaged in accordance with the requirements of Schedule 2 to the 1992 Regulations by the relevant medical practitioner in relation to whom it is a succeeding contractor, paragraphs (2) and (3) shall apply.

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(23) Paragraph 4(4) was substituted by S.I. 1994/633 and amended by S.I. 1998/682.

(24) Paragraph 14 was amended by S.I. 1998/682 and 2002/1896 (W.197).



(2) The requirements to make checks contained in the terms of the general medical services contract which give effect to paragraphs 56(1)(b) and 57(1) of Schedule 6 to the 2004 Regulations, or in the equivalent terms of the default contract—

- (a) in a case where equivalent checks have previously been carried out in respect of that person by the relevant medical practitioner, shall not apply; or
- (b) in any other case, shall apply subject to the modification that the checks may be carried out at any time up to 30th June 2004.

(3) The requirement to obtain references in the term of the general medical services contract which gives effect to paragraph 58 of Schedule 6 to the 2004 Regulations, or in the equivalent term of the default contract, shall not apply if such references have been obtained, checked and found to be satisfactory by the relevant medical practitioner by whom the health care professional was employed or engaged on 31st March 2004.

### **Independent nurse prescribers and supplementary prescribers**

**17.**—(1) Where, on or before 31st March 2004, a relevant medical practitioner had notified the Local Health Board of any matters relating to an independent nurse prescriber or a supplementary prescriber under paragraph 28A of Schedule 2 to the 1992 Regulations<sup>(25)</sup>, the succeeding contractor shall not be required to notify the Local Health Board of those same matters under—

- (a) the term of its general medical services contract which gives effect to paragraph 64 of Schedule 6 to the 2004 Regulations; or
- (b) the equivalent term of its default contract.

(2) In paragraph (1), “independent nurse prescriber” and “supplementary prescriber” have the same meaning as in paragraph 1 of Schedule 2 to the 1992 Regulations<sup>(26)</sup>.

### **Patient records**

**18.**—(1) Where, on 31st March 2004, a relevant medical practitioner had the written consent of the Local Health Board to the keeping of computerised records under paragraph 36 of Schedule 2 to the 1992 Regulations and that consent had not been withdrawn, that consent shall be regarded as written consent to the succeeding contractor for the purposes of—

- (a) the term of its general medical services contract which gives effect to paragraph 72 of Schedule 6 to the 2004 Regulations; or
- (b) the equivalent term of the default contract.

(2) Where—

- (a) on or before 31st March 2004, a Local Health Board had requested a relevant medical practitioner to send it the records relating to a patient under paragraph 36(6) of Schedule 2 to the 1992 Regulations; and
- (b) on 31st March 2004 that request had not yet been complied with,

the records requested shall be sent by the succeeding contractor to the Local Health Board as soon as possible.

(3) Where, on or before 31st March 2004, a relevant medical practitioner had been informed of the death of a patient on its list by the Local Health Board or had otherwise learned of the death of such a patient but on 31st March 2004 had not yet sent that patient’s records to the Local Health Board in accordance with paragraph 36(6)(b) of Schedule 2 to the 1992 Regulations, those records shall be sent to the Local Health Board by the succeeding contractor—

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(25) Paragraph 28A was inserted by S.I. 1999/326.

(26) These definitions were inserted into paragraph 1 by S.I. 2003/2646 (W.252).

- (a) in a case in which the relevant medical practitioner was informed of the death by the Local Health Board, within 14 days of the date on which he or she was so informed; or
- (b) in any other case, within one month of the date on which the relevant medical practitioner learned of the death.

### **Rights of entry**

**19.**—(1) Where, on or before 31st March 2004, a relevant medical practitioner had received a written request for inspection of his or her practice premises under paragraph 27(b) of Schedule 2 to the 1992 Regulations(**27**) but, on 31st March 2004, no inspection had yet taken place pursuant to that request, the request shall, on 1st April 2004, be regarded as notice of an intended entry to the succeeding contractor under—

- (a) the term of its general medical services contract which gives effect to paragraph 87 of Schedule 6 to the 2004 Regulations; or
- (b) the equivalent term of its default contract.

(2) In determining whether reasonable notice was given of any entry to the practice premises following a notice referred to in paragraph (1), regard shall be had to the date on which the request under paragraph 27(b) of Schedule 2 to the 1992 Regulations was made.

### **Refusal of approval of premises under paragraphs 29 and 29A of Schedule 2 to the 1992 Regulations**

**20.**—(1) Where, on or before 31st March 2004, a Local Health Board had notified a relevant medical practitioner under paragraph 29(12) of Schedule 2 to the 1992 Regulations(**28**) of its refusal of an application made under—

- (a) paragraphs 29(1) or (17) of that Schedule in relation to any place at which he or she was to be available; or
- (b) paragraphs 29A(1) or (6) of that Schedule(**29**) in relation to the treatment of patients other than at his or her practice premises,

paragraphs (2) and (3) shall apply.

(2) Where, on 31st March 2004, the time for appealing against the refusal specified in paragraph 29(13) of Schedule 2 to the 1992 Regulations had not expired and no appeal had yet been made, the time for appealing shall continue as if paragraph 29 and, if applicable, paragraph 29A of that Schedule had not been revoked.

(3) Where—

- (a) on 31st March 2004, the relevant medical practitioner had appealed in writing against that refusal under paragraph 29(13) of Schedule 2 to the 1992 Regulations but the appeal had not been determined or withdrawn; or
- (b) after 31st March 2004, an appeal is made pursuant to paragraph (2),

that appeal shall be dealt with or continue to be dealt with, as if paragraph 29 and, if applicable, paragraph 29A of that Schedule had not been revoked.

(4) Where an appeal dealt with under paragraph (3) is successful, the Local Health Board shall agree to a variation of the contract which it holds with the succeeding contractor which has the effect of adding to the list of practice premises under that contract the premises approved as a result of the appeal.

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(27) Paragraph 27(b) was amended by [S.I. 2002/1896 \(W.197\)](#).

(28) Paragraph 29 was amended by [S.I. 2002/1896 \(W.197\)](#) and [2002/916 \(W.104\)](#).

(29) Paragraph 29A was inserted by [S.I. 1995/80](#) and amended by [S.I. 2002/1896 \(W.197\)](#) and [2002/916 \(W.104\)](#).

- (5) A variation agreed by the Local Health Board pursuant to paragraph (4) shall have effect—
- (a) from a date no later than 28 days after the date on which the outcome of the appeal was notified to the relevant medical practitioner; and
  - (b) only if it is in writing and signed by or on behalf of the Local Health Board and the succeeding contractor.

### **Withdrawal of approval of premises under paragraph 29A of Schedule 2 to the 1992 Regulations**

21.—(1) Where—

- (a) on or before 31st March 2004 a Local Health Board had notified a relevant medical practitioner of withdrawal of its approval of premises under paragraph 29A(10) of Schedule 2 to the 1992 Regulations; and
- (b) on 31st March 2004, the time for appealing specified in sub-paragraph (11) of that paragraph had not expired and no appeal had yet been made,

the time for appealing shall continue as if paragraph 29A of Schedule 2 to the 1992 Regulations had not been revoked.

(2) Where—

- (a) on or before 31st March 2004, the relevant medical practitioner had appealed in writing against a withdrawal of approval under paragraph 29A(11) of Schedule 2 to the 1992 Regulations but the appeal had not been determined or withdrawn; or
- (b) after 31st March 2004, an appeal is made pursuant to paragraph (1)

that appeal shall be dealt with or continue to be dealt, with as if paragraph 29 and, if applicable, paragraph 29A of Schedule 2 to the 1992 Regulations were still in force.

(3) Where an appeal dealt with under paragraph (2) is successful, the Local Health Board shall agree to a variation of the contract which it holds with the succeeding contractor which has the effect of adding to the list of practice premises under that contract the premises approved as a result of the appeal.

(4) A variation agreed by the Local Health Board pursuant to paragraph (3) shall have effect—

- (a) from a date no later than 28 days after the date on which the outcome of the appeal was notified to the relevant medical practitioner; and
- (b) only if it is in writing and signed by or on behalf of the Local Health Board and the succeeding contractor.

### **Investigation of outstanding complaints**

22.—(1) Where, on 31st March 2004—

- (a) a complaint had been made under paragraph 47A of Schedule 2 to the 1992 Regulations<sup>(30)</sup> by or on behalf of a patient or former patient of a relevant medical practitioner; and
- (b) the investigation of that complaint under the practice based complaints procedure required to be established under paragraph 47A had not concluded,

that complaint must, from 1st April 2004, be investigated, or in an appropriate case continue to be investigated, by the succeeding contractor as if paragraph 47A had not been revoked.

(2) Where, on 31st March 2004—

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<sup>(30)</sup> Paragraph 47A was inserted by S.I. 1996/702 and amended by S.I.2003/784 (W.95).

(a) a complaint had been made under paragraph 47A of Schedule 2 to the 1992 Regulations by or on behalf of a patient or former patient of a medical practitioner to whom there is no succeeding contractor; and

(b) the investigation of that complaint under the practice based complaints procedure required to be established under paragraph 47A had not concluded,

that complaint must be investigated by one of the persons specified in paragraph (3) as if paragraph 47A had not been revoked.

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

- (a) the person or persons who was or were the former partner or partners of the medical practitioner on whose list of patients the complainant was included, if he or she or they meet the requirements in paragraph (4);
- (b) if the person or persons specified in paragraph (a) satisfy the Local Health Board on whose medical list their former partner was included for the purposes of providing general medical services to the complainant that, having regard to the nature of the complaint, it would not be appropriate for the complaint to be investigated by him or her or them, that Local Health Board; or
- (c) in any other case, the Local Health Board on whose medical list the medical practitioner was included for the purposes of providing general medical services to the complainant.

(4) The requirements referred to in paragraph (3) are that the former partner or partners—

- (a) has or have entered into a default contract or a general medical services contract, as an individual medical practitioner or as one of two or more individuals practising in partnership, with the Local Health Board on whose medical list their former partner was included for the purposes of providing general medical services to the complainant; or
- (b) is a legal and beneficial shareholder or are legal and beneficial shareholders in a company which has entered into a general medical services contract with that Local Health Board.

(5) Where, under paragraph (3), a complaint made by or on behalf of a patient or former patient would fall to be investigated, or continue to be investigated, by more than one general medical services contractor or default contractor, the contractors concerned shall—

- (a) enter into discussions as to which of them would be the most appropriate person to deal with the complaint; and
- (b) if they are unable to reach agreement, refer the matter to the Local Health Board on whose medical list their former partner was included for the purposes of providing general medical services to the complainant and that Local Health Board shall investigate the complaint itself.

(6) Where, under this article, a complaint falls to be investigated by a Local Health Board the investigation shall be carried out in accordance with the directions dated 29th June 1998 on dealing with complaints about family health services practitioners given by the Assembly under section 16BB(4) of the 1977 Act<sup>(31)</sup>.

#### **Complaints relating to general medical services made after 31st March 2004**

**23.** The complaints procedure established and operated by a succeeding contractor under—

- (a) the term of its general medical services contract which gives effect to paragraph 90 of Schedule 6 to the 2004 Regulations; or

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(31) Section 16BB(4) was inserted into the Act by section 6 of the National Health Service Reform and Health Care Professions Act 2002 (c. 17). The relevant directions are 'Directions to Health Authorities on dealing with complaints about family health service practitioners and providers of personal medical services and providers of personal dental services other than personal dental services provided by NHS trusts' dated 27th March 2003.

- (b) the equivalent term of the default contract,

shall apply to any complaint which a patient or former patient of the relevant medical practitioner to whom it is a succeeding contractor could have made (but did not make) on or before 31st March 2004 under paragraph 47A of Schedule 2 to the 1992 Regulations as it applies to complaints made by a patient or former patient of the succeeding contractor in relation to any matter reasonably connected with the provision of services under the contract.

### **Reports to a medical officer**

**24.**—(1) Where, on or before 31st March 2004, a relevant medical practitioner had received a request for information or an inquiry from a medical officer (or an officer of the Department for Work and Pensions on his or her behalf or at his or her direction) under paragraph 48 of Schedule 2 to the 1992 Regulations<sup>(32)</sup> but, on 31st March 2004, he or she had not yet responded to that request or inquiry, the succeeding contractor shall respond as if the request or inquiry had been made under—

- (a) the term of its general medical services contract which gives effect to paragraph 78 of Schedule 6 to the 2004 Regulations; or
- (b) the equivalent term of its default contract.

(2) In this article, “medical officer” means a medical practitioner who is—

- (a) employed or engaged by the Department for Work and Pensions; or
- (b) provided by an organisation in pursuance of a contract entered into with the Assembly for Work and Pensions.

### **Inquiries about prescriptions and referrals**

**25.** Where, on or before 31st March 2004, a relevant medical practitioner had received an inquiry about prescriptions or referrals from a Local Health Board under paragraph 49 of Schedule 2 to the 1992 Regulations<sup>(33)</sup> but had not yet responded to that inquiry, the succeeding contractor shall respond as if the inquiry had been made under—

- (a) the term of its general medical services contract which gives effect to paragraph 77 of Schedule 6 to the 2004 Regulations; or
- (b) the equivalent term of its default contract.

### **Notification of sub-contracts under general medical services contracts**

**26.**—(1) Where—

- (a) on 31st March 2004, a relevant medical practitioner had in place arrangements for the engagement of a deputy of which he or she had informed the Local Health Board under paragraph 21(1) of Schedule 2 to the 1992 Regulations<sup>(34)</sup>, and
- (b) the succeeding general medical services contractor wishes to continue those arrangements after 31st March 2004 in the form of a sub-contract to which paragraph 68 of Schedule 6 to the 2004 Regulations applies,

any requirement for the succeeding contractor to notify the Local Health Board of its intention to enter into that sub-contract contained in the term of its general medical services contract which gives effect to paragraph 68(1)(b) of Schedule 6 to the 2004 Regulations shall not apply, unless the date of termination of the arrangements is extended beyond the date which applied to them on 31st March 2004 or there is a material variation in the nature of those arrangements.

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<sup>(32)</sup> Paragraph 48 was substituted by [S.I. 1998/682](#).

<sup>(33)</sup> Paragraph 49 was amended by [S.I. 2002/1896 \(W.197\)](#).

<sup>(34)</sup> Paragraph 21(1) was amended by [S.I. 2001/3742](#) and [2002/2469](#).

(2) In this article—

“deputy” has the meaning given in paragraph 1 of Schedule 2 to the 1992 Regulations; and  
 “organisation providing deputy doctors” has the same meaning as in paragraph 21A(1) of that Schedule.

### **Practice leaflet**

**27.**—(1) This article applies where a relevant medical practitioner had compiled a practice leaflet which met the requirements of paragraph 47 of Schedule 2 to the 1992 Regulations<sup>(35)</sup> and that leaflet was, on 31st March 2004, available to patients on his or her list.

(2) In the circumstances to which this article applies, the practice leaflet made available to patients by—

- (a) the succeeding contractor; or
- (b) a general medical services contractor who enters into a general medical services contract before 31st July 2004 which takes effect immediately after its default contract with the same Local Health Board ceases to have effect,

need not, until 1st August 2004, include all the information specified in the term of the general medical services contract which gives effect to Schedule 10 to the 2004 Regulations (or in the equivalent term of the default contract) provided that, from the date of commencement of the contract until the practice leaflet does so comply, the general medical services contractor or the default contractor makes available to patients in written form the information specified in paragraph (3).

(3) The information referred to in paragraph (2) is—

- (a) the services available under the general medical services contract or the default contract;
- (b) the opening hours of the practice premises and the method of obtaining access to services throughout the core hours;
- (c) the arrangements for services in the out of hours period (whether or not provided by the general medical services contractor or the default contractor) and how the patient may contact such services; and
- (d) if the services in sub-paragraph (c) are not provided by the general medical services contractor or the default contractor, the fact that the Local Health Board which is a party to the general medical services contract or the default contract is responsible for commissioning the services and the name, address and telephone number of that Local Health Board.

(4) In this article, “practice leaflet”—

- (a) in relation to the period before 1st April 2004, has the meaning given in paragraph 47 of Schedule 2 to the 1992 Regulations; and
- (b) in relation to the period from 1st April 2004, has the meaning given in regulation 2(1) of the 2004 Regulations.

### **Medical examination of medical practitioners**

**28.** Where, on or before 31st March 2004—

- (a) a Local Health Board had required a relevant medical practitioner to be medically examined under regulation 25(5) of the 1992 Regulations; and
- (b) that medical examination had not yet taken place,

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(35) Paragraph 47 was amended by [S.I. 2002/1896 \(W.197\)](#).

the requirement shall, on 1st April 2004, unless the Local Health Board notifies him or her otherwise in writing, be regarded as a request made to that medical practitioner for him or her to be medically examined on the grounds that he or she is incapable of adequately providing services under the succeeding contract and arrangements for the medical examination shall, with the consent of the medical practitioner, continue to be made by the Local Medical Committee for the area of the Local Health Board which is a party to the succeeding contract, pursuant to the function conferred on that committee by regulation 27 of the 2004 Regulations.

#### **Patients not seen within three years**

**29.** The term of a general medical services contract which gives effect to paragraph 5 of Schedule 6 to the 2004 Regulations (or the equivalent term of a default contract) shall be read as if the reference to a consultation or clinic provided by the general medical services contractor (or the default contractor) included a reference to a consultation or clinic provided by—

- (a) the relevant medical practitioner in relation to whom it is a succeeding contractor; or
- (b) in the case of a general medical services contract which takes effect immediately after a default contract between the same parties ceases to have effect, the contractor who held that default contract.

#### **Patients aged 75 years and over**

**30.** The term of a general medical services contract which gives effect to paragraph 6 of Schedule 6 to the 2004 Regulations (or the equivalent term of a default contract) shall be read as if the reference to participating in a consultation under that term included a reference to participating in a consultation under—

- (a) paragraph 16 of Schedule 2 to the 1992 Regulations; or
- (b) in the case of a general medical services contract which takes effect immediately after a default contract between the same parties ceases to have effect, under the term of the default contract which was equivalent to paragraph 6 of Schedule 6 to the 2004 Regulations.

#### **Arrangements for GP Registrars**

**31.—(1)** Where, before 1st April 2005, a general medical services contractor or a default contractor employs a GP Registrar for the purpose of being trained by a GP Trainer, the requirement for the general medical services contractor or the default contractor to have the agreement of the Assembly to that employment in—

- (a) the term of the general medical services contract which gives effect to paragraph 63 of Schedule 6 to the 2004 Regulations; or
- (b) the equivalent term of the default contract,

shall not apply.

(2) In this article, “GP Registrar” and “GP Trainer” have the same meaning as in regulation 2(1) of the 2004 Regulations.

#### **Refund of fees paid under paragraph 38(f) of Schedule 2 to the 1992 Regulations**

**32.** Where, on 31st March 2004 a patient had paid a fee to a medical practitioner under paragraph 38(f) of Schedule 2 to the 1992 Regulations but—

- (a) the period for applying for a refund of that fee under paragraph 39(1) of that Schedule(36) had not yet expired; or
- (b) an application for refund of the fee had been made but not yet determined,

the period for applying for a refund and the powers of the Local Health Board in dealing with any application for a refund shall continue as if paragraph 39(1) of that Schedule had not been revoked.

### **Annual reports**

**33.** Notwithstanding the revocation of the 1992 Regulations, any medical practitioner to whom paragraph 50 of Schedule 2 to those Regulations (annual reports)(37) applied shall, by 30th June 2004, provide, either individually or as a member of a partnership, to the Local Health Board on whose medical list he or she appeared on 31st March 2004, an annual report in respect of the period of 12 months ending on 31st March 2004 which includes—

- (a) the number of complaints received in accordance with paragraph 47A of Schedule 2 to the 1992 Regulations(38); and
- (b) if the Local Health Board, having considered whether the information is available to it from another source and having consulted the Local Medical Committee, so requests, the information specified in paragraph 3 of Schedule 13 to those Regulations(39).

### **Determination of question whether a substance is a drug**

**34.—**(1) Where, on 31st March 2004, a Local Health Board had, under regulation 36(7) of the 1992 Regulations(40), informed a medical practitioner of its decision that a substance ordered by him or her was not a drug but—

- (a) the medical practitioner had not given notice of appeal under paragraph (8) of that regulation; and
- (b) the time for appealing in that paragraph had not yet expired,

the time for appealing shall continue as if regulation 36 of the 1992 Regulations were still in force.

(2) Where—

- (a) on 31st March 2004, a medical practitioner had given notice of appeal against a decision of a Local Health Board under regulation 36 of the 1992 Regulations but that appeal has not been determined or withdrawn; or
- (b) a medical practitioner has given notice of such an appeal after 31st March 2004, pursuant to paragraph (1),

that appeal shall continue to be dealt with as if regulation 36 of the 1992 Regulations were still in force.

### **Entry on to medical performers list of persons approved under regulations 18A or 18B of the 1992 Regulations**

**35.** Where a Local Health Board—

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(36) Paragraph 39(1) was amended by [S.I. 2002/1896 \(W.197\)](#).

(37) Paragraph 50 was amended by [S.I. 1993/540](#), [1997/730](#) and [2002/1896 \(W.197\)](#).

(38) Paragraph 47A was inserted by [S.I. 1996/702](#) and amended by [S.I. 2003/784 \(W.95\)](#).

(39) Schedule 13 was substituted by [S.I. 1993/540](#).

(40) Regulation 36(7) was amended by [S.I. 2002/1896 \(W.197\)](#).



- (a) had, on 31st March 2004, approved a medical practitioner under regulation 18A or 18B of the 1992 Regulations(41) but had not yet entered his or her name on its medical list in accordance with regulation 18F(1) of those Regulations(42); and
- (b) intends to enter into a default contract or general medical services contract with two or more individuals practising in partnership one of whom is the person so approved,

it shall add that person's name to its medical performers list unless he or she is already on the medical performers list of another Local Health Board and is not withdrawing from that list.

### **Outstanding appeals against refusal of approval under regulations 18A or 18B of the 1992 Regulations**

**36.**—(1) Where, on 31st March 2004—

- (a) a Local Health Board had refused to approve a medical practitioner under regulation 18A or 18B of the 1992 Regulations; and
- (b) he or she had a right of appeal under regulations 18G or 18GG of the 1992 Regulations(43) and the time for appealing had not yet expired,

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

(2) Where a medical practitioner whose nomination a Local Health Board had refused to approve under regulation 18A or 18B of the 1992 Regulations—

- (a) had, 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 had not yet been determined or withdrawn; or
- (b) has given notice of such an appeal after 31st March 2004 pursuant to paragraph (1),

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.

(3) Where—

- (a) following an appeal dealt with under paragraph (2), the FHSAA determines that the nomination of the medical practitioner should have been approved by the Local Health Board; and
- (b) a default contractor or a general medical services contractor notifies the Local Health Board that the person concerned is to join it as a partner,

the Local Health Board shall add that person's name to its medical performers list unless he or she is already on the medical performers list of another Local Health Board and is not withdrawing from that list.

### **Permission for use of facilities in private practice under section 72 of the 1977 Act**

**37.** Where, on 31st March 2004, a relevant medical practitioner had the permission of the Assembly under section 72 of the 1977 Act (permission for use of facilities in private practice), that permission shall be regarded, from 1st April 2004, as permission granted under that section to the succeeding contractor.

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(41) Regulations 18A and 18B were substituted by [S.I. 1998/2838](#) and amended by [S.I. 2002/916 \(W.104\)](#).

(42) Regulation 18F(1) was substituted by [S.I. 1998/2838](#) and amended by [S.I. 2002/916 \(W.104\)](#) and [2002/1896 \(W.197\)](#).

(43) Regulation 18G was substituted by [S.I. 1998/2838](#) and amended by [S.I. 2002/916 \(W.104\)](#) and [2002/1896 \(W.197\)](#); regulation 18GG was inserted by [S.I. 2001/3742](#) and amended by [S.I. 2002/1896 \(W.197\)](#).

### **Recovery of overpayments**

**38.**—(1) Where, on or before 31st March 2004, a medical practitioner had admitted an overpayment drawn to its attention by a Local Health Board under regulation 35(2) of the 1992 Regulations<sup>(44)</sup> (claims and overpayments) but the overpayment, or any part of it, had not been recovered, the amount overpaid, or any part of it not recovered before 31st March 2004, shall, notwithstanding the repeal of the 1992 Regulations, continue to be recoverable by that Local Health Board and shall be treated as a debt owed by that medical practitioner to that Local Health Board.

(2) Notwithstanding the repeal of the 1992 Regulations, where a Local Health Board considers that a payment has been made to a medical practitioner under the Statement of Fees and Allowances when it was not due and has not drawn that alleged overpayment to the attention of the medical practitioner on or before 31st March 2004, the Local Health Board may draw that overpayment to the attention of the medical practitioner and—

- (a) where the overpayment is admitted by him or her, the Local Health Board may recover the amount overpaid from him or her as a civil debt; and
- (b) where the overpayment is not admitted by him or her, the arrangements for appeals set out in paragraph 80 of the Statement of Fees and Allowances shall apply.

(3) In this article “Statement of Fees and Allowances” means the statement determined and published by the Assembly under regulation 34 of the 1992 Regulations<sup>(45)</sup>, as that statement had effect on 31st March 2004.

### **Continuation of pre-contract disputes relating to general medical services contracts**

**39.**—(1) Where, on or before 31st March 2004—

- (a) a prospective party to a general medical services contract had referred a pre-contract dispute to the Assembly to consider and determine under section 4(4) of the 1990 Act or under regulation 9 of the 2004 Regulations; and
- (b) that party had entered into the general medical services contract whose terms were subject to dispute before that dispute had been determined or withdrawn,

the dispute shall, notwithstanding that the parties to the dispute have entered into a general medical services contract, continue to be dealt with under the procedure specified in regulation 9(2) of the 2004 Regulations.

(2) In the case of a dispute dealt with pursuant to paragraph (1), the determination—

- (a) may require the parties to agree an amendment or variation to the general medical services contract; and
- (b) shall be binding upon the parties to that contract.

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<sup>(44)</sup> Regulation 35(2) was amended by S.I. 1996/702, 2002/1896 (W.197).

<sup>(45)</sup> Regulation 34 was amended by S.I. 1993/540, 1997/2468, 2000/1992 (W.144) and 2002/1896 (W.197).

## PART 3

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

#### Application and interpretation of this Part

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

(2) In a case to which this Part applies, the general medical services contract shall, unless it is entered into with a person to whom the particular article does not apply, include, or be deemed to include, terms which have the effect specified in articles 41 to 51.

(3) In this Part—

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

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

#### Carry over of approvals, applications, notices etc.

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

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

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

(c) any application or request made by a patient to the default contractor under its default contract and which has not been dealt with or determined on or before the date on which the default contract ceases to have effect, shall be deemed to be an application or request made by the patient to the general medical services contractor under its general medical services contract and any time specified in the general medical services contract in relation to that application or request shall be deemed to run from the date on which the application or request was made under the default contract;

(d) any notice given to or served on the default contractor under its default contract by the Local Health Board which—

(i) requires it to provide or cease providing services, or

- (ii) withdraws, suspends or varies an approval previously given to it by the Local Health Board,
- from a date which is after the date on which the default contract ceases to have effect, shall be deemed to be a notice served on the general medical services contractor under its general medical services contract which takes effect on the date on which it would have taken effect had the default contract continued in force and any time specified in the general medical services contract for referring the matter to the NHS dispute resolution procedure shall be deemed to run from the date on which the notice was given to or served on the default contractor;
- (e) subject to paragraph (2), any notification or information given to the Local Health Board or a patient by the default contractor under its default contract shall be deemed to be a notification or information given by the general medical services contractor under the equivalent term of its general medical services contract on the date on which the general medical services contract takes effect and any reference in the relevant term of the general medical services contract to the date on which the event referred to in the notification shall take effect shall be read as a reference to the date on which that event would have taken effect had the default contract remained in force;
- (f) any report, notification or information (other than a notification required to be given under the term of the default contract equivalent to paragraph 84 of Schedule 6 to the 2004 Regulations) which, on the date on which the default contract ceased to have effect, was required to be given to any person by the default contractor under its default contract but had not been so given, shall be given by the general medical services contractor as if it was required to be given under the general medical services contract, subject to the modification that the timescale for giving any such report, notification or information shall be that which would have applied to the default contractor had the default contract remained in force;
- (g) any notifications or acknowledgements required to be given by the Local Health Board to a default contractor under its default contract on the date on which it ceases to have effect but which had not been so given shall be given by the Local Health Board to the general medical services contractor as if it was required under the terms of the general medical services contract;
- (h) any notifications required to be given by the Local Health Board under a default contract to a patient on the default contractor's list of patients on the date on which the default contract ceases to have effect but which had not been so given, shall be given to that patient by the Local Health Board—
- (i) if the patient is included in the list of patients of the general medical services contractor, as if the notification were required to be given under the general medical services contract, or
- (ii) in any other case, as soon as possible after the default contract ceases to have effect;
- (i) any request or inquiry made to the default contractor under the default contract but which has not been complied with on or before the date on which the default contract ceases to have effect, shall be complied with by the general medical services contractor as if it was a request or inquiry made under the equivalent term of the general medical services contract and any time specified in the general medical services contract for responding to any such request shall be deemed to run from the date on which the request was made to the default contractor;
- (j) any preference expressed by a patient under the default contract to receive services from a particular performer or class of performer under that default contract and which he or she has not withdrawn on or before the date on which the default contract ceases to have effect

shall, with effect from the date on which the general medical services contract takes effect, be regarded, for the purposes of that general medical services contract, as a preference expressed under the term of that contract which gives effect to paragraph 18 of Schedule 6 to the 2004 Regulations;

- (k) any checks which the default contractor has made under the terms of its default contract which are equivalent to paragraphs 56 to 58 of Schedule 6 to the 2004 Regulations or steps which it has taken to satisfy itself under the terms of that contract equivalent to paragraphs 57(1)(b), 59 or 68(1) of that Schedule shall be regarded as checks made or steps taken by the general medical services contractor under the terms of its general medical services contract which give effect to those paragraphs;
- (l) any records relating to a patient which are required to be sent to the Local Health Board by the default contractor under the term of its default contract which is equivalent to paragraph 72(6) of Schedule 6 to the 2004 Regulations but which have not been sent on or before the date on which the default contract ceases to have effect, shall be sent to the Local Health Board by the general medical services contractor by the date on which the default contractor would have been required to send them had its default contract not ceased to have effect;
- (m) the reference to a warning given by the general medical services contractor in the term of the general medical services contract which gives effect to paragraph 20(3) of Schedule 6 to the 2004 Regulations shall be deemed to include a reference to a warning given by the default contractor.

(2) Where—

- (a) pursuant to paragraph (1)(e), a notification is deemed to have been given by a general medical services contractor under the term of its contract which gives effect to paragraph 68(1) of Schedule 6 to the 2004 Regulations on the date on which the general medical services contract takes effect; and
- (b) the notification under the equivalent provision of the default contract was given more than 28 days before the date on which the default contract ceased to have effect,

the right of the Local Health Board under the term of the general medical services contract which gives effect to paragraph 68 of Schedule 6 to the 2004 Regulations to object to the sub-contract covered by that notification shall not apply.

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

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

contained in the default contract.

### **Newly registered patients**

**42.**—(1) Where a patient of a default contractor—

- (a) was, immediately before the default contract ceased to have effect, entitled to be invited to participate in a consultation under the term of the default contract equivalent to paragraph 4 of Schedule 6 to the 2004 Regulations; and
- (b) had not been given such an invitation,

that patient shall be regarded as a patient of the general medical services contractor who, on the date on which the general medical services contract takes effect, falls within the term of the general medical services contract which gives effect to paragraph 4 of Schedule 6 to the 2004 Regulations.

(2) In the case of a patient to whom paragraph (1) applies, the reference to a period of six months in the term of the general medical services contract which gives effect to paragraph 4(2) of Schedule 6 to the 2004 Regulations shall be read as if it was a reference to six months from the date of the patient's acceptance on or assignment to the default contractor's list.

### **Temporary residents**

43. Where, on the date on which the default contract ceases to have effect—
- (a) a default contractor has accepted a person as a temporary resident under the term of its default contract equivalent to paragraph 16 of Schedule 6 to the 2004 Regulations; and
  - (b) its responsibility for that patient has not yet been terminated under that term,

the person shall be treated as if he or she had been accepted as a temporary resident by the general medical services contractor under the term of its general medical services contract which gives effect to paragraph 16 of Schedule 6 to the 2004 Regulations, subject to the modification that the reference to a period of three months in that term shall be read as a reference to a period of three months starting with the date on which the person was accepted as a temporary resident by the default contractor.

### **Provision of immediately necessary treatment**

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

### **Removals from the list of patients**

45.—(1) Where, on the date on which the default contract ceases to have effect, a Local Health Board has received a request from a patient to be removed from a default contractor's list of patients but that removal has not yet taken effect under the term of the default contract equivalent to paragraph 19(3) of Schedule 6 to the 2004 Regulations, that removal shall take effect as a removal from the list of patients of the general medical services contractor on the date on which it would have taken effect had the default contract remained in force.

(2) Where, on the date on which the default contract ceases to have effect, a Local Health Board has informed a default contractor and one of its registered patients of the matters required under the term of the default contract equivalent to paragraph 23 of Schedule 6 to the 2004 Regulations but the 30 days referred to in that term has not expired, the information shall be regarded as if it had been given under the term of the general medical services contract which gives effect to paragraph 23 of Schedule 6 to the 2004 Regulations subject to the modification that the reference in that term to 30 days shall be read as a reference to 30 days from the date of the advice given to the patient by the default contractor.

(3) Where, on the date on which the default contract ceases to have effect, a Local Health Board has given notice in writing to a default contractor in accordance with the term of its contract which is equivalent to paragraph 24 of Schedule 6 to the 2004 Regulations but the six months referred to in that term has not expired, the notice shall be regarded as if it had been given under the term of the general medical services contract which gives effect to paragraph 24 of Schedule 6 to the 2004 Regulations subject to the modification that the reference in that term to six months shall be read as a reference to six months commencing with the date of the notice to the default contractor.

### **Requirement to provide dispensing services**

**46.**—(1) Where, on the date on which the default contract ceases to have effect—

- (a) a default contractor has received a request from a patient to provide dispensing services under the term of its default contract equivalent to paragraph 47(5) of Schedule 6 to the 2004 Regulations;
- (b) 30 or more days have elapsed since the date on which the patient made his or her request; and
- (c) the default contractor has not applied to the Local Health Board for the right to provide dispensing services to that patient,

the Local Health Board may give notice to the general medical services contractor under the term of its general medical services contract which gives effect to paragraph 47(5) of Schedule 6 to the 2004 Regulations as if the request had been made by the patient to the general medical services contractor on the date on which it was made to the default contractor.

(2) Where the Local Health Board has given notice to the default contractor under its default contract that it requires it to provide dispensing services to a patient from a date before the date on which the default contract ceases to have effect, that notice shall be regarded as a notice served on the general medical services contractor under the term of its general medical services contract which gives effect to paragraph 47(5) of Schedule 6 to the 2004 Regulations requiring it to provide dispensing services to the patient from the date on which the general medical services contract takes effect.

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

### **Sub-contracting**

**47.**—(1) Where—

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

the term of the general medical services contract which gives effect to paragraph 68(1)(b) of Schedule 6 to the 2004 Regulations shall not apply to that sub-contract unless it is extended beyond the date referred to in sub-paragraph (b) or there is a material variation in its terms.

(2) In this article, “health care professional” has the same meaning as in section 28M of the 1977 Act<sup>(46)</sup>.

### **Complaints**

**48.**—(1) Where—

- (a) a complaint—
  - (i) has been made to a default contractor under the complaints procedure established in accordance with the term of the default contract equivalent to paragraph 90 of Schedule 6 to the 2004 Regulations, or
  - (ii) falls to be investigated by a default contractor pursuant to articles 22 or 23; and

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<sup>(46)</sup> Section 28M was inserted in to the 1977 Act by section 172(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).

- (b) on the date on which the default contract ceases to have effect the investigation of that complaint has not been concluded,

the complaint shall be investigated or, in an appropriate case, continue to be investigated, by the general medical services contractor under the complaints procedure established in accordance with the term of its general medical services contract which gives effect to paragraph 90 of Schedule 6 to the 2004 Regulations.

(2) In a case to which this Part applies, any references in the terms of the general medical services contract which give effect to paragraphs 90 to 94 and 96 of Schedule 6 to the 2004 Regulations to—

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

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

### **Refund of fees**

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

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

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

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

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

### **Annual returns and reviews**

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

- (a) notwithstanding the term of the general medical services contract which gives effect to paragraph 79 of Schedule 6 to the 2004 Regulations, the Local Health Board shall not require an annual return from the general medical services contractor if a return covering all or part of the same financial year has been requested from the default contractor; and
- (b) any annual return submitted by the general medical services contractor for a financial year in which it also held a default contract shall provide the required information in relation to the default contract as well as in relation to the general medical services contract.

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

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

**51.**—(1) Where—



- (a) on or before the date on which a default contract ceases to have effect, a default contractor has referred a dispute arising out of or in connection with the default contract, other than one to which article 66 applies, to be determined in accordance with the NHS dispute resolution procedure; and
- (b) on the date on which the default contract ceases to have effect, that dispute has not been determined or withdrawn,

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

(2) In this article “adjudicator” means the Assembly or a person or persons appointed by the Assembly under section 4(5) of the 1990 Act or paragraph 99(5) of Schedule 6 to the 2004 Regulations.

#### **Grounds for termination of the general medical services contract**

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

- (a) circumstances arise which would entitle the Local Health Board on or before that date to terminate the default contract under the term of the default contract equivalent to paragraph 111 of Schedule 6 to the 2004 Regulations; and
- (b) the Local Health Board has not terminated the default contract on those grounds,

those circumstances shall, for the purposes of the term of the general medical services contract which gives effect to paragraph 111 of Schedule 6 to the 2004 Regulations, be regarded as if they had arisen during the existence of the general medical services contract.

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

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

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

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

## **PART 4**

### **TRANSITIONAL PROVISIONS RELATING TO THE CHOICE REGULATIONS**

#### **Assignment of patients**

**54.** Where, on 31st March 2004, a person had applied to a Local Health Board for assignment to a medical practitioner under regulation 4 of the Choice Regulations but that application had not yet been determined, the Local Health Board shall—

- (a) assign the patient in accordance with the terms of the contract, to—
  - (i) a default contractor, or
  - (ii) a general medical services contractor, or
- (b) otherwise make arrangements for the applicant to be provided with essential services (or their equivalent) in the area of the Local Health Board.

### **Representations against assignments**

**55.**—(1) Where, on 31st March 2004, a Local Health Board had assigned a patient to a relevant medical practitioner under regulation 4 of the Choice Regulations but the seven days for him or her to make representations against that assignment in regulation 6(1) of those Regulations had not yet expired, the succeeding contractor shall be entitled to make representations to the Local Health Board in writing against that assignment within the period of seven days beginning on the day on which the relevant medical practitioner received notice of the assignment under regulation 4 of the Choice Regulations, as if regulation 6 of the Choice Regulations were still in force.

(2) Where representations are made to a Local Health Board under paragraph (1) or (2), the Local Health Board shall deal with those representations in accordance with regulation 6 of the Choice Regulations as if those Regulations were still in force and shall, on or before 30th April 2004, either confirm or revise its decision to assign the patient.

(3) In this article, “relevant medical practitioner” and “succeeding contractor” have the meaning given in article 2(3).

## **PART 5**

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

#### **Interpretation of this Part**

**56.** In this Part—

“agreement” means, unless the context otherwise requires, an agreement for primary medical services made under section 28C of the 1977 Act;

“out of hours arrangement” means—

- (a) in relation to the period before 1st April 2004, an arrangement under paragraph 18A(2) of Schedule 2 to the 1992 Regulations<sup>(47)</sup>; or
- (b) in relation to the period from 1st April 2004, means an arrangement under the term of a general medical services contract which gives effect to paragraph 1(2) of Schedule 7 to the 2004 Regulations (or the equivalent term of a default contract);

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

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

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<sup>(47)</sup> Paragraph 18A was inserted by [S.I. 1996/702](#) and paragraph (2) was substituted, by [S.I. 2002/2548](#) and amended by [S.I. 2002/916 \(W.104\)](#).

- (ii) in a general medical services contract as additional services funded under the global sum.

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

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

- (a) a general medical services contract shall include or be deemed to include terms which have the effect specified in articles 58,59, 60, 61, 62, 63, 64, 65, 66, 67 and 68;
- (b) a default contract shall include or be deemed to include terms which have the effect specified in articles 58, 59, 60, 61, 63, 64 and 68.

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

**58.**—(1) Where, on or before 31st March 2004, a medical practitioner had applied to the Local Health Board for approval of an out of hours arrangement under paragraph 18A(7) of Schedule 2 to the 1992 Regulations<sup>(48)</sup> but that application had not yet been determined, it shall, if the medical practitioner meets the requirements in paragraph (2), be treated, on 1st April 2004, as if it were an application made by the general medical services contractor under the term of its contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations (or by the default contractor under the equivalent term of its default contract) subject to the modification that the period of 28 days referred to in the term giving effect to paragraph 2(2) of Schedule 7 (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Local Health Board received the application under paragraph 18A(7) of Schedule 2 to the 1992 Regulations.

- (2) The requirements referred to in paragraph (1) are that the medical practitioner—
  - (a) has entered as an individual medical practitioner into a general medical services contract, or a default contract;
  - (b) is one of two or more individuals practising in partnership who have entered into such a contract; or
  - (c) is a legal and beneficial shareholder in a company which has entered into a general medical services contract.
- (3) In any application which falls within paragraph (1)—
  - (a) any references to the patients of the medical practitioner shall be deemed to be references to the patients of the general medical services contractor or the default contractor;
  - (b) any references to the whole of the out of hours period shall be deemed to be references to—
    - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day,
    - (ii) the period between 6.30pm on Friday and 8am the following Monday, and
    - (iii) Good Friday, Christmas Day and bank holidays;
  - (c) in any reference to part of the out of hours period—
    - (i) any reference to 7pm on Monday to Friday shall be deemed to be a reference to 6.30pm, and
    - (ii) any reference to 1pm on Saturday shall be deemed to be a reference to 6.30pm on Friday; and
  - (d) any references to a particular transferee doctor shall be deemed to be references to—

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<sup>(48)</sup> Paragraph 18A(7) as inserted by [S.I. 1996/702](#) was amended by [S.I. 2002/1896 \(W.197\)](#).

- (i) that person as a general medical services contractor, a default contractor or a party to contractual arrangements made under article 15 of the Transitional Order,
- (ii) that person and any other medical practitioner with whom he or she is practising in partnership who have entered into a general medical services contract or a default contract or are a party to contractual arrangements made under article 15 of the Transitional Order, or
- (iii) the company in which he or she is a legal and beneficial shareholder and which has entered into a general medical services contract.

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

**59.**—(1) Where, on 31st March 2004—

- (a) a medical practitioner had approval from a Local Health Board of an out of hours arrangement; and
- (b) that approval had not been withdrawn under paragraph 18B or 18C of Schedule 2 to the 1992 Regulations and the withdrawal taken effect,

that approval shall, if the medical practitioner meets the requirements in article 58(2), be treated from 1st April 2004 as if it were an approval granted to the general medical services contractor by the Local Health Board pursuant to the term of its contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations (or to the default contractor under the equivalent term of its default contract) except in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that the approval under paragraph 18A of Schedule 2 to the 1992 Regulations related to an arrangement with a transferee doctor as defined in paragraph 18A(1)(c) of Schedule 2 to the 1992 Regulations and that doctor—

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

(3) The terms of an approval granted pursuant to paragraph (1) shall be the same as those of the approval granted under paragraph 18A of Schedule 2 to the 1992 Regulations except that—

- (a) any references to the patients of the medical practitioner shall be deemed to be references to the patients of the general medical services contractor or the default contractor;
- (b) any references to the whole of the out of hours period shall be deemed to be references to—
  - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day,
  - (ii) the period between 6.30pm on Friday and 8am the following Monday, and
  - (iii) Good Friday, Christmas Day and bank holidays;
- (c) in any reference to part of the out of hours period—
  - (i) any reference to 7pm on Monday to Friday shall be deemed to be a reference to 6.30pm, and

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

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

#### **60.—(1) Where—**

- (a) on or before 31st March 2004, a Local Health Board had notified a medical practitioner under paragraph 18A(10) of Schedule 2 to the 1992 Regulations that it had refused approval of an out of hours arrangement; and
- (b) on or before 1st April 2004, that medical practitioner—
  - (i) has entered as an individual medical practitioner into a general medical services contract, or a default contract, which requires the provision of out of hours services,
  - (ii) is one of two or more individuals practising in partnership who have entered into such a contract, or
  - (iii) is a legal and beneficial shareholder in a company which has entered into such a general medical services contract,

paragraphs (2) and (3) shall apply.

(2) In a case where the time for appealing under paragraph 18A(11) of Schedule 2 to the 1992 Regulations had not expired on or before 31st March 2004, that refusal shall be treated as if it were a refusal under the term of the general medical services contract referred to in paragraph (1)(b) which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations (or under the equivalent term of the default contract), subject to the modification that the 30 days referred to in the term of the general medical services contract giving effect to paragraph 2(5) of that Schedule (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Local Health Board's notification under paragraph 18A(10) was sent.

(3) In a case where, on 31st March 2004, an appeal had been made under paragraph 18A(11) of Schedule 2 to the 1992 Regulations but not yet been determined or withdrawn, that appeal shall continue to be dealt with as if paragraph 18A had not been revoked and, if the appeal is successful, the approval of the arrangement shall be treated as an approval given under the term of the general medical services contract referred to in paragraph (1)(b) which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations (or under the equivalent term of the relevant default contract).

(4) The circumstances referred to in paragraph (3) are that the appeal related to an arrangement with a transferee doctor as defined in paragraph 18A(1)(c) of Schedule 2 to the 1992 Regulations and that doctor—

- (a) has not entered as an individual medical practitioner into a general medical services contract, or a default contract, which includes the provision of out of hours services;
- (b) is not one of two or more individuals practising in partnership who have entered into such a contract;

- (c) is not a legal and beneficial shareholder in a company which has entered into such a general medical services contract; or
  - (d) is not a party to contractual arrangements under article 15 of the Transitional Order which include the provision of out of hours services.
- (5) For the purposes of a dispute pursuant to paragraph (2) or an appeal dealt with pursuant to paragraph (3), the application which is the subject of the dispute or appeal shall be read as if—
- (a) any references to the patients of the medical practitioner were references to the patients of the general medical services contractor or the default contractor;
  - (b) any references to the whole of the out of hours period were references to—
    - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day,
    - (ii) the period between 6.30pm on Friday and 8am the following Monday, and
    - (iii) Good Friday, Christmas Day and bank holidays;
  - (c) in any reference to part of the out of hours period—
    - (i) any reference to 7pm on Monday to Friday were a reference to 6.30pm, and
    - (ii) any reference to 1pm on Saturday were a reference to 6.30pm on Friday; and
  - (d) any references to a particular transferee doctor were references to—
    - (i) that person as a general medical services contractor, a default contractor or a party to contractual arrangements made under article 15 of the Transitional Order;
    - (ii) that person and any other medical practitioner with whom he or she is practising in partnership who have entered in to a general medical services contract or a default contract or are a party to contractual arrangements made under article 15 of the Transitional Order; or
    - (iii) the company in which he or she is a legal and beneficial shareholder and which has entered into a general medical services contract.

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

#### **61.—(1) Where—**

- (a) an approval of an out of hours arrangement granted under paragraph 18A of Schedule 2 to the 1992 Regulations is to be treated, pursuant to article 59, as an approval granted under the term of a general medical services contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations (or under the equivalent term of a default contract); and
- (b) on or before 31st March 2004, the Local Health Board had commenced a review of its approval of that arrangement under paragraph 18B of Schedule 2 to the 1992 Regulations but had not yet made its determination,

that review shall continue as if it were a review under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 7 to the 2004 Regulations (or under the equivalent term of the default contract), subject to the modification that the 30 days referred to in the term giving effect to paragraph 4(2) of that Schedule (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Local Health Board sent its notice under paragraph 18B(1) of Schedule 2 to the 1992 Regulations.

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

62.—(1) Where—

- (a) an approval of an out of hours arrangement granted under a default contract is to be treated, pursuant to article 41, as an approval granted under the term of a general medical services contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations; and
- (b) on or before the date on which the default contract ceases to have effect, the Local Health Board has commenced a review of its approval of that arrangement under the term of the default contract which is equivalent to paragraph 4 of Schedule 7 to the 2004 Regulations but has not yet made its determination,

that review shall continue as if it were a review under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 7 to the 2004 Regulations, subject to the modification that the 30 days referred to in the term giving effect to paragraph 4(2) of that Schedule shall be treated as beginning with the day on which the Local Health Board sent its notice under the equivalent term of the default contract.

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

63.—(1) Where—

- (a) an approval of an out of hours arrangement granted under paragraph 18A of Schedule 2 to the 1992 Regulations is to be treated, pursuant to article 59, as an approval granted under the term of a general medical services contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations (or under the equivalent term of a default contract); and
- (b) on or before 31st March 2004, a Local Health Board had notified a medical practitioner of its withdrawal of approval of that arrangement under paragraph 18B of Schedule 2 to the 1992 Regulations but that withdrawal had not yet taken effect,

paragraphs (2) to (4) shall apply.

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

- (a) the time for appealing under paragraph 18B(6) of Schedule 2 to the 1992 Regulations had expired without any appeal being made; or
- (b) an appeal had been made under that paragraph but had been determined or withdrawn before the end of the period of two months beginning with the date on which the notice of withdrawal was sent by the Local Health Board under paragraph 18B(4) of that Schedule,

the withdrawal shall take effect as a withdrawal of approval under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 7 to the 2004 Regulations (or under the equivalent term of the default contract) on the date on which it would have taken effect had paragraph 18B(7) of Schedule 2 to the 1992 Regulations not been revoked.

(3) In a case where the time for appealing under paragraph 18B(6) of Schedule 2 to the 1992 Regulations had not expired on or before 31st March 2004, the notice of determination of withdrawal shall be deemed to be a notice of determination of withdrawal of approval on notice under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 7 to the 2004 Regulations (or under the equivalent term of the default contract), subject to the modifications that—

- (a) the 30 days referred to in the term of the general medical services contract giving effect to paragraph 4(8) (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Local Health Board sent the notice under paragraph 18B, and

- (b) the date referred to in the term of the general medical services contract giving effect to sub-paragraph 4(9)(a) (or in the equivalent term of the default contract) shall be treated as being the date on which the Local Health Board sent the notice under paragraph 18B.

(4) In a case where, on 31st March 2004, an appeal had already been made under paragraph 18B(6) of Schedule 2 to the 1992 Regulations but not yet been determined or withdrawn, the appeal shall continue to be dealt with as if paragraphs 18A and 18B of that Schedule had not been revoked and, if the appeal is dismissed, the withdrawal of approval shall take effect as a withdrawal of approval under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 7 to the 2004 Regulations (or under the equivalent term of the default contract) on the date on which the general medical services contractor or the default contractor received notice of the dismissal of the appeal.

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

**64.** Where—

- (a) on or before 31st March 2004, a Local Health Board had notified a medical practitioner of its immediate withdrawal of approval of an out of hours arrangement under paragraph 18C of Schedule 2 to the 1992 Regulations; and
- (b) on or before 1st April 2004, that medical practitioner—
- (i) has entered as an individual medical practitioner into a general medical services contract, or a default contract, which requires the provision of out of hours services;
  - (ii) is one of two or more individuals practising in partnership who have entered into such a contract; or
  - (iii) is a legal and beneficial shareholder in a company which has entered into such a general medical services contract,

paragraphs (2) and (3) shall apply.

(2) In a case where the time for appealing under paragraph 18C(4) had not expired on or before 31st March 2004, that withdrawal shall be treated as if it were a withdrawal of approval under the term of the general medical services contract which gives effect to paragraph 4(3)(c) of Schedule 7 to the 2004 Regulations (or under the equivalent term of a default contract) subject to the modification that the 30 days referred to in the term giving effect to paragraph 4(8) of that Schedule (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Local Health Board's notification under paragraph 18C(2) of Schedule 2 to the 1992 Regulations was sent.

(3) In a case where, on 31st March 2004, an appeal had already been made under paragraph 18C(4) but not yet been determined or withdrawn, that appeal shall, except in the circumstances specified in paragraph (4), continue to be dealt with as if paragraphs 18A and 18C of Schedule 2 to the 1992 Regulations had not been revoked and, if the appeal is successful, the approval of the arrangement shall be treated as an approval given under the term of the general medical services contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations (or under the equivalent term of the default contract).

(4) The circumstances referred to in paragraph (3) are that the appeal related to an arrangement with a transferee doctor as defined in paragraph 18A(1)(c) of Schedule 2 to the 1992 Regulations and that doctor—

- (a) has not entered as an individual medical practitioner into a general medical services contract, or a default contract, which includes the provision of out of hours services;
- (b) is not one of two or more individuals practising in partnership who have entered into such a contract;



- (c) is not a legal and beneficial shareholder in a company which has entered into such a general medical services contract; or
  - (d) is not a party to contractual arrangements under article 15 of the Transitional Order which include the provision of out of hours services.
- (5) The terms of an approval granted pursuant to paragraph (2) or (3) shall be the same as those of the approval previously granted under paragraph 18A of Schedule 2 to the 1992 Regulations except that—
- (a) any references to the patients of the medical practitioner shall be amended to be references to the patients of the general medical services contractor or the default contractor;
  - (b) any references to the whole of the out of hours period shall be amended to be references to—
    - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day,
    - (ii) the period between 6.30pm on Friday and 8am the following Monday, and
    - (iii) Good Friday, Christmas Day and bank holidays;
  - (c) in any reference to part of the out of hours period—
    - (i) any reference to 7pm on Monday to Friday shall be amended to be a reference to 6.30pm, and
    - (ii) any reference to 1pm on Saturday shall be amended to be a reference to 6.30pm on Friday; and
  - (d) any references to a particular transferee doctor shall be amended to be references to—
    - (i) that person as a general medical services contractor, a default contractor or a party to contractual arrangements made under article 15 of the Transitional Order,
    - (ii) that person and any other medical practitioner with whom he or she is practising in partnership who have entered in to a general medical services contract or a default contract or are a party to contractual arrangements made under article 15 of the Transitional Order, or
    - (iii) the company in which he or she is a legal and beneficial shareholder and which has entered into a general medical services contract.

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

**65. Where—**

- (a) on or before the date on which a default contract ceases to have effect, a default contractor has received notice of—
  - (i) the refusal of an application for approval of an out of hours arrangement under the term of its contract equivalent to paragraph 2(4) of Schedule 7 to the 2004 Regulations,
  - (ii) a determination of a Local Health Board under the term of its contract equivalent to paragraph 4(6) of Schedule 7 to the 2004 Regulations which gives notice of immediate withdrawal of approval, or
  - (iii) immediate withdrawal of approval under the term of its contract equivalent to paragraph 5(1)(b) of that Schedule;
- (b) on the date on which the default contract ceases to have effect—

- (i) the 30 days for referring that matter in accordance with the NHS dispute resolution procedure has not expired, and
- (ii) no referral under that procedure has yet been made; and
- (c) the default contractor has entered into a general medical services contract which takes effect immediately after the default contract ceases to have effect,

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

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

66.—(1) Where—

- (a) on or before the date on which a default contract ceases to have effect, a default contractor has referred a dispute to be determined in accordance with the NHS dispute resolution procedure under the terms of its default contract equivalent to paragraphs 2(5), or 4(8) of Schedule 7 to the 2004 Regulations;
- (b) on the date on which the default contract ceases to have effect, that dispute has not been determined or withdrawn; and
- (c) the default contractor has entered into a general medical services contract which takes effect immediately after the default contract ceases to have effect,

paragraph (2) shall apply.

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

- (a) a refusal of an application under the term of the general medical services contract giving effect to paragraph 2 of Schedule 7 to the 2004 Regulations;
- (b) a determination of the Local Health Board under the term of the general medical services contract giving effect to paragraph 4 of that Schedule; or
- (c) an immediate withdrawal of approval under the term of the general medical services contract giving effect to paragraph 6 of that Schedule.

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

67.—(1) Where, prior to 1st January 2005, a general medical services contractor wishes to sub-contract all or part of its out of hours services in circumstances which would require the written approval of the Local Health Board in accordance with the term of the general medical services contract which gives effect to paragraph 69 of Schedule 6 to the 2004 Regulations, it shall be deemed to have such written approval if, at the date on which it enters into the sub-contract—

- (a) it has, or, pursuant to articles 59, 60, and 64 is deemed to have, approval of an out of hours arrangement under the term of the general medical services contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations whose terms are, in all material respects, identical to those of the proposed sub-contract;
- (b) that approval has not been suspended or withdrawn; and

(c) it has not previously entered into a sub-contract for its out of hours services in reliance on the approval referred to in sub-paragraph (a).

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

(3) An approval deemed to have been granted pursuant to paragraph (1) shall be regarded, for all purposes, as an approval granted under the term of the general medical services contract which gives effect to paragraph 69 of Schedule 6 of the 2004 Regulations.

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

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

(2) In the case of a general medical services contract, the requirement referred to in paragraph (1) shall cease on the date on which any opt out of out of hours services commences pursuant to the terms of the general medical services contract which gives effect to paragraphs 4 or 5 of Schedule 3 to the 2004 Regulations.

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

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

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

- (a) the terms of the general medical services contract which give effect to paragraphs 11, 13 and 69 to 71 of Schedule 6 to the 2004 Regulations and Schedule 7 to those Regulations; or
- (b) any equivalent terms of the default contract.

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

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

## PART 6

### TRANSITIONAL ARRANGEMENTS: THE NATIONAL HEALTH SERVICE (SERVICE COMMITTEES AND TRIBUNAL) REGULATIONS 1992

#### Interpretation

**70.**—(1) In this Part—

“the Service Committees Regulations” means the National Health Service (Service Committees and Tribunal) Regulations 1992<sup>(49)</sup>;

“amendments” in respect of any regulation or regulations in the Service Committees Regulations means amendments made to that regulation or those regulations by paragraph 10 of Schedule 1 to this Order;

“appropriate Local Health Board” has the same meaning as “appropriate Health authority” in the Service Committees Regulations;

“contracting LHB” means a Local Health Board that has entered into a default contract or a general medical services contract (as the case may be) with—

- (a) a doctor who is the subject of the allegation,
- (b) a partnership, where a doctor who is the subject of the allegation is a partner,
- (c) a limited company, where a doctor who is the subject of the allegation is a legal and beneficial shareholder of shares in that company;

“doctor” has the same meaning as in the Service Committees Regulations;

“the Performers List LHB” means the Local Health Board in whose medical performers list the doctor’s name appears on 1st April 2004;

“relevant contractor” means a party to a general medical services contract or default contract with a contracting LHB, where that contractor is—

- (a) a doctor who is the subject of the allegation,
- (b) a partnership, and a doctor who is or was the subject of the allegation is a partner in that partnership,
- (c) a limited company, where a doctor who is or was the subject of the allegation is a legal and beneficial shareholder of shares in that company; and

“relevant date” means 1st April 2004.

(2) Unless the contract otherwise requires, any reference in this Part to—

- (a) A numbered regulation is to the regulation bearing that number in the Service Committees Regulations; and
- (b) A numbered Schedule is to the Schedule to the Service Committees Regulations bearing that number.

#### **Cases where no decision has been made before the relevant date as to whether disciplinary action should be taken (regulation 4 of the Service Committees Regulations)**

**71.**—(1) Where, before the relevant date, or on or after the relevant date in respect of a matter that occurred before the relevant date, a Local Health Board receives, or has received information that could amount to an allegation that a doctor had failed to comply with his or her terms of service and—

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<sup>(49)</sup> S.I. 1992/664 as amended by S.I.1996/703, 1998/674, 2002/2469 and 2003/1397.

- (a) that Local Health Board, or its reference committee (as the case may be), has not taken a final decision pursuant to regulation 4(1) of the Service Committees Regulations before the relevant date as to whether it will take no action or take one or both of the courses of action set out in regulation 4(2) of the Service Committees Regulations; and
  - (b) any time limit specified in regulation 6 of the Service Committees Regulations has not expired,
- paragraph (2) shall apply.
- (2) Where this paragraph applies, the Local Health Board shall—
    - (a) if it is the appropriate Local Health Board, continue to be the appropriate Local Health Board for the purposes of the Service Committees Regulations, and consider and take such action as it sees fit pursuant to the Service Committees Regulations, subject to article 74, as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect; or
    - (b) if it is not the appropriate Local Health Board, forward the information to that Trust as soon as is reasonably practicable, and that Trust shall consider the information received and take such action as it sees fit pursuant to the Service Committees Regulations, subject to the time limits specified in the Service Committees Regulations, and article 74, as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect.
  - (3) If the appropriate Local Health Board, or its reference committee, decides, pursuant to paragraph (2)(a) or (b), to refer the matter to the discipline committee of another Local Health Board (B) in accordance with regulation 4(2)(a) or (7)—
    - (a) that Local Health Board (B) shall investigate the matter and report to the appropriate Local Health Board as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect; and
    - (b) the appropriate Local Health Board shall be entitled, subject to article 74, to take any action it could have taken pursuant to the Service Committees Regulations as if those amendments had not taken effect.

**Referrals to investigating discipline committees before the relevant date (regulation 5 of the Service Committees Regulations)**

72. Where a Local Health Board (A) has, before the relevant date, referred a matter in respect of a doctor to another Local Health Board (B) in accordance with regulation 4(2)(a) or (7)—
- (a) that matter has not been finally determined by the discipline committee of that Local Health Board (B) before the relevant date—
    - (i) the discipline committee of that Local Health Board (B) shall investigate the matter and report to the Local Health Board (A) as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect, and
    - (ii) the Local Health Board (A) shall be entitled to take any action it could have taken pursuant to the Service Committees Regulations as if those amendments had not taken effect, subject to article 74; or
  - (b) that Local Health Board (A) has received the report of the discipline committee of the Local Health Board (B) but has not yet determined what (if any) action to take as a result of the report, the Local Health Board (A) shall be entitled to take any action it could have taken pursuant to the Service Committees Regulations as if the amendments to regulations 2 to 8 had not taken effect, subject to article 74.

**Determination of a Local Health Board or the Assembly made before the relevant date (regulation 8, 9, 10 and 11 of the Service Committees Regulations)**

73.—(1) Where, before the relevant date, a Local Health Board (or where relevant, the Assembly) has determined pursuant to regulation 8(5)(a) and 9(3) or regulation 11 (as the case may be) that an amount should be recovered from the doctor, insofar as any of that amount has not been recovered before the relevant date, it shall continue to be recoverable by the Local Health Board that was the appropriate Local Health Board for the purposes of the Service Committees Regulations in respect of that matter, and it shall be treated as a debt owed by that doctor to that Trust.

(2) Where a contracting LHB has record of, or receives notification of, an adverse determination made before the relevant date pursuant to regulation 8, 9, 10 or 11 in respect of a doctor (where, in the case of a determination under regulation 8, such a determination was not overturned on appeal), paragraph (3) shall apply without prejudice to any other rights the contracting LHB may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(3) Where this paragraph applies, the contracting LHB—

- (a) may take into account that adverse determination in relation to a relevant contractor if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 113(7) of Schedule 6 to the 2004 Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract; but
- (b) shall not, pursuant to sub-paragraph (a), take into account any adverse determination that was made that occurred more than 6 years prior to the date upon which the contracting LHB is considering terminating the general medical services contract or the default contract (as the case may be).

(4) Where a Performers List LHB has record of, or receives notification of, an adverse determination pursuant to regulation 8, 9, 10 or 11 made before the relevant date in respect of a doctor (where, in the case of a determination under regulation 8, such a determination was not overturned on appeal) it may take that determination into account in determining what (if any) action it should take in respect of that doctor pursuant to its powers under the Performers Lists Regulations.

**Determination of a Local Health Board made on or after the relevant date (regulation 8 of the Service Committees Regulations)**

74.—(1) Where, on or after the relevant date, an appropriate Local Health Board is determining what (if any) action to take pursuant to regulation 8 in accordance with provision made in this Part, it shall make such a determination in accordance with such limitations and modifications to that regulation as are specified in this article.

(2) The appropriate Local Health Board may—

- (a) pursuant to regulation 8(1)(c)(i), determine that no further action should be taken;
- (b) pursuant to regulation 8(3), determine after consultation with the Local Medical Committee that it would have considered it appropriate to impose a special limit on the number of persons for whom a doctor may undertake to provide treatment;
- (c) pursuant to regulation 8(5)(a), determine that an amount shall be recovered from the doctor; or
- (d) pursuant to regulation 8(5)(c), determine that it would have warned the doctor to comply more closely with his or her terms of service in future, if those terms of service were still applicable,

and if it makes any one or more of the decisions specified in sub-paragraphs (b) to (d), it shall, after the period specified in regulation 8(11)(a) or (b) (as applicable) has expired, notify in writing the contracting LHB and the Performers List LHB (if any) of its decision and the reasons for it, if either one is a different Local Health Board to the appropriate Local Health Board.

(3) Where, pursuant to paragraph (2)(c), the appropriate Local Health Board determines that an amount should be recovered from the doctor, regulation 8(8) shall not apply and that amount shall be recoverable by the appropriate Local Health Board and it shall be treated as a debt owed by that doctor to that appropriate Local Health Board.

(4) Where the appropriate Local Health Board has notified the contracting LHB that it has made any of the determinations specified in paragraph (2)(b) to (d), or where the appropriate Local Health Board is the contracting LHB, paragraph (5) shall apply without prejudice to any other rights the contracting LHB may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(5) Where this paragraph applies, the contracting LHB—

(a) may, in relation to a relevant contractor, take into account the determination of the appropriate Local Health Board if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 113(7) of Schedule 6 to the 2004 Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract; but

(b) shall not, pursuant to sub-paragraph (a), take into account any determination of an appropriate Local Health Board that was made more than 6 years prior to the date upon which the contracting LHB is considering terminating the general medical services contract or the default contract (as the case may be).

(6) Where—

(a) a Performers List LHB has received notification from an appropriate Local Health Board pursuant to paragraph (2); or

(b) where an appropriate Local Health Board that has taken a decision pursuant to paragraph (2) is also the Performers List LHB,

it shall consider what (if any) action it should take in respect of that doctor pursuant to its powers under the Performers Lists Regulations.

### **Appeals to the Assembly against determinations of Local Health Boards (regulations 9, 10 and 11 of the Service Committees Regulations)**

75.—(1) Where a doctor has—

(a) appealed against a determination of a Local Health Board in accordance with regulation 9 before the relevant date, but that appeal has not been finally determined before that date; or

(b) in respect of a determination made by a Local Health Board in accordance with regulation 8 before the relevant date, the time limit specified in regulation 9(2) for appealing that determination has not expired before the relevant date, and the doctor serves a notice of appeal on or after the relevant date but within the time limit specified in regulation 9(2),

that appeal shall be determined pursuant to regulations 9, 10 and 11, as if the amendments to those regulations and Schedule 5 had not taken effect.

(2) Where an appropriate Local Health Board has made a determination in respect of a doctor on or after the relevant date pursuant to this Part—

(a) the doctor shall be entitled to appeal against that determination in accordance with regulation 9; and

(b) that appeal shall be determined pursuant to regulations 9, 10 and 11, as if the amendments to those regulations and to Schedule 5 had not taken effect.

(3) Where, on or after the relevant date, the Assembly is determining pursuant to regulation 9, 10 or 11 (as the case may be) what (if any) action to take in respect of a doctor, it shall make a determination pursuant to those regulations as if the amendments to those regulations and to Schedule 5 had not taken effect and that determination shall have effect in accordance with this article.

(4) If, in accordance with paragraph (3), the Assembly determines pursuant to—

- (a) regulation 8(3), that it would have considered it appropriate to impose a special limit on the number of persons for whom a doctor may undertake to provide treatment;
- (b) pursuant to regulation 9(3)(d), that there has been an overpayment and, if so, what amount;
- (c) pursuant to regulation 8(5)(a) and 9(3) or 11, that an amount shall be recovered from the doctor; or
- (d) pursuant to regulation 8(5)(c), that it would have warned the practitioner to comply more closely with his or her terms of service in future, if those terms of service were still applicable,

it shall, in addition to the persons specified in regulation 10(14), notify the Local Health Boards specified in paragraph (5).

(5) The Assembly shall, pursuant to paragraph (4)(a) to (d), notify the contracting LHB and the Performers List LHB (if any) of its determination if those Local Health Boards are different to the Local Health Board referred to in regulation 10(14).

(6) Where, pursuant to regulation 8(5)(a) and 9(3) or 11, the Assembly has determined that an amount shall be recovered from a doctor it shall direct the appropriate Local Health Board, to recover that amount from the doctor and that amount shall be a debt owed to that appropriate Local Health Board.

(7) Where, pursuant to paragraph (5), the Assembly has notified the contracting LHB that it has taken any of the decisions specified in paragraph (4)(a) to (d), whether or not the contracting LHB is also the appropriate Local Health Board, paragraph (8) shall apply without prejudice to any other right the contracting LHB may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(8) Where this paragraph applies, the contracting LHB may, in relation to a relevant contractor, take into account the determination of the Assembly if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 113(7) of Schedule 6 to the 2004 Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract.

(9) The contracting LHB shall not, pursuant to paragraph (8), take into account any notification received that relates to a determination that was made by the Assembly that occurred more than 6 years prior to the date upon which the contracting LHB is considering the matter pursuant to paragraph (8).

(10) Where a Performers List LHB has received notification from the Assembly pursuant to paragraph (4) or (5), whether or not the Performers List LHB is also the appropriate Local Health Board, it shall consider what (if any) action it should take in respect of that doctor pursuant to its powers under the Performers Lists Regulations.

### **Excessive prescribing (regulation 15 of the Service Committees Regulations)**

76.—(1) Where, on 31st March 2004, a Local Health Board had—



(a) referred a question of excessive prescribing for investigation and determination by a professional committee under regulation 15 of the Service Committees Regulations(50); and

(b) that committee had not yet made its determination,

the investigation by the committee shall continue and its determination be made as if that regulation were still in force.

(2) Where, on 31st March 2004, a professional committee had given notice of its determination to a medical practitioner under paragraph (18) of regulation 15 but—

(a) the medical practitioner had not given notice of appeal in accordance with paragraph (20) of that regulation; and

(b) the time for appealing in paragraph (19) of that regulation had not yet expired,

the time for appealing shall continue as if regulation 15 were still in force.

(3) Where—

(a) on 31st March 2004, a medical practitioner had given notice of appeal against the determination of a professional committee in accordance with paragraph (20) of regulation 15 but that appeal had not been determined or withdrawn; or

(b) a medical practitioner 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 15 were still in force.

(4) In this article “professional committee” has the same meaning as in regulation 15.

### **Investigation of certification (regulation 16 of the Service Committees Regulations)**

77.—(1) Where the Assembly has—

(a) before the relevant date, or on or after the relevant date in respect of an investigation that took place before the relevant date, received information in relation to an investigation of medical certificates issued under and for the purposes of the Social Security Act 1975 by a doctor, but he or she has not yet determined whether to refer the matter for consideration pursuant to regulation 16(1); or

(b) before the relevant date, pursuant to regulation 16(1), referred a matter to a Local Medical Committee, or to a joint committee of two or more Local Medical Committees and the Local Medical Committee has not yet finally determined the matter pursuant to regulation 16(6),

the Assembly may, in a case falling within sub-paragraph (a), refer the matter as if the amendments to regulation 16 had not taken effect and, in relation to both sub-paragraphs, the Local Medical Committee or joint committee of Local Medical Committees shall consider or continue to consider (as the case may be) and determine the matter in accordance with regulation 16, subject to the provisions in this article.

(2) Where, pursuant to paragraph (1), the Local Medical Committee makes a determination pursuant to regulation 16(6), it shall forward its report to the contracting LHB and the Performers List LHB (if any), in addition to the persons specified in regulation 16(6), unless the doctor exercises his or her right of appeal pursuant to regulation 16.

(3) Where—

(a) a doctor—

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(50) Regulation 15 was amended by [S.I. 2003/1937](#).

- (i) has appealed against a finding of a Local Medical Committee made before the relevant date pursuant to regulation 16(7), and within the time limit specified in that paragraph, and that appeal has not been determined before the relevant date, or
  - (ii) appeals against a finding of a Local Medical Committee on or after the relevant date in respect of a finding of a Local Medical Committee made pursuant to paragraph (1) within the time limit specified in regulation 16(7); or
- (b) the Assembly —
- (i) has referred a finding of a Local Medical Committee made before the relevant date pursuant to regulation 16(10), and that referral has not been determined before the relevant date, or
  - (ii) referred a finding of a Local Medical Committee on or after the relevant date in respect of a finding of a Local Medical Committee made pursuant to paragraph (1), that appeal or referral shall be determined in accordance with regulation 16 as if the amendments to that regulation had not taken effect, save that written notification of the determination made by the referee or referees shall be given to the contracting LHB and the Performers List LHB (if any).
- (4) The Assembly may, on or after the relevant date, determine that, pursuant to regulation 16(12), an amount should be recovered from a doctor, and shall, in determining whether an amount should be recovered, act as if the amendments to regulations 11(3), (4) and (5) and 16 and Schedule 5 had not taken effect.
- (5) Where pursuant to regulation 16(12), the Assembly has determined that an amount should be recovered from a doctor—
- (a) before the relevant date, where that amount has not been fully recovered before the relevant date; or
  - (b) on or after the relevant date pursuant to this article,
- that amount shall be recoverable by the appropriate Local Health Board, insofar as it has not already been recovered before the relevant date in respect of an amount falling within sub-paragraph (a), and that amount shall be a debt owed to that Local Health Board.
- (6) Where the contracting LHB has received notification pursuant to this article of an adverse determination in respect of the doctor pursuant to regulation 16, paragraph (7) shall apply without prejudice to any other right the contracting LHB may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.
- (7) Where this paragraph applies, the contracting LHB may, in relation to a relevant contractor, take into account the adverse determination of the Assembly if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 113(7) of Schedule 6 to the Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract.
- (8) The contracting LHB shall not, pursuant to paragraph (7), take into account any notification that relates to a determination that was made more than 6 years prior to the date upon which the contracting LHB is considering the matter pursuant to paragraph (7).
- (9) Where a Performers List LHB has received notification of an adverse determination pursuant to regulation 16, it shall consider what (if any) action it should take in respect of that doctor pursuant to its powers under the Performers Lists Regulations.

### **Investigation of record keeping (regulation 17 of the Service Committees Regulations)**

- 78.**—(1) Where the Assembly has—

- (a) before the relevant date, or on or after the relevant date in respect of an examination of record cards by a medical officer that took place before the relevant date, received information in relation to an examination of record cards held by a doctor, but he or she has not yet determined whether to refer the matter for consideration pursuant to regulation 17(1); or
- (b) before the relevant date, pursuant to regulation 17(1), referred a matter to a Local Medical Committee and the Local Medical Committee has not yet finally determined the matter pursuant to regulation 17(8),

the Assembly may, in a case falling within sub-paragraph (a), refer the matter as if the amendments to regulation 17 had not taken effect and, in relation to both sub-paragraphs, the Local Medical Committee shall consider or continue to consider (as the case may be) and determine the matter in accordance with regulation 17, subject to the provisions in this article.

(2) Where, pursuant to paragraph (1), the Local Medical Committee makes a determination pursuant to regulation 17(8), it shall forward its report to the contracting LHB and the Performers List LHB, in addition to the persons specified in regulation 17(8), unless the doctor exercises his or her right of appeal pursuant to regulation 17(10).

(3) Where—

(a) a doctor—

- (i) has appealed against a finding of a Local Medical Committee made before the relevant date pursuant to regulation 17(10), and within the time limit specified in that paragraph, and that appeal has not been determined before the relevant date, or
- (ii) appeals against a finding of a Local Medical Committee on or after the relevant date in respect of a finding of a Local Medical Committee made pursuant to paragraph (1) within the time limit specified in regulation 17(10); or

(b) the Assembly —

- (i) has referred a finding of a Local Medical Committee made before the relevant date pursuant to regulation 17(12), and that referral has not been determined before the relevant date, or
- (ii) referred a finding of a Local Medical Committee on or after the relevant date in respect of a finding of a Local Medical Committee made pursuant to paragraph (1), that appeal or referral shall be determined in accordance with regulation 17 as if the amendments to that regulation (and regulation 16(8) and (9) where applicable) had not taken effect, save that written notification of the determination made by the referee or referees shall be given to the contracting LHB and the Performers List LHB (if any).

(4) The Assembly may, on or after the relevant date, determine that, pursuant to regulation 17(14), an amount should be recovered from a doctor and shall, in determining whether an amount should be recovered, act as if the amendments to regulations 11(3), (4) and (5) and 17 and Schedule 5 had not taken effect.

(5) Where pursuant to regulation 17(14), the Assembly has determined that an amount should be recovered from a doctor—

- (a) before the relevant date, where that amount has not been fully recovered before the relevant date; or
- (b) on or after the relevant date pursuant to this article,

that amount shall be recoverable by the appropriate Local Health Board, insofar as it has not already been recovered before the relevant date in respect of an amount falling within sub-paragraph (a), and that amount shall be a debt owed to that Local Health Board.

(6) Where the contracting LHB has received notification pursuant to this article of an adverse determination in respect of the doctor pursuant to regulation 17, paragraph (7) shall apply without prejudice to any other right the contracting LHB may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(7) Where this paragraph applies, the contracting LHB may, in relation to a relevant contractor, take into account the adverse determination of the Assembly if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 113(7) of Schedule 6 to the 2004 Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract.

(8) The contracting LHB shall not, pursuant to paragraph (7), take into account any notification that relates to a determination that was made more than 6 years prior to the date upon which the contracting LHB is considering the matter pursuant to paragraph (7).

(9) Where a Performers List LHB has received notification of an adverse determination pursuant to regulation 17, it shall consider what (if any) action it should take in respect of that doctor pursuant to its powers under the Performers Lists Regulations.

#### **Decision as to treatment for which fees may be charged by doctors (regulation 18 of the Service Committees Regulations)**

79.—(1) Where a question has arisen as to whether any treatment given by a doctor to a patient is treatment for which he or she may demand or accept a fee from a patient within the meaning of regulation 18(1), and that question has arisen before the relevant date, or on or after the relevant date in respect of any fee charged by a doctor before the relevant date, and that question—

- (a) has not been referred for consideration by the Local Medical Committee; or
- (b) has been referred to the Local Medical Committee and the Local Medical Committee has not yet finally determined the matter pursuant to regulation 18,

the question may, in a case falling within sub-paragraph (a), be referred as if the amendments to that regulation and Schedule 7 had not taken effect and, in relation to both sub-paragraphs, the Local Medical Committee shall consider or continue to consider (as the case may be) and determine the matter in accordance with regulation 18 and Schedule 7, subject to the provisions in this article.

(2) Where a Local Medical Committee makes a determination pursuant to paragraph (1), regulation 18(6) shall apply to the Local Health Board.

(3) Where a Local Health Board—

- (a) has referred a finding of a Local Medical Committee made before the relevant date to the Assembly pursuant to regulation 18(2), and that referral has not been determined before the relevant date; or
- (b) refers a finding of a Local Medical Committee on or after the relevant date,

that referral shall be determined in accordance with regulation 18 and Schedule 7 as if the amendments to that regulation and Schedule had not taken effect.

(4) Where the Assembly—

- (a) has referred a finding of a Local Medical Committee made before the relevant date pursuant to regulation 18(6), and that referral has not been determined before the relevant date; or
- (b) refers a finding of a Local Medical Committee on or after the relevant date,

that referral shall be determined in accordance with regulation 18 and Schedule 7 as if the amendments to that regulation and Schedule had not taken effect.

## Functions of Local Medical Committees

80. Where—

- (a) a Local Medical Committee has, before the relevant date had any matter referred to it for its consideration that it had not finally determined before the relevant date; and
- (b) pursuant to this Part, that matter is to be determined by the Local Medical Committee on or after the relevant date,

the Local Medical Committee that had had the matter referred to it shall be deemed to be a Local Medical Committee that is recognised by a Local Health Board pursuant to section 45A of the 1977 Act for the purpose of exercising the continuing functions conferred on it in relation to the matter by this Part.

## PART 7

### MISCELLANEOUS

#### Details to be included on prescription forms

81.—(1) Notwithstanding—

- (a) the terms of a general medical services contract which give effect to Schedule 1 to and paragraph 65(2)(b) of Schedule 6 to the 2004 Regulations; or
- (b) the equivalent terms of a default contract,

prescription forms, issued for the purposes of a default contract, a general medical services contract or a personal medical services agreement before 31st March 2005 need not include the name of the contractor.

- (2) In paragraph (1), “prescription form”, has the same meaning as in the 2004 Regulations.

#### Transitional provision in cases where preferential treatment on transferring to medical lists was given

82.—(1) This article applies to any case to which, on or before 31st March 2004, paragraph 1 of Schedule 1 (cases where preferential treatment on transferring to medical lists is given) to the Primary Care Act 1997(51) (“the Schedule”) applies.

(2) If —

- (a) a medical practitioner had made an application to a Local Health Board, pursuant to paragraph 1 of the Schedule, for his or her name to be included in its medical list; and
- (b) the matter had not been determined on or before 31st March 2004,

paragraph 7 of Schedule 1 (transitional and consequential provisions) to the Performers Lists Regulations shall apply.

(3) In a case where—

- (a) paragraph (2) applies; and
- (b) the Local Health Board determines to add that medical practitioner’s name to its medical performers list,

that medical practitioner shall be treated as though his or her name had been included in the medical list of that Local Health Board on 31st March 2004.

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(51) 1997 (c. 46); Schedule 1 was amended by the Health and Social Care Act 2001 (c. 15) (“the 2001 Act”).

(4) In any case where representations under paragraph 3 of the Schedule have been made and the FHSAA (“the Authority”) has not determined that matter on or before 31st March 2004, the matter shall be treated by the Authority as though it were an appeal against the refusal of the Local Health Board to include that medical practitioner’s name in its medical performers list.

(5) If the Authority decides that appeal in favour of that medical practitioner—

- (a) his or her name shall be included in that Local Health Board’s medical performers list; and
- (b) he or she shall be treated as though his or her name had been included in the medical list of that Local Health Board on 31st March 2004.

(6) In a case to which paragraph (4) applies (“paragraph 4 case”), if that medical practitioner had applied to be included in the medical performers list of any Local Health Board or, by virtue of paragraph 7 of Schedule 1 to the Performers Lists Regulations, is treated as so applying, any appeal to the Authority in respect of that application shall be heard with the paragraph 4 case.

### Continuing validity of forms

**83.** Notwithstanding the amendments made by paragraphs 1 and 5 of Schedule 1 to the form of certificates set out in Part 2 of Schedule 2 to the Social Security (Medical Evidence) Regulations 1976<sup>(52)</sup> and in Part 2 of the Schedule to the Statutory Maternity Pay (Medical Evidence) Regulations 1987<sup>(53)</sup>, a form which complies with those regulations as in force on 31st March 2004 shall continue to be valid.

### Transitory interpretation of references in enactments to primary medical services

**84.** For so long as default contracts entered into pursuant to section 176(3) of the 2003 Act (general medical services: transitional) exist, a reference in any enactment to primary medical services under the 1977 Act shall be deemed to include a reference to services provided under such contracts.

### Transitory interpretation of references to general medical services contracts

**85.—**(1) For as long as default contracts entered into pursuant to section 176(3) of the 2003 Act (general medical services: transitional) exist, any reference to a general medical services contract or to a contract under section 28Q of the 1977 Act in the enactments listed in paragraph (2) shall be deemed to include a reference to a default contract.

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

- (a) the 1977 Act, sections 3(4)(b)<sup>(54)</sup>, 26(2)<sup>(55)</sup> and (4)(aa)(b)<sup>(55)</sup>, 28D(1)(bc)(i)<sup>(56)</sup>, 45A(3), (4) and (11)<sup>(57)</sup>, 54(1)(c)<sup>(58)</sup>, 72(5)(d)<sup>(59)</sup>;
- (b) the Community Health Councils (Access to Information) Act 1988<sup>(60)</sup>, section 1(6), in the paragraph 6B inserted into Schedule 12A to the Local Government Act 1972<sup>(61)</sup>;
- (c) the Access to Health Records Act 1990<sup>(62)</sup>, section 1(2)(a);

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<sup>(52)</sup> S.I. 1976/615; Part 2 of Schedule 2 was amended by S.I. 1991/2284, 2001/2931 and 2002/2469.

<sup>(53)</sup> S.I. 1987/235. Relevant amending instruments are S.I. 2001/2931 and 2002/2469.

<sup>(54)</sup> Section 3(4) was inserted into the Act by paragraph 8 of Schedule 11 to the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (“the 2003 Act”).

<sup>(55)</sup> Section 26(2)(b) and (4)(aa) were substituted by the 2003 Act, Schedule 11, paragraph (2)(b) and (3)(b).

<sup>(55)</sup> Section 26(2)(b) and (4)(aa) were substituted by the 2003 Act, Schedule 11, paragraph (2)(b) and (3)(b).

<sup>(56)</sup> Section 28D(bc) was inserted by the 2003 Act, section 177(2).

<sup>(57)</sup> Section 45A was inserted into the Act by paragraph 23 of Schedule 11 to the 2003 Act.

<sup>(58)</sup> Paragraph (c) was inserted into section 54(1) of the Act by paragraph 26(2)(c) of Schedule 11 to the 2003 Act.

<sup>(59)</sup> Paragraph (d) was inserted into section 72(5) of the Act by paragraph 27(2) of Schedule 11 to the 2003 Act.

<sup>(60)</sup> 1988 c. 24. Section 1(6) was amended by the 2003 Act, Schedule 11, paragraph 51.

<sup>(61)</sup> 1972 c. 70.

<sup>(62)</sup> 1990 c. 23. Section 1(2)(a) was substituted by the 2003 Act, Schedule 11, paragraph 57(2).

- (d) the Trade Union and Labour Relations (Consolidation) Act 1992(63), section 279(2);
- (e) the Health Service Commissioners Act 1993, section 2A(1)(a) and (2)(a)(64);
- (f) the Employment Rights Act 1996, section 43K(1)(ba)(65);
- (g) the Health and Social Care Act 2001, Schedule 1, paragraph 11(a)(66).

## PART 8

### SAVINGS, MODIFICATIONS, AMENDMENTS AND REVOCATIONS

#### Meaning of suitable experience

86.—(1) Until the coming into force of article 5 of the 2003 Order, where, in any enactment, there is a reference to a medical practitioner being “suitably experienced” within the meaning of section 31(2) of the National Health Service Act 1977, that reference shall be construed in accordance with sub-paragraph (2).

(2) A medical practitioner shall, pursuant to sub-paragraph (1), be regarded as being “suitably experienced” if he or she—

- (a) holds a certificate of prescribed experience;
- (b) holds a certificate of equivalent experience;
- (c) is exempt from the need to have acquired the prescribed experience pursuant to regulation 5 of the National Health Service (Vocational Training for General Medical Practice) Regulations 1997(67) (exemptions); or
- (d) has an acquired right to practise pursuant to regulation 5 of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994(68), other than by virtue of regulation 5(1)(d) of those Regulations (acquired rights)(69),

(3) In this article, “certificate of prescribed experience” and “certificate of equivalent experience” have the meanings assigned to them in regulation 2(1) of the National Health Service (Vocational Training for General Medical Practice) Regulations 1997.

(4) Notwithstanding the repeal of section 31 and 32 of the 1977 Act, the National Health Service (Vocational Training for General Medical Practice) Regulations 1997 and the Vocational Training for General Medical Practice (European Requirements) Regulations 1994 shall remain in force (subject to the transitory modifications made in this Part) until their revocation by virtue of article 31(5) of, and Part 2 of Schedule 10 to the 2003 Order.

(63) 1992 c. 52. Section 279(2) was inserted by the 2003 Act, Schedule 11, paragraph 59(4).

(64) 1993 c. 46. Section 2A was inserted by the Health Service Commissioners (Amendment) Act 1996 (c. 5), section 1 and subsections (1)(a) and (2)(a) were substituted by the 2003 Act, Schedule 11, paragraph 62.

(65) 1996 c. 18. Section 43K was inserted by the Public Interest Disclosure Act 1998 (c. 23), section 1 and subsection (1)(ba) was inserted by the 2003 Act, Schedule 11, paragraph 65(2).

(66) 2001 c. 15. Paragraph 11 of Schedule 1 was substituted by the 2003 Act, Schedule 11, paragraph 72(2).

(67) S.I. 1997/2817 as amended by S.I. 1998/669 and 2003/3148. The whole Regulations are prospectively revoked by S.I. 2003/1250, article 31(5) and Part 2 of Schedule 10.

(68) S.I. 1994/3130 as amended by S.I. 1997/2817 and 2003/3148. The whole Regulations are prospectively revoked by S.I. 2003/1250, article 31(5) and Part 2 of Schedule 10.

(69) Regulation 5 was previously amended by S.I. 1997/2817: the whole Regulations are prospectively revoked by S.I. 2003/1250, article 31(5) and Part 2 of Schedule 10.

### **Savings of certain provisions of the Medical Act 1983**

**87.** Notwithstanding the coming into force of the amendments to sections 11 and 12 of the Medical Act 1983(**70**) made by paragraphs 47 to 49 of Schedule 11 to the 2003 Act(**71**), in relation to any employment before 1st April 2004 in—

- (a) an approved medical practice; or
- (b) a health centre,

sections 11(4) and 12(2)(a) of the Medical Act 1983 shall have effect as if those amendments had not been brought into force.

### **Saving of section 279 of the Trade Union and Labour Relations (Consolidation) Act 1992**

**88.** Notwithstanding the coming into force of the amendments to the definition of worker in section 279 of the Trade Union and Labour Relations (Consolidation) Act 1992(**72**) (health service practitioners) made by paragraph 59 of Schedule 11 to the 2003 Act(**73**), in relation to any complaint arising in respect of a matter which occurred before 1st April 2004, section 279 shall have effect as if those amendments had not been brought into force.

### **Saving of sections 2A and 6(5) of the Health Service Commissioners Act 1993**

**89.** Notwithstanding the coming into force of the amendments to sections 2A and 6(5) of the Health Service Commissioners Act 1993(**74**) made by paragraphs 62 and 63 of Schedule 11 to the 2003 Act(**75**), in relation to any complaint arising in respect of a matter which occurred before 1st April 2004, sections 2A and 6(5) shall have effect as if those amendments had not been brought into force.

### **Transitional provision in relation to the National Health Service (Injury Benefits) Regulations 1995**

**90.** Notwithstanding the amendments made to the National Health Service (Injury Benefits) Regulations 1995 by paragraph 13 of Schedule 1, those regulations shall, in relation to any employment before 1st April 2004, continue to apply as if those amendments had not been made.

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(70) 1983 c. 54.

(71) Paragraphs 47 to 49 of Schedule 11 were commenced on 1st April 2004 by article 4(2)(w) of the Health and Social Care (Community Health and Standards) Act 2003 Commencement (No. 1) (Wales) Order 2004 (S.I. 2004/480 (W.49) (C.19)).

(72) 1992 c. 52. Section 279 as amended by the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 122, the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 67, the Health and Social Care Act 2001 (c. 15), Schedule 5, paragraph 9, the National Health Service Reform and Health Care Professions Act 2002 (c. 17), Schedule 2, paragraph 60 and Schedule 3, paragraph 13 and the 2003 Act, Schedule 11, paragraph 59.

(73) Paragraph 59 of Schedule 11 was commenced on 1st April 2004 by article 4(2)(z) of the Health and Social Care (Community Health and Standards) Act 2003 Commencement (No. 1) (Wales) Order 2004 (S.I. 2004/480 (W.49)(C.19)), subject to the transitional provision in article 7(9) of that Order.

(74) 1993 c. 46. Section 2A was inserted by the Health Service Commissioners (Amendment) Act 1996 (c. 5), section 1 and amended by the National Health Service (Primary Care) Act 1997, Schedule 2, paragraph 68, the Health Service Commissioners (Amendment) Act 2000 (c. 28), section 1, the Scottish Public Services Ombudsman Act 2002, Schedule 6, paragraph 14 and the 2003 Act, Schedule 11, paragraph 62; section 6(5) was inserted by the Health Service Commissioners (Amendment) Act 1996 (c. 5), section 7(3) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c. 17), Schedule 2, paragraph 61 and the 2003 Act, Schedule 11, paragraph 63.

(75) Paragraphs 62 and 63 of Schedule 11 were commenced on 1st April 2004 by article 5(2)(w) of the Health and Social Care (Community Health and Standards) Act 2003 Commencement (No. 2) Order 2004 (S.I. 2004/288), subject to the transitional provision in article 7(10) of that Order.



### **Transitory modification of section 18 of the 1990 Act**

**91.** For as long as default contracts entered into pursuant to section 176(3) of the 2003 Act (general medical services: transitional) exist, section 18 of the 1990 Act<sup>(76)</sup> (indicative amounts for doctors' practices) shall be read as if—

- (a) the reference in subsection (3)(a) to a contract under section 28Q of the Act included a reference to a default contract entered into pursuant to section 176(3) of the 2003 Act; and
- (b) after subsection (3), there were inserted—

“(3A) Where, in the same financial year, a practice enters into—

- (a) a contract pursuant to section 176(3) of the Health and Social Care (Community Health and Standards) Act 2003; and
- (b) a contract with the same Local Health Board under section 28Q of the Act which takes effect immediately after the contract referred to in paragraph (a) ceases to have effect,

that practice will, for that financial year, count as a single practice for the purposes of this section.”.

### **Modification of section 115 of the Police Act 1997**

**92.**—(1) Until the coming into force of paragraph 4(4) of Schedule 35 to the Criminal Justice Act 2003<sup>(77)</sup>, section 115 of the Police Act 1997<sup>(78)</sup> shall be read as if—

- (a) in subsection (6C)—
  - (i) the words “Part 2 of” were omitted, and
  - (ii) for paragraph (a) there were substituted—
    - “(a) medical practitioners performing primary medical services,”; and
- (b) in subsection (6E)—
  - (i) in paragraph (a) the words “section 28DA of the National Health Service Act 1977 or” were omitted, and
  - (ii) in paragraph (b), for “the 1977 Act” there were substituted “the National Health Service Act 1977”.

(2) The modifications made by this article do not extend to Scotland or Northern Ireland.

### **Transitory modification of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994**

**93.**—(1) Until their revocation by virtue of article 31(5) of, and Part 2 of Schedule 10 to the 2003 Order, the Vocational Training for General Medical Practice (European Requirements) Regulations 1994 are to have effect as if they were amended in accordance with this article.

(2) In regulation 5 (acquired rights)<sup>(79)</sup>, for paragraph (4)(a), substitute—

- “(a) a person who has the acquired right specified in paragraph (1)(a), but only by virtue of the fact that he or she was a restricted services principal included in a list specified in that paragraph, is not entitled to be considered as suitably experienced within the meaning of

<sup>(76)</sup> 1990 c. 19. Section 18(3) (a) and (b) were substituted by the 2003 Act, Schedule 11, paragraph 56(3).

<sup>(77)</sup> 2003 c. 44.

<sup>(78)</sup> 1997 c. 50. Subsections (6C) and (6E) were inserted into section 115 by the Health and Social Care Act 2001 (c. 15), section 19(3) and section (6E) was amended by the National Health Service Reform and Health Care Professions Act 2002 (c. 17), Schedule 2, paragraph 64.

<sup>(79)</sup> Regulation 5 was previously amended by S.I. 1997/2817: the whole Regulations are prospectively revoked by S.I. 2003/1250, article 31(5) and Part 2 of Schedule 10.

section 31(2) of the National Health Service Act 1977 for the purposes of regulation 4(1), (2)(a) or (3)(a) of the National Health Service (General Medical Services Contracts) Regulations 2004<sup>(80)</sup> or regulation 4(1), (2)(a) or (3)(a) of the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004<sup>(81)</sup>; and”.

(3) The modifications made by this article do not extend to Scotland or Northern Ireland.

### **Transitory modification of the National Health Service (Vocational Training for General Medical Practice) Regulations 1997**

**94.**—(1) Until their revocation by virtue of article 31(5) of, and Part 2 of Schedule 10 to the 2003 Order, the National Health Service (Vocational Training for General Medical Practice) Regulations 1997 are to have effect as if they were amended in accordance with this article.

(2) In regulation 2 (interpretation)—

(a) in the definition of “General Practice (GP) Registrar”—

(i) for sub-paragraph (a), there shall be substituted—

“(a) means a medical practitioner who is being trained in general practice by a medical practitioner who has been approved for that purpose by the JCPTGP pursuant to regulation 7;”, and

(ii) for sub-paragraph (d), there shall be substituted—

“(d) includes a practitioner who is being trained in general practice by a practitioner who performs primary medical services in connection with an agreement for primary medical services made under section 28C of the Act;”;

(b) in the definition of “medical list”, in both sub-paragraphs (a) and (b), insert after the word “list” the words “that was”;

(c) in paragraph (2)—

(i) in sub-paragraph (a) for the words “is (or if the context so requires was)” substitute “was”, and

(ii) omit the full out text at the end.

(3) Regulation 4 (experience and certificates required) shall be omitted.

(4) In regulation 5 (exemptions), in paragraph (1) for sub-paragraph (d) substitute—

“(d) if his or her name was, on 31st December 1994, included in a medical list for the provision of general medical services limited to—

(i) child health surveillance services only,

(ii) contraceptive services only,

(iii) maternity medical services only,

(iv) minor surgery services only, or

(v) any combination of the services mentioned in paragraphs (i) to (iv);”.

### **Minor and consequential amendments**

**95.** The enactments listed in Schedule 1 are amended as there specified.

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<sup>(80)</sup> S.I. 2004/291.

<sup>(81)</sup> S.I. 2004/478 (W.48).

## Revocations

96. The enactments listed in Schedule 2 are revoked to the extent there specified.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(82)

31st March 2004

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly