
STATUTORY RULES OF NORTHERN IRELAND

2004 No. 156

The General Medical Services Transitional and Consequential Provisions (No. 2) (Northern Ireland) Order 2004

PART 3

TRANSITIONAL PROVISIONS FOR GENERAL MEDICAL SERVICES CONTRACTS WHICH FOLLOW DEFAULT CONTRACTS

Application and interpretation of this Part

41.—(1) This Part applies where a person who holds a default contract with a Board enters into a general medical services contract with that Board which takes effect immediately after his 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 42 to 52.

(3) In this Part –

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

“general medical services contractor” means the person who holds the general medical services contract entered into by the default contractor.

Carry over of approvals, applications, notices etc.

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

(a) any approval, authorisation or consent given by the 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 Board by the default contractor under his 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 his 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 his 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 his 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 his default contract by the Board which –
 - (i) requires him to provide or cease providing services, or
 - (ii) withdraws, suspends or varies an approval previously given to him by the 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 his 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 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 Board or a patient by the default contractor under his default contract shall be deemed to be a notification or information given by the general medical services contractor under the equivalent term of his 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 80 of Schedule 5 to the 2004 Regulations) which, on the date on which the default contract ceased to have effect, was required to be given to any person by the default contractor under his 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 Board to a default contractor under his default contract on the date on which it ceases to have effect but which had not been so given shall be given by the 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 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 Board –
 - (i) if the patient is included in the list of patients of the general medical services contractor, as if the notification were required to be given under the general medical services contract, or
 - (ii) in any other case, as soon as possible after the default contract ceases to have effect;
- (i) any request or inquiry made to the default contractor under the default contract but which has not been complied with on or before the date on which the default contract ceases to have effect, shall be complied with by the general medical services contractor as if it

was a request or inquiry made under the equivalent term of the general medical services contract and any time specified in the general medical services contract for responding to any such request shall be deemed to run from the date on which the request was made to the default contractor;

- (j) any preference expressed by a patient under the default contract to receive services from a particular performer or class of performer under that default contract and which he has not withdrawn on or before the date on which the default contract ceases to have effect shall, with effect from the date on which the general medical services contract takes effect, be regarded, for the purposes of that general medical services contract, as a preference expressed under the term of that contract which gives effect to paragraph 18 of Schedule 5 to the 2004 Regulations;
- (k) any checks which the default contractor has made under the terms of his default contract which are equivalent to paragraphs 52 to 54 of Schedule 5 to the 2004 Regulations or steps which he has taken to satisfy himself under the terms of that contract equivalent to paragraphs 53(1)(b), 55 or 64(1) of that Schedule shall be regarded as checks made or steps taken by the general medical services contractor under the terms of his 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 Board by the default contractor under the term of his default contract which is equivalent to paragraph 68(6) of Schedule 5 to the 2004 Regulations but which have not been sent on or before the date on which the default contract ceases to have effect, shall be sent to the Board by the general medical services contractor by the date on which the default contractor would have been required to send them had his 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 5 to the 2004 Regulations shall be deemed to include a reference to a warning given by the default contractor.

(2) Where –

- (a) pursuant to paragraph (1)(e), a notification is deemed to have been given by a general medical services contractor under the term of his contract which gives effect to paragraph 64(1) of Schedule 5 to the 2004 Regulations on the date on which the general medical services contract takes effect; and
- (b) the notification under the equivalent provision of the default contract was given more than 28 days before the date on which the default contract ceased to have effect,

the right of the Board under the term of the general medical services contract which gives effect to paragraph 64 of Schedule 5 to the 2004 Regulations to object to the sub-contract covered by that notification shall not apply.

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

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

contained in the default contract.

Newly registered patients

43.—(1) Where a patient of a default contractor –

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

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

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

Temporary residents

44. 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 his default contract equivalent to paragraph 16 of Schedule 5 to the 2004 Regulations; and
- (b) his responsibility for that patient has not yet been terminated under that term,

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

Provision of immediately necessary treatment

45. 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

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

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

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

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 64(1)(b) of Schedule 5 to the 2004 Regulations shall not apply to that sub-contract unless it is extended beyond the date referred to in sub-paragraph (b) or there is a material variation in its terms.

(2) In this Article, “health care professional” has the same meaning as in Article 15C of the 1972 Order⁽¹⁾.

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 84 of Schedule 5 to the 2004 Regulations, or
 - (ii) falls to be investigated by a default contractor pursuant to Articles 22 or 23; and
- (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 his general medical services contract which gives effect to paragraph 84 of Schedule 5 to the 2004 Regulations.

(2) In a case to which this Part applies, any references in the terms of the general medical services contract which give effect to paragraphs 84 to 88 and 90 of Schedule 5 to the 2004 Regulations to –

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

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

(1) Article 15C was amended by Article 6 of the 2004 Order

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 his 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 his 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 75 of Schedule 5 to the 2004 Regulations, the 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 he 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.

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 to be determined in accordance with the dispute resolution procedure; and
- (b) on the date on which the default contract ceases to have effect, that dispute has not been determined or withdrawn,

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

(2) In this Article, “adjudicator” means the Department or a person appointed by the Department under Article 8(4) of the 1991 Order or paragraph 93(5) of Schedule 5 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 Board on or before that date to terminate the default contract under the term of the default contract equivalent to paragraph 105 of Schedule 5 to the 2004 Regulations; and
- (b) the 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 105 of Schedule 5 to the 2004 Regulations, be regarded as if they had arisen during the existence of the general medical services contract.

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

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 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).