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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 142**

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

**PART 2**

**ENTITLEMENT TO ENTER INTO GMS CONTRACTS**

**Entitlement to a GMS contract as an individual medical practitioner**

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

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

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

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

- (a) that person is suspended from the Medical Register in the circumstances specified in paragraph (5) or suspended by the Tribunal from the Health Board's medical list; or
- (b) the Health Board has in place for that person's temporary arrangements under regulation 24(7) of the 1995 Regulations<sup>(2)</sup>.

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

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

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

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

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

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

after a finding of professional misconduct or unfitness to practise) of the 1983 Act or under rules made under paragraph 5A(3) of Schedule 4 (proceedings before professional conduct, health and preliminary proceedings committees) to that Act(3);

- (b) by the Health Committee of the General Medical Council under section 37 (unfitness to practise through illness etc.)(4) or 38(1) of the 1983 Act; or
- (c) under section 41A (interim orders) of the 1983 Act(5).

(6) In relation to any suspension which occurs after the coming into force of articles 13 and 14 of the Medical Act 1983 (Amendment) Order 2002(6), sub paragraphs (a) and (b) of paragraph (5) shall be read as if they referred to suspension by a Fitness to Practise Panel constituted under Part 3 of Schedule 1 to the 1983 Act in a case relating to deficient professional performance or adverse physical or mental health under–

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

(7) A Health Board shall not be required under paragraph (2) to enter into a GMS contract with a person for whom it has in place–

- (a) on 31st March 2004, temporary arrangements under regulation 24(7) of the 1995 Regulations; or
- (b) contractual arrangements under article 15 which replace such temporary arrangements,

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

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

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

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

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

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

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

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