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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 5**

**CONTRACT TERMS**

**Additional services in default contracts**

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

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

- (a) on 31st March 2004 the equivalent of that service was not being provided to the default contractor's patients by—
  - (i) the medical practitioner who has entered into the default contract; or
  - (ii) in the case of a default contract with a partnership, any of the medical practitioners who are partners in that partnership; and
- (b) the default contractor does not wish to provide that service to its patients under a GMS contract which it intends to enter into on or after 1st April 2004 pursuant to article 3 or 4.

**Additional services in GMS contracts under article 8 or 10**

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

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

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

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

- (a) the services which were specified in the notice of the vacancy published under regulation 11(2) of the 1995 Regulations<sup>(1)</sup>; or
- (b) in a case in which the services required were not so specified, the services which the medical practitioner whose death or withdrawal or removal from the Health Boards medical list led to the declaration of the vacancy was providing to that practitioner's

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

patients immediately prior to the practitioner's death or withdrawal or removal from the list.

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

**18.** Where, on or after 1st April 2004, a Health Board enters into a GMS contract pursuant to article 3 or 4 with a person who, immediately before the coming into force of that GMS contract, is a party to a default contract with that Health Board, that GMS contract must require the contractor to provide in core hours to its registered patients and persons accepted by it as temporary residents such of the additional services as were required to be provided under the default contract, except to the extent that, prior to the signing of the GMS contract, the Health Board which is a prospective party to that contract has accepted in writing a written request from the contractor that the GMS contract should not require the GMS contractor to provide all or any of those additional services.

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

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

- (a) a medical practitioner who was, on 31st March 2004, relieved of responsibility for providing services to the practitioner's patients under paragraph 17(2) of Schedule 1 to the 1995 Regulations; or
  - (b) a partnership in which all of the partners who are general medical practitioners were on 31st March 2004, relieved of responsibility for providing services to their patients under that paragraph.
- (2) The services referred to in paragraph (1) are—
- (a) services which would be essential services if provided in core hours; and
  - (b) such additional services as are included in the contract pursuant to article 16.
- (3) Where a default contract is with—
- (a) an individual medical practitioner who was on 31st March 2004, responsible for providing services during all or part of the out of hours period to the patients of a medical practitioner who meets the requirements in paragraph (4); or
  - (b) a partnership in which at least one of the partners was on 31st March 2004, a medical practitioner responsible for providing such services to such patients,

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

- (4) The requirements referred to in paragraph (3)(a) are that—
- (a) the medical practitioner was relieved of responsibility for providing services to the practitioner's patients under paragraph 17(2) of Schedule 1 to the 1995 Regulations; and
  - (b) the medical practitioner—
    - (i) has entered or intends to enter into a default or GMS contract which does not include out of hours services pursuant to paragraph (1)(a) or regulation 30(1)(b)(i) of the 2004 Regulations;
    - (ii) is a partner in a partnership which has entered or intends to enter into a default or GMS contract which does not include out of hours services pursuant to paragraph (1)(b) or regulation 30(1)(b)(ii) of the 2004 Regulations; or

(iii) is a legal and beneficial shareholder in a company which has entered or intends to enter into a GMS contract which does not include out of hours services pursuant to regulation 30(1)(b)(iii) of the 2004 Regulations.

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

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

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

**20.**—(1) Where a GMS contract is with—

- (a) an individual medical practitioner who was on 31st March 2004 responsible for providing services during all or part of the out of hours period to the patients of a medical practitioner who meets the requirements in paragraph (2);
- (b) a partnership in which at least one of the partners was on 31st March 2004, a medical practitioner responsible for providing such services to such patients; or
- (c) a company in which one or more of the shareholders was on 31st March 2004, a medical practitioner responsible for providing such services to such patients,

the GMS contract with that GMS contractor must require it to continue to provide such services to the patients of the exempt contractor until the happening of one of the events in paragraph (3).

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

- (a) the medical practitioner was relieved of responsibility for providing services to the practitioner’s patients under paragraph 17(2) of Schedule 1 to the 1992 Regulations; and
- (b) the medical practitioner—
  - (i) has entered or intends to enter into a default contract which does not include out of hours services pursuant to article 19(1)(a); or
  - (ii) is a partner in a partnership which has entered or intends to enter into a default contract which does not include out of hours services pursuant to article 19(1)(b).

(3) The events referred to in paragraph (1) are—

- (a) the exempt contractor’s default contract has come to an end and not been succeeded by a GMS contract which does not include out of hours services pursuant to regulation 30(1)(b) of the 2004 Regulations;
- (b) the GMS contractor has opted out of the provision of out of hours services in accordance with paragraph 4 or 5 of Schedule 2 to the 2004 Regulations; or
- (c) the Health Board (and, if it is different, the Health Board with which the exempt contractor holds its contract) has or have agreed in writing that the GMS contractor need no longer provide some or all of those services to some or all of those patients.

(4) In this article “exempt contractor” means a contractor who is exempt from providing out of hours services pursuant to article 19(1)(a) or (b).

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

**21.** For as long as default contracts exist—

- (a) paragraph 63(2)(a) of Schedule 5 to the 2004 Regulations (sub contracting of out of hours services) shall be read as if the reference to a GMS contract included a reference to a default contract; and
- (b) Schedule 6 to those Regulations (out of hours services) shall be read as if—
  - (i) the reference to a GMS contract in paragraph 1(5) included a reference to a default contract, and
  - (ii) in paragraph 5(1)(a), after “contract” there were included “or, as the case may be, default contract”.

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

22. For as long as contractual arrangements made under article 15 exist—
- (a) paragraph 63(2) of Schedule 5 to the 2004 Regulations (sub contracting of out of hours services) shall be read as if, after paragraph (b), there were inserted—
    - “(bb) a person who is a party to contractual arrangements made under article 15 of the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004;”;
  - (b) Schedule 6 to those Regulations (out of hours services) shall be read as if—
    - (i) in paragraph 1(5), after “agreement” there were included “, or who is a party to contractual arrangements made under article 15 of the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004;” and
    - (ii) in paragraph 5(1)(a), after “agreement” there were included “or to be a party to contractual arrangements made under article 15 of the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004;”.

**Effect on a GMS contract of approval of an out of hours arrangement made by a default contractor**

23.—(1) Where, under the terms of the default contract which are equivalent to Schedule 6 to the 2004 Regulations, a Health Board has approved an out of hours arrangement made by a default contractor with a person who holds a GMS contract, the Health Board with whom that person holds the GMS contract and that GMS contractor shall be deemed to have agreed a variation of their contract which has the effect of including in it, from the date on which the out of hours arrangement commences, and for so long as that arrangement is not suspended or terminated, the services covered by that arrangement.

(2) The term of the GMS contract which gives effect to paragraph 94(1) of Schedule 5 to the 2004 Regulations shall not apply to a variation made under paragraph (1).

(3) In this article, “out of hours arrangement” means an arrangement made under the term of the default contract which is equivalent to paragraph 1(2) of Schedule 6 to the 2004 Regulations.

**Services to patients not registered with the contractor in default contracts and GMS contracts**

- 24.—(1) Where a medical practitioner who meets the requirements in paragraph (2)—
- (a) enters into—
    - (i) a default contract; or
    - (ii) a GMS contract pursuant to article 3;
  - (b) is a partner in a partnership which enters into—

- (i) a default contract; or
- (ii) a GMS contract pursuant to article 4; or
- (c) is a legal and beneficial shareholder in a company which enters into a GMS contract under which services are to be provided from 1st April 2004,

that contract must require the contractor to provide such of the additional services as are equivalent to those of the services listed in paragraph (2)(a) to (c), to the patients to whom the medical practitioner was providing those services on 31st March 2004 except, in the case of a GMS contract, to the extent that the contractor is not required to provide the additional service concerned to its registered patients under regulation 29 of the 2004 Regulations.

(2) The requirements referred to in paragraph (1) are that, on 31st March 2004 the medical practitioner is providing, as part of general medical services under section 19 of the 1978 Act to a patient who is not recorded as being on the practitioner's list of patients—

- (a) child health surveillance services under regulation 29 of the 1995 Regulations(2);
- (b) contraceptive services under regulation 30 of those Regulations(3); or
- (c) maternity medical services under regulation 31 of those Regulations(4).

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

- (a) in a default contract under article 16; or
- (b) in a GMS contract under regulation 29 of the 2004 Regulations.

(4) Nothing in this article shall prevent a contractor from subsequently terminating its responsibility for a patient not registered with the contractor under the term of its contract which gives effect to paragraph 28 of Schedule 5 to the 2004 Regulations (or the equivalent term of a default contract).

(5) A requirement in a GMS contract to provide any additional services under this paragraph to patients not registered with the contractor shall cease on the date on which any opt out of that additional service in respect of the GMS contractor's own registered patients commences pursuant to the terms of the GMS contract which give effect to Schedule 2 to the 2004 Regulations.

(6) Where paragraph (5) applies, the requirement to inform patients of opt outs in the term of the GMS contract which gives effect to paragraph 6 of Schedule 2 to the 2004 Regulations shall apply to the patients to whom services are provided pursuant to this paragraph as it applies to the GMS contractor's own registered patients.

### **Services to patients not registered with the contractor in GMS contracts entered into following a default contract**

**25.**—(1) Where, on or after 1st April 2004, a Health Board enters into a GMS contract pursuant to articles 3 or 4 with a person who, immediately before the coming into force of that contract, is a party to a default contract, that GMS contract shall require the contractor to provide to patients who are not included on the contractor's list of patients such of the additional services as were provided to those patients under that default contract, except to the extent that the contractor is not required to provide the additional service concerned to its registered patients under article 18.

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

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(2) Regulation 29 was amended by [S.S.I. 1999/54](#).

(3) Regulation 30 was amended by [S.S.I. 1999/54](#).

(4) Regulation 31 was substituted by [S.I.1997/943](#) and amended by [S.I. 1998/660](#) and [S.S.I. 1999/54](#).

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

### **Premises for the purposes of default contracts and GMS contracts**

**26.**—(1) Where a medical practitioner who, on 31st March 2004, is providing general medical services under section 19 of the 1978 Act<sup>(5)</sup>—

- (a) enters into—
  - (i) a default contract; or
  - (ii) a GMS contract pursuant to article 3;
- (b) is a partner in a partnership which enters into—
  - (i) a default contract; or
  - (ii) a GMS contract pursuant to article 4; or
- (c) is a legal and beneficial shareholder in a company which enters into a GMS contract under which services are to be provided from 1st April 2004,

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

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

- (a) in the case of a contract with an individual medical practitioner, all the premises which, on 31st March 2004, were approved (whether with or without conditions) by the Health Board or the Scottish Ministers under paragraph 24 or 27 of Schedule 1 to the 1995 Regulations in respect of that practitioner and whose approval had not been withdrawn;
- (b) in the case of a contract with a partnership, all the premises which, on 31st March 2004 were approved (whether with or without conditions) by the Health Board or the Scottish Ministers under paragraph 24 or 27 of Schedule 1 to the 1995 Regulations in respect of any of those practitioners and whose approval had not been withdrawn; or
- (c) in the case of a contract with a company, all the premises which, on 31st March 2004 were approved (whether with or without conditions) by the Health Board or the Scottish Ministers under paragraph 24 or 27 of Schedule 1 to the 1995 Regulations in respect of any of the medical practitioners who are legal and beneficial shareholders in that company and whose approval had not been withdrawn.

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

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

**27.** The area specified at its commencement in a default contract as the area as respects which persons resident in it will, subject to any other terms of the contract relating to patient registration, be entitled to register with the contractor or seek acceptance by it as a temporary resident must be—

- (a) in the case of a default contract with an individual medical practitioner, the area which was that practitioner's practice area on 31st March 2004 for the purposes of the practitioner's arrangements under section 19 of the 1978 Act; or

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

- (b) in the case of a default contract with a partnership, the area which covers all of the areas which were the partnership's practice areas on 31st March 2004 for the purposes of their arrangements under section 19 of the 1978 Act.

### **Lists of patients for default contracts and GMS contracts**

**28.**—(1) Subject to article 30(1), where a medical practitioner who, on 31st March 2004 is providing general medical services under section 19 of the 1978 Act—

- (a) enters into—
  - (i) a default contract; or
  - (ii) a GMS contract pursuant to article 3;
- (b) is a partner in a partnership which enters into—
  - (i) a default contract; or
  - (ii) a GMS contract pursuant to article 4; or
- (c) is a legal and beneficial shareholder in a company which enters into a GMS contract under which services are to be provided from 1st April 2004,

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

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

- (a) were recorded by the Health Board pursuant to regulation 27 of the 1995 Regulations as being on the list of—
  - (i) the contractor where the contractor is an individual medical practitioner;
  - (ii) any of the two or more medical practitioners who are partners in a partnership which has entered into the contract; or
  - (iii) any of the medical practitioners who are legal and beneficial shareholders in the company which has entered into the contract,

unless, in the case of a GMS contract, they live outside the practice area as specified in that contract and were not included on the medical practitioner's list of patients by virtue of an assignment under regulation 4 of the Choice Regulations<sup>(6)</sup>;

- (b) had been assigned to the contractor or to any of the persons listed in paragraph (2)(a)(ii) or (iii) under regulation 4 of the Choice Regulations but not yet included in the list referred to in sub paragraph (a).

### **Lists of patients for GMS contracts entered into following a default contract**

**29.** Where, after 1st April 2004, a Health Board enters into a GMS contract pursuant to article 3 or 4 with a person who, immediately before the coming into force of that GMS contract, is a party to a default contract, it must include on the contractor's list of patients, for the purposes of that GMS contract—

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

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(6) Regulation 4 was amended by [S.S.I. 2001/ 85](#) and [191](#).

### **Lists of patients for default contracts and GMS contracts entered into following arrangements under regulation 24 of the 1995 Regulations or article 15**

**30.**—(1) Where, on or after 1st April 2004, a Health Board enters into a default contract or a GMS contract pursuant to article 3 with an individual medical practitioner for whom, or pursuant to article 4 with a partnership, one of the partners for whom, immediately prior to the commencement of that contract, it had in place temporary arrangements under regulation 24(2) or (7) of the 1995 Regulations, it must include on the contractor's list of patients at the start of that default, or, as the case may be, GMS contract, all of the patients who, on the date on which the temporary arrangements came to an end were—

- (a) temporarily assigned to other medical practitioners under regulation 24(17A) of the 1995 Regulations(7); or
- (b) included on the list of the medical practitioner for whom the temporary arrangements were in place,

apart from, in the case of a GMS contract, any such patient who lives outside the practice area as specified in that contract and who became registered with either the medical practitioner for whom the temporary arrangements are in place, or the medical practitioner or practitioners providing the temporary arrangements, otherwise than as the result of an assignment under regulation 4 of the Choice Regulations.

(2) Where, on or after 1st April 2004, a Health Board enters into a GMS contract pursuant to article 3 with an individual medical practitioner for whom, or pursuant to article 4 a partnership, one of the partners for whom, immediately prior to the commencement of that contract, it had in place contractual arrangements under article 15, it must include on the contractor's list of patients at the start of that GMS contract all of the patients who were, on the date on which those contractual arrangements came to an end, on the list or lists of patients prepared and maintained by the Health Board for the purpose of those contractual arrangements, apart from any such patient who lives outside the practice area as specified in the GMS contract and whose inclusion in the list of patients did not result from an assignment under regulation 4 of the Choice Regulations or under the contractual arrangements under article 15.

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

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

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

- (a) on 31st March 2004—
  - (i) in the case of a contract with an individual medical practitioner, that practitioner is exempt from the liability to have persons (other than a specified person) assigned to the practitioner under regulation 4(8) of the Choice Regulations; or
  - (ii) in the case of a contract with a partnership, all the partners in that partnership are exempt from such liability; and
- (b) the Health Board has determined, in the light of the circumstances in which it granted the exemption or exemptions referred to in paragraph (a), that the contractor's list of patients should, from the commencement of the default contract, be closed to applications for inclusion in the list other than from the immediate family members of registered patients.

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

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



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

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

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

**32.**—(1) Where a medical practitioner who, on 31st March 2004 is providing general medical services under section 19 of the 1978 Act—

- (a) enters into a GMS contract pursuant to article 3;
- (b) is a partner in a partnership which enters into a GMS contract pursuant to article 4; or
- (c) is a legal and beneficial shareholder in a company which enters into a GMS contract under which services are to be provided from 1st April 2004 ,

the contractor's list of patients for the purposes of that contract shall, on the date on which the contract comes into force, be open to applications from patients in accordance with the term of the contract which gives effect to paragraph 15 of Schedule 5 to the 2004 Regulations except in the circumstances specified in paragraph (2).

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

- (a) on 31st March 2004—
  - (i) in the case of a contract with an individual medical practitioner, that practitioner is exempt from the liability to have persons (other than a specified person) assigned to the practitioner under regulation 4(8) of the Choice Regulations;
  - (ii) in the case of a contract with a partnership, all of the partners in that partnership who are medical practitioners are exempt from such liability;
  - (iii) in the case of a contract with a company, all of the medical practitioners who are legal and beneficial shareholders in that company are exempt from such liability; and
- (b) the Health Board has determined, in the light of the circumstances in which it granted the exemption or exemptions referred to in paragraph (a), that the contractor's list of patients should, from the commencement of the contract, be closed to applications for inclusion in the list other than from the immediate family members of registered patients.

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

(4) The contractor's list of patients shall remain closed for the period of twelve months from the date on which the contract comes into force unless the contractor notifies the Health Board in writing of its intention to re-open the list before the end of that period and of the date on which it will re open.

(5) A contractor which has re-opened its list under paragraph (4) shall not be entitled to close it again during the period of twelve months referred to in paragraph (4) except under the term of its GMS contract which gives effect to paragraph 29 of Schedule 5 to the 2004 Regulations.

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

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

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

(2) Any dispute referred to the Scottish Ministers under paragraph (1) shall be determined in accordance with the NHS dispute resolution procedure as if in Schedule 5 to the 2004 Regulations—

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

(b) in paragraph 91(3) “sub paragraph (1)” and in paragraph 92(2) “paragraph 90(1)”, read “paragraph (1) of article 33 of the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004”.

**Additional ground for termination of a GMS contract**

**34.** Where a Health Board has entered into a GMS contract—

(a) following a default contract; or

(b) pursuant to an entitlement under Part 2 of this Order, on or after 1st April 2004 other than following a default contract,

paragraph 101 of Schedule 5 to the 2004 Regulations shall apply to that contract as if it enabled the Health Board to serve notice of termination on the contractor on the grounds of a person falling within sub paragraph (2)(d) at any time after 31st March 2004.