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STATUTORY INSTRUMENTS

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**2004 No. (W.)**

**NATIONAL HEALTH SERVICE, WALES**

**The General Medical Services Transitional and Consequential Provisions (Wales) Order 2004**

*Made* - - - - 2004

*Coming into force* - - 2004

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 200 and 201 of the Health and Social Care (Community Health and Standards) Act 2003(a) hereby makes the following Order:

**PART 1**  
**GENERAL**

**Citation, commencement, application and interpretation**

**1.**—(1) This Order may be cited as the General Medical Services and Personal Medical Services Transitional and Consequential Provisions (Wales) Order 2004 and shall come into force on [ ] 2004.

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

(3) In this Order—

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

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

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

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(a) 2003 c.43.  
(b) S.I. 1992/635 plus amendments  
(c) S.I. 2004/?? (W. )  
(d) S.I. 1998/668 as amended by S.I. 1999/3179 and 2000/1708 (W. 115)

“default contract” means a contract under article and “default contractor” shall be construed accordingly ;

“registered patient” means—

(a) a person who is recorded by the Local Health Board as being on the contractor’s list of patients, or

(b) a person whom the 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 the contractor as a temporary resident under paragraph 16 of Schedule 6 to the 2004 Regulations and for whom the contractor’s responsibility has not been terminated in accordance with that paragraph.

## PART 2

### TRANSITIONAL PROVISIONS RELATING TO GENERAL MEDICAL SERVICES

#### **Application of this Part**

2. This Part applies where a medical practitioner who, on 31<sup>st</sup> March 2004, is providing services under section 29 of the 1977 Act (general medical services)—

- (a) has entered into a default contract with effect from 1<sup>st</sup> April 2004 as an individual medical practitioner or as one of two or more persons practising in partnership; or
- (b) has entered into a general medical services contract pursuant to article 3 or 5 of the General Medical Services Transitional Provisions (Wales)(a) Order 2004 under which services are required to be provided from 1<sup>st</sup> April 2004.

(2) In this Part, “relevant contractor” means the contractor which is a party to—

- (a) the default contract; or
- (b) the general medical services contract,

which the medical practitioner who falls within paragraph (1) has entered into either as an individual medical practitioner or as one of two or more individuals practising in partnership.

#### **Applications for inclusion on lists and removals from lists**

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

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

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

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

**5.** Where, on 31<sup>st</sup> March 2004, a Local Health Board has received notice from a patient under regulation 23(1)(a) of the 1992 Regulations that he wishes to be removed from a medical practitioner's list but that removal has 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 relevant contractor as if it were a removal pursuant to a request received by the Local Health Board in accordance with—

- (a) the term of the 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 the default contract subject to a modification to the same effect.

**6.** Where, on 31<sup>st</sup> March 2004, a medical practitioner has notified the Local Health Board that the medical practitioner wishes to have a patient removed from that medical practitioner's list in accordance with paragraph 9 of Schedule 2 to the 1992 Regulations but that removal has not yet taken effect, the removal shall take effect as a removal from the list of patients of the relevant contractor under—

- (a) the term of the general medical services contract which gives effect to paragraph 20(7) of Schedule 6 to the 2004 Regulations, subject to the modification that the reference to the eighth day after the Local Health Board receives the notice in the term which gives effect to paragraph 20(7)(b) 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 the default contract subject to a modification to the same effect.

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

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

**(2)** In cases to which this paragraph applies—

- (a) written confirmation of the request for removal shall be given to the PrimaLocal Health Board by the relevant contractor within 7 days of the date on which notification was given under paragraph 9A(1);
- (b) reasonable steps shall be taken by the relevant contractor to inform the patient of the request for removal; and
- (c) the Local Health Board shall send written notice of the removal to the patient.

**8.** Where, on 31<sup>st</sup> March 2004, a Local Health Board has informed a patient, in accordance with regulation 23(2) of the 1992 Regulations, that the patient's medical practitioner is not longer obliged to visit and treat the patient but the 30 days referred to in that regulation has not yet expired, that information shall be regarded as if it had been given under—

- (a) 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 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 the default contract subject to a modification to the same effect.

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

(a) 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 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 the default contract subject to a modification to the same effect.

### **Temporary residents**

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

(a) the term of the 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 the default contract.

**11.—(1)** This article applies where, on 31<sup>st</sup> March 2004—

(a) a medical practitioner has accepted a person as a temporary resident under paragraph 7 of Schedule 2 to the 1992 Regulations; and

(b) the medical practitioner's responsibility for that patient has not yet been terminated under paragraphs 9 and 10 of that Schedule or the period for which the person was accepted as a temporary resident come to an end.

(2) In a case to which this article applies, the person shall, on 1<sup>st</sup> April 2004, be treated as if the person had been accepted as a temporary resident by the relevant contractor under—

(a) the term of the 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 medical practitioner under paragraph 7 of Schedule 2 to the 1992 Regulations; or

(b) the equivalent term of the default contract subject to a modification to the same effect.

**12.** Where, on 31<sup>st</sup> March 2004, a medical practitioner has informed the Local Health in writing in accordance with paragraph 10 of Schedule 2 to the 2002 Regulations that he wishes to terminate his responsibility for a temporary resident but that responsibility has not yet terminated under paragraph 9 of that Schedule, the responsibility of the relevant contractor for that temporary resident shall terminate seven days after the date on which the information under paragraph 10 of Schedule 2 to the 2002 Regulations was given to the Local Health Board by the medical practitioner.

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

**13.** Where, on 31<sup>st</sup> March 2004, a medical practitioner is responsible for providing immediately necessary treatment to any person under paragraph 4(4) of Schedule 2 to the 1992 Regulations, the relevant contractor shall continue to be responsible for providing such treatment to that person for

the period for which the medical practitioner would have been responsible if paragraph 4(4) of that Schedule had not been revoked.

### **Newly registered patients**

**14.**—(1) This article applies where, on 31<sup>st</sup> March 2004, a person on a contractor’s list of patients (whether for the purposes of a general medical services or a default contract)—

- (a) was entitled to be invited to participate in a consultation under paragraph 14 of Schedule 2 to the 1992 Regulations; and
- (b) had not been given such an invitation.

(2) A patient to whom this article applies shall, on 1<sup>st</sup> April 2004 or on the date on which the contract comes into force, whichever is the later, be regarded as a patient who falls within —

- (a) the term of the general medical services contract which gives effect to paragraph 4 of Schedule 6 to the 2004 Regulations (newly registered patients); or
- (b) the equivalent term of the default contract.

(3) This article does not apply in the case of a patient who is included on the contractor’s list of patients for the purposes of a general medical services contract if that patient was invited to participate in a consultation by that contractor under a default contract.

### **Appointments system**

**15.** Where, on or before 31<sup>st</sup> March 2004, a medical practitioner has—

- (a) notified a Local Health Board under paragraph 31 of Schedule 2 to the 2002 Regulations that the medical practitioner intends to operate an appointments system; and
- (b) not notified it of any proposal to discontinue such a system,

that notice shall be regarded as a notice given by the relevant contractor to the Local Health Board for the purposes of the term of the general medical services contract which gives effect to paragraph 82(c) of Schedule 2 to the 2004 Regulations or the equivalent term of the default contract.

### **Qualifications of performers**

**16.**—(1) This article applies where, on 1<sup>st</sup> April 2004, a relevant contractor employs or engages a person who on 31<sup>st</sup> March 2004 was employed or engaged in accordance with the requirements of Schedule 2 to the 1992 Regulations by the medical practitioner who (whether as an individual medical practitioner or one of two or more persons practising in partnership) has entered into the contract held by the relevant contractor.

(2) In a case to which this article applies—

- (a) the checks required under the terms of the general medical services contract which give effect to paragraphs 57(1)(b) or 58(1) of Schedule 2 to the 2004 Regulations, or under the equivalent terms of the default contract, shall apply subject to the modification that the checks may be carried out at any time up to 30<sup>th</sup> June 2004; and
- (b) the requirement to obtain references in the term of the general medical services contract which gives effect to paragraph 59 of Schedule 2 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 medical practitioner by whom the health care professional was employed or engaged on 31<sup>st</sup> March 2004.

### **Excessive prescribing**

**17.**—(1) Where, on 31<sup>st</sup> March 2004, a Local Health Board has—

- (a) referred a question of excessive prescribing for investigation and determination by a professional committee under regulation 15 of the National Health Service (Service Committees and Tribunal) Regulations 1992(a); and
- (b) that committee has 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 31<sup>st</sup> March 2004, a professional committee has given notice of its determination to a medical practitioner under paragraph (18) of regulation 15 of the National Health Service (Service Committees and Tribunal) Regulations 1992 but—

- (a) the medical practitioner has 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 has not yet expired,

the time for appealing shall continue as if regulation 15 of the National Health Service (Service Committees and Tribunal) Regulations 1992 were still in force.

(3) Where—

- (a) on 31<sup>st</sup> March 2004, a medical practitioner has given notice of appeal against the determination of a professional committee in accordance with paragraph (20) of regulation 15 of the National Health Service (Service Committees and Tribunal) Regulations 1992; or
- (b) a medical practitioner has given notice of such an appeal after 31<sup>st</sup> March 2004, pursuant to paragraph (2),

that appeal shall continue to be dealt with as if regulation 15 of the National Health Service (Service Committees and Tribunal) Regulations 1992 were still in force.

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

**18.—(1)** Where, on 31<sup>st</sup> March 2004, a Local Health Board has, under regulation 36(7) of the 1992 Regulations, informed a medical practitioner of its decision that a substance ordered by him was not a drug but—

- (a) the medical practitioner has not given notice of appeal under paragraph (8) of that regulation; and
- (b) the time for appealing in that paragraph has 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 31<sup>st</sup> March 2004, a medical practitioner has given notice of appeal against a decision of a Primary Care Trust under regulation 36 of the 1992 Regulations; or
- (b) a medical practitioner has given notice of such an appeal after 31<sup>st</sup> 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.

#### **Patient records**

**19.—(1)** Where, on 31<sup>st</sup> March 2004, a medical practitioner has 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 has not been withdrawn, that consent shall be regarded as written consent to the relevant contractor for the purposes of paragraph 72 of Schedule 6 to the 2004 Regulations.

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(a) S.I. 1992/664. Regulation 15 was amended by S.I. 2002/2469 and 2003/1937.

(2) Where, on 31<sup>st</sup> March 2004—

- (a) a Local Health Board has, on or before that date, requested a medical practitioner to send it the records relating to a patient under paragraph 36(6) of Schedule 2 to the 2002 Regulations; and
- (b) that request has not been complied with,

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

(3) Where, on 31<sup>st</sup> March 2004, a medical practitioner has been informed of the death of a patient on its list by the Local Health Board or has otherwise learned of the death of such a patient but has 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 relevant contractor—

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

### **Practice leaflet**

**20.**

### **Rights of entry**

**21.—**(1) Where, on 31<sup>st</sup> March 2004, a medical practitioner has received a written request for inspection of his practice premises under paragraph 27(b) of Schedule 2 to the 1992 Regulations but no inspection has taken place pursuant to that request, the request shall, on 1<sup>st</sup> April 2004, be regarded as notice of an intended entry under—

- (a) the term of the general medical services contract which gives effect to paragraph 89 of Schedule 6 to the 2004 Regulations; or
- (b) the equivalent term of the 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.

### **Premises**

**22.—**(1) Subject to paragraph (2), where, on 31<sup>st</sup> March 2004—

- (a) a Local Health Board has refused to approve an application made by a medical practitioner under paragraph 29(1) or (17) of Schedule 2 to the 1992 Regulations (doctors' availability to patients) in relation to any place at which he is to be available; and
- (b) the medical practitioner has appealed in writing against that refusal under paragraph 29(13) of that Schedule,

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

(2) Paragraph (1) does not apply unless the medical practitioner whose application was refused has (whether as an individual medical practitioner or as one of two or more individuals practising in partnership) entered into—

- (a) a default contract; or
- (b) a general medical services contract pursuant to articles 3 or 4 of the General Medical Services Transitional Provisions (Wales) Order 2004(a).

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(a) S.I.2004/xxxx(W.)

(3) Subject to paragraph (4), where, on 31<sup>st</sup> March 2004—

(a) a Local Health Board has—

(i) refused to approve an application made by a medical practitioner under paragraph 29A(1) or (6) of Schedule 2 to the 1992 Regulations (availability to patients outside normal hours), or

(ii) withdrawn its approval under paragraph 29A(9) of that Schedule and

(b) the medical practitioner has appealed in writing against that refusal under paragraph 29(13) or 29A(11) of that Schedule,

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

(4) Paragraph (3) does not apply unless the medical practitioner whose application was refused or whose approval of premises was withdrawn has (whether as an individual medical practitioner or as one of two or more individuals practising in partnership) entered into—

(a) a default contract; or

(b) a general medical services contract pursuant to articles 3 or 4 of the General Medical Services Transitional Provisions (Wales) Order 2004(a) which includes the provision of out of hours services.

(5) Where an appeal dealt with under paragraph (1) or (3) is successful, the Local Health Board shall agree to a variation of the contract which he holds with the medical practitioner concerned (whether as an individual medical practitioner or as one of two or more individuals practising in partnership) which has the effect of adding to the list of practice premises under the contract the premises approved as a result of the appeal.

(6) A variation agreed by the Local Health Board pursuant to paragraph (5) shall have effect—

(a) from a date no earlier than 28 days after the date on which the outcome of the appeal was notified to the medical practitioner; and

(b) only if it is in writing and signed by or on behalf of the Local Health Board and the contractor.

## PART 3

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

#### **Application of this Part**

23. This Part applies where—

(a) a medical practitioner has entered into a general medical services contract pursuant to article 3 or 4 after 31<sup>st</sup> March 2004; and

(b) immediately before entering into that contract, the medical practitionerthe medical practitioner was, either as an individual medical practitioner or as one of two or more persons practising in partnership, party to a default contract, which required to provide services to substantially the same patients to whom the medical practioner is required to provide services under the general medical services contract.

#### **Applications for inclusion on lists, refusal of applications and removals from lists in the case of general medical services contracts entered into following a default contract**

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(a) S.I.2004/xxxx(W.)



**24.** Where a person has applied to a contractor who holds a default contract for inclusion in its list of patients but that application has not been determined at the date on which the default contract terminates, the application shall, with effect from the date immediately after termination of the default contract, be regarded as if it had been made to the same contractor under the term of its general medical services contract which gives effect to paragraph 15 of Schedule 6 to the 2004 Regulations.

**25.** Where a contractor who holds a default contract has, in accordance with the terms of that contract, accepted an application for inclusion in its list of patients but has not yet notified the Local Health Board of that acceptance at the date on which the default contract terminates, that acceptance shall, with effect from the date immediately after termination of the default contract, be regarded as an acceptance by the same contractor under its general medical services contract and notification of that acceptance shall be sent by that contractor to the Local Health Board in accordance with the term of the general medical services contract which gives effect to paragraph 15(5) of Schedule 6 to the 2004 Regulations.

**26.** Where a contractor who holds a default contract has, in accordance with the terms of that contract, refused an application for inclusion in its list of patients but has not yet notified the applicant in writing of the refusal and the reason for it, at the date on which the default contract terminates, that refusal shall, with effect from the date immediately after termination of the default contract, be regarded as a refusal by the same contractor under its general medical services contract and notification of that refusal shall be sent by that contractor to the applicant in accordance with the term of the general medical services contract which gives effect to paragraph 17(3) of Schedule 6 to the 2004 Regulations, subject to the modification that the reference in that term to sending the notification within 14 days of the decision shall be read as a reference to sending it within 14 days of the decision to remove the patient taken under the default contract.

**27.** Where a patient who has been accepted by a contractor who holds a default contract has, prior to the termination of that contract—

- (a) expressed a preference to receive services from a particular performer or class of performer under that contract; and
- (b) not withdrawn that preference on or before the date on which the default contract terminates,

that preference shall, with effect from the date immediately after termination of the default contract, be regarded, for the purposes of the contractor's general medical services contract, as a preference expressed under the term of that general medical services contract which gives effect to paragraph 18 of Schedule 6 to the 2004 Regulations.

**28.** Where a contractor who holds a default contract has received a request from a registered patient for removal from its list of patients but has not, at the date on which the default contract terminates, notified the Local Health Board of this request, the request shall be regarded as if it had been made to the contractor under its general medical services contract and notified to the Local Health Board in accordance with the term of that contract which gives effect to paragraph 19 of Schedule 6 to the 2004 Regulations.

**29.** Where a Local Health Board has—

- (a) received notification from a contractor who holds a default contract of a request from a registered patient for removal from its list of patients; or
- (b) has received a request from a patient for removal from such a list,

but that removal has not taken effect by the date on which the default contract terminates, that notification or request shall be regarded as if it had been received by the Local Health Board in accordance with the term of the contractor's general medical services contract which gives effect to paragraph 19 of Schedule 2 to the 2004 Regulations, subject to the modification that the reference in that term to the removal taking effect 14 days after the notification or request is received by the Local Health Board shall be read as a reference to 14 days after the notification or request was received under the default contract.

## PART 4

### TRANSITIONAL PROVISIONS WHICH AFFECT BOTH GENERAL MEDICAL SERVICES

#### **Assignment**

**30.** Where, on 31<sup>st</sup> March 2004, a person has applied to a Local Health Board for assignment to a medical practitioner under regulation 4 of the Choice Regulations but that application has not yet been determined, the Local Health Board shall consider the application as if it had been made to it on 1<sup>st</sup> April 2004 and shall—

- (a) assign the patient in accordance with the terms of the contract, to a contractor who holds—
  - (i) a default contract, or
  - (ii) a general medical services contract; or
- 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.

**31.**—(1) Where, on 31<sup>st</sup> March 2004, a patient has been assigned to a medical practitioner under regulation 4 of the Choice Regulations but the seven days for the medical practitioner to make representations against that assignment in regulation 6(1) of those Regulations has not yet expired, the relevant 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 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), 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 30<sup>th</sup> April 2004, either confirm or revise its decision to assign the patient.

## PART 5

### TRANSITIONAL PROVISIONS RELATING TO OUT OF HOURS ARRANGEMENTS AND SERVICES (still to be revised)

#### **Applications for approval of out of hours arrangements**

**32.**—(1) Where, on 31<sup>st</sup> March 2004, a medical practitioner has 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 but that application has not yet been determined, it shall, if the medical practitioner meets the requirements in paragraph (2), be treated, on 1<sup>st</sup> April 2004, as if it were an application made by the contractor under the term of its contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations subject to the modification that the period of 28 days referred to in the term giving effect to paragraph 2(2) of Schedule 7 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 sub-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, which requires the provision of out of hours services;

- (b) is one of two or more persons 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 such a 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 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;
    - (ii) that person and any other medical practitioner with whom he is practising in partnership and has entered in to a general medical services contract; or
    - (iii) the company in which he is a legal and beneficial shareholder and which has entered into a general medical services contract.

### **Approvals of out of hours arrangements**

33.—(1) Where, on 31<sup>st</sup> March 2004—

- (a) a medical practitioner has approval from a Local Health Board of an arrangement to transfer his liabilities and obligations during all or part of the out of hours period under paragraph 18A of Schedule 2 to the 1992 Regulations; and
- (b) that approval has 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 32(2), be treated from 1<sup>st</sup> April 2004 as if it were an approval granted to the 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 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 into a general medical services contract, or a default contract, which includes the provision of out of hours services as an individual medical practitioner;
- (b) is not one or two or more individuals practising in partnership who have entered into such a contract; or
- (c) is not a legal and beneficial shareholder in a company which has entered into such a contract.

(3) The terms of an arrangement granted approval pursuant to sub-paragraph (1) shall be the same as those of the arrangement granted approval 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 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;
  - (ii) that person and any other medical practitioner with whom he is practising in partnership and has entered in to a general medical services contract; or
  - (iii) the company in which he is a legal and beneficial shareholder and which has entered into a general medical services contract.

#### **Refusal of approval of out of hours arrangements**

**34.** Where, on 31<sup>st</sup> March 2004, a Local Health Board has refused approval of an out of hours arrangement under paragraph 18A of Schedule 2 to the 1992 Regulations—

- (a) in a case where the time for appealing under paragraph 18A(11) has not yet expired, that refusal shall be treated as if it were a refusal under the term of the general medical services contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations subject to the modification that the 30 days referred to in the term giving effect to paragraph 2(5) of that Schedule shall be treated as beginning with the day on which the Local Health Board's notification under paragraph 18A(10) was sent; and
- (b) in a case where an appeal has already been made under paragraph 18A(11), that appeal shall continue 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 relevant general medical services contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations.

#### **Review of approval of an out of hours arrangement**

**35.—(1)** This article and article 36 apply where 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 33, as an approval granted under the term of the general medical services contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations.

(2) Where, on 31<sup>st</sup> March 2004, a Local Health Board has commenced a review of its approval of an out of hours arrangement under paragraph 18B of Schedule 2 to the 1992 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 a notice under paragraph 18B(1) of Schedule 2 to the 1992 Regulations.

#### **Withdrawal of approval of out of hours arrangements**

**36.** Where, on 31<sup>st</sup> March 2004, a Local Health Board has notified a medical practitioner of its withdrawal of approval of an out of hours arrangement under paragraph 18B of Schedule 2 to the 1992 Regulations but that withdrawal has not yet taken effect—

- (a) in a case where the time for appealing under paragraph 18B(6) has not yet expired, 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 subject to the modifications that—
  - (i) the 30 days referred to in the term giving effect to sub-paragraph (8) shall be treated as beginning with the day on which the Local Health Board sent the notice under paragraph 18B, and
  - (ii) the date referred to in the term giving effect to sub-paragraph (9)(a) shall be treated as being the date on which the Local Health Board sent the notice under paragraph 18B; and
- (b) in a case where an appeal has already been made under paragraph 18B(6), the appeal shall continue as if paragraphs 18A and 18B 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.

**37.** Where, on 31<sup>st</sup> March 2004, a Local Health Board has 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—

- (a) in a case where the time for appealing under paragraph 18C(4) has not yet expired, 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 6(1)(c) of Schedule 7 to the 2004 Regulations subject to the modification that the 30 days referred to in the term giving effect to paragraph 6(5) of that Schedule 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; and
- (b) in a case where an appeal has already been made under paragraph 18C(4), that appeal shall continue 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.

#### **Sub-contracting of out of hours services**

**38.—(1)** Where, prior to 1<sup>st</sup> January 2005, a 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 article 3, 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; and
- (b) that approval has not been suspended or withdrawn.

(2) The 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 treated as if it had been granted under the term of the general medical services contract which gives effect to paragraph 69 of the 2004 Regulations.

## PART 6 MISCELLANEOUS

### **Modification of section 4(5) of the National Health Service and Community Care Act 1990**

**39.** For the purposes of disputes relating to general medical services contracts which are referred to the Secretary of State under section 4(3) or (4) of the National Health Service and Community Care Act 1990(a) (NHS contracts), section 4(5) of that Act shall be read as if after “appoint a person” there were included the words “or persons”.

### **Consequential amendments**

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

### **Revocations**

**41.** 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(a)

Date

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(a) 1990 c.19. Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672, article 2, Schedule 1.

SCHEDULE 1  
CONSEQUENTIAL AMENDMENTS

SCHEDULE 2  
REVOCATIONS

(a) 1998 c.38.