SCOTTISH STATUTORY INSTRUMENTS

2004 No. 163

NATIONAL HEALTH SERVICE

The General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004

Made - - - -	*30th March 2004*
Laid before the Scottish Parliament - - - -	*30th March 2004*
Coming into force - -	*1st April 2004*

The Scottish Ministers, in exercise of the powers conferred by section 7 of the Primary Medical Services (Scotland) Act 2004(**1**) and of all other powers enabling them in that behalf, hereby make the following Order:

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) This Order may be cited as the General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004 and shall come into force on 1st April 2004.

(2) In this Order–

"the 1978 Act" means the National Health Service (Scotland) Act 1978(**2**);

"the 1995 Regulations" means the National Health Service (General Medical Services) Regulations 1995(**3**);

"the 2003 Order" means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(**4**);

(**1**) 2004 asp 1.
(**2**) 1978 c. 29.
(**3**) S.I. 1995/416.
(**4**) S.I. 2003/1250.

"the 2004 Act" means the Primary Medical Services (Scotland) Act 2004(**5**);

"the 2004 Regulations" means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(**6**);

"additional services" has the same meaning as in the 2004 Regulations;

"area medical committee" has the same meaning as in the 2004 Regulations;

"core hours" has the same meaning as in the 2004 Regulations;

"the Choice Regulations" means the National Health Service (Choice of Medical Practitioner) (Scotland) Regulations 1998(**7**);

"contractor" means a person with whom a Health Board enters into a contract;

"default contract" means a contract entered into under article 13 of the Transitional Order and "default contractor" shall, except in Part 3, where it has the meaning given in article 34(3), be construed accordingly;

"essential services" has the same meaning as in the 2004 Regulations;

"general medical services contract" means a contract under section 17J of the 1978 Act and general medical services contractor shall, except in Part 3, where it has the meaning given in article 34(3), be construed accordingly;

"Health Board" means a Health Board constituted under section 2 of the 1978 Act(**8**) and, in relation to any time before 1st April 2004, includes a National Health Service trust to which functions of the Health Board were delegated under section 12AA of the 1978 Act(**9**);

"list of patients" means–

(a) in relation to a person providing general medical services under section 19 of the 1978 Act(**10**), the list of patients of a medical practitioner prepared by the Health Board under regulation 27(**11**) of the 1995 Regulations;

(b) in relation to a general medical services contractor or a default contractor, the list prepared and maintained by the Health Board under the term of a general medical services contract which gives effect to paragraph 14 of Schedule 5 to the 2004 Regulations or under the equivalent term of a default contract; and

(c) in relation to a person providing services under an agreement for primary medical services made (or, pursuant to article 49, deemed to be made) under section 17C of the 1978 Act–

(i) the list prepared and maintained by the Health Board under the term of that agreement which gives effect to paragraph 8 of Schedule 2 to the Section 17C Agreements Regulations;

(ii) the performers or pooled list required to be kept under the terms of any directions made by the Scottish Ministers in relation to patient lists for transitional agreements; or

(**5**) 2004 asp. 1.
(**6**) S.S.I. 2004/115.
(**7**) S.I. 1998/659.
(**8**) Section 2 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 14(2) and Schedule 7, paragraph 1, the Hospital Complaints Procedure Act 1985 (c. 42), section 1(1) and the National Health Service and Community Care Act 1990 (c. 19), section 28 and Schedule 9, paragraph 19 and Schedule 10.
(**9**) Section 12AA was inserted by the Health Act 1999 (c. 8), section 47.
(**10**) 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, paragraph 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 2004 Act, Schedule, paragraph 1(7).
(**11**) Regulation 27 was amended by S.I. 1998/660, S.S.I. 1999/54 and S.S.I. 2003/443.

(iii) the performers or pooled list required to be kept under regulation 9 of the National Health Service (Personal Medical Services) (Scotland) Regulations 2001(**12**);

"medical list" means the list of medical practitioners undertaking to provide general medical services for persons in its area kept by a Health Board under regulations made under section 19(2)(a) of the 1978 Act;

"NHS dispute resolution procedure", except in Part 4 where it has the meaning given in article 48, has the same meaning as in the 2004 Regulations;

"National Health Service Trust" has the meaning indicated by section 12A of the 1978 Act(**13**);

"out of hours period" has the same meaning as in the 2004 Regulations;

"Performers Lists Regulations" means the National Health Service (Primary Medical Services Performers' Lists (Scotland) Regulations 2004(**14**);

"pilot scheme" means an agreement made under Part 1 of the National Health Service (Primary Care) Act 1997(**15**);

"pilot scheme provider" means a person who is providing services under a pilot scheme;

"practice premises" in relation to a person providing services under section 19 of the 1978 Act, has the same meaning as in regulation 2(1) of the 1995 Regulations(**16**) and, in relation to a general medical services contractor or a default contractor, has the same meaning as in regulation 2(1) of the 2004 Regulations;

"primary medical services performers list" has the same meaning as in the 2004 Regulations;

"public or local holiday" has the same meaning as in the 2004 Regulations;

"section 17C agreement" means an agreement made under section 17C of the 1978 Act(**17**);

"the Section 17C Agreements Regulations" means the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004(**18**);

"section 17C provider" means–

(a) a provider as defined in regulation 2 of the Section 17C Agreements Regulations; or

(b) in relation to a transitional agreement, a provider as defined in article 48;

"registered patient" means–

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

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

"temporary resident" means a person accepted by a general medical services contractor or a default contractor as a temporary resident under the term of its general medical services contract which gives effect to paragraph 16 of Schedule 5 to the 2004 Regulations (or under the equivalent terms of its default contract) and for whom the contractor's responsibility has

(**12**) S.S.I. 2001/72.

(**13**) Section 12A was inserted by the National Health Service and Community Care Act 1990 (c. 19), section 31 and amended by the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 34 and the Health Act 1999 (c. 8), sections 46 and 48 and Schedule 4, paragraph 45.

(**14**) S.S.I. 2004/114.

(**15**) 1997 c. 46 is to be amended from 1st April 2004 by the 2004 Act, Schedule, paragraph 2(2).

(**16**) Regulation 2 was amended by S.I. 1995/3199, S.I. 1996/1504, S.I. 1997/943, S.I. 1998/4, S.I. 1998/660, S.I. 1999/54, S.S.I. 1999/54, S.S.I. 2002/111 and S.S.I. 2003/443.

(**17**) Section 17C was inserted by the National Health Service (Primary Care) Act 1997 (c. 46), section 21(2) and was amended by the 2004 Act asp 1, section 2(2).

(**18**) S.S.I. 2004/116.

not been terminated in accordance with the terms of the general medical services contract or default contract;

"transitional agreement" means an agreement which is deemed under article 49 to have been made under section 17C of the 1978 Act and which has not been varied in accordance with article 50;

"the Transitional Order" means the General Medical Services (Transitional and other Ancillary Provisions) (Scotland) Order 2004(**19**).

PART 2

TRANSITIONAL PROVISIONS RELATING TO GENERAL MEDICAL SERVICES

Application and interpretation of this Part

2.—(1) In this Part–

(a) articles 3 to 26 apply to a default contract, or a general medical services contract entered into on 1st April 2004, with–

(i) an individual medical practitioner who has entered into the general medical services contract pursuant to an entitlement under article 3 of the Transitional Order or the default contract pursuant to article 13 of that Order;

(ii) a partnership which has entered into the general medical services contract pursuant to an entitlement under article 4 of that Order or the default contract pursuant to an entitlement under article 13 of that Order; or

(iii) a company in which one or more of the legal and beneficial shareholders is, on 31st March 2004, providing services under section 19 of the 1978 Act;

(b) articles 27 and 28 apply to the contracts specified in sub-paragraph (a) and to a general medical services contract which takes effect immediately after a default contract with the same parties ceases to have effect; and

(c) article 29 applies to all general medical services contracts and default contracts entered into before 1st April 2005.

(2) Unless it is entered into with a person to whom the particular article does not apply, a general medical services contract or a default contract which falls within paragraph (1) shall include, or be deemed to include, terms which have the effect specified in articles 3 to 29.

(3) In this Part–

"relevant medical practitioner" means a medical practitioner who, on 31st March 2004, is providing services under section 19 of the 1978 Act and–

(a) as an individual medical practitioner has entered into–

(i) a default contract; or

(ii) a general medical services contract under which services are to be provided from 1st April 2004;

(b) is a partner in a partnership that has entered into–

(i) a default contract; or

(**19**) S.I. 2004/142.

(ii) a general medical services contract under which services are to be provided from 1st April; or

(c) is a legal and beneficial shareholder in a company which has entered into a general medical services contract under which services are to be provided from 1st April 2004;

"succeeding contractor" means the default contractor which is a party to the default contract or the general medical services contractor which is a party to the general medical services contract which–

(a) a relevant medical practitioner has entered into as an individual medical practitioner;

(b) has been entered into by a partnership in which the relevant medical practitioner is a partner; or

(c) has been entered into by a company in which a relevant medical practitioner is a legal and beneficial shareholder.

Applications for inclusion in lists of patients

3. Where, on or before 31st March 2004, a person had applied to a relevant medical practitioner for inclusion in that medical practitioner's list of patients pursuant to regulation 2 or 3(1) of the Choice Regulations(**20**) but on 31st March 2004 that application had not yet been determined, the application shall, on 1st April 2004, be regarded as if it had been made to the succeeding contractor under–

(a) the term of its general medical services contract which gives effect to paragraph 15 of Schedule 5 to the 2004 Regulations; or

(b) the equivalent term of its default contract.

Acceptance of applications for inclusion in lists of patients

4.—(1) Where, on or before 31st March 2004, a relevant medical practitioner had agreed to accept a person on that medical practitioner's list of patients pursuant to paragraph 6 of Schedule 1 to the 1995 Regulations but on 31st March 2004 the relevant medical practitioner had not yet sent the signed medical card or the application to the Health Board in accordance with sub-paragraph (3) of that paragraph, that acceptance shall be regarded on 1st April 2004 as an acceptance by the succeeding contractor and notification of that acceptance shall be sent by the succeeding contractor to the Health Board in accordance with–

(a) the term of its general medical services contract which gives effect to paragraph 15(5) of Schedule 5 to the 2004 Regulations; or

(b) the equivalent term of its default contract.

(2) In paragraph (1), "medical card" has the same meaning as in the 2004 Regulations.

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

5. Where, on or before 31st March 2004, a Health Board had received notice from a patient under regulation 25(1) of the 1995 Regulations(**21**) that the patient wished to be removed from a relevant medical practitioner's list of patients but on 31st March 2004 that removal had not yet taken effect in accordance with that regulation, the removal shall take effect as a removal from the list of patients of the succeeding contractor as if it were a removal pursuant to a request received by the Health Board in accordance with–

(**20**) Regulation 2 was amended by S.S.I. 2001/85 and Regulation 3 was amended by S.S.I. 2000/191 and S.S.I. 2001/85.
(**21**) Regulation 25 was amended by S.S.I. 1999/54.