WELSH STATUTORY INSTRUMENTS

2004 No. 1016 (W.113)

NATIONAL HEALTH SERVICE, WALES

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

Made - - - -	*31st March 2004*
Coming into force - -	*1st April 2004*

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 176, 195(1), 200 and 201 of the Health and Social Care (Community Health and Standards) Act 2003(**1**), 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 Transitional and Consequential Provisions (Wales) (No. 2) Order 2004 and shall come into force on 1st April 2004.

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

(3) In this Order—

"the 1990 Act" means the National Health Service and Community Care Act 1990(**2**);

"the 1992 Regulations" means the National Health Service (General Medical Services) Regulations 1992(**3**);

"the 2003 Act" means the Health and Social Care (Community Health and Standards) Act 2003;

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

(**1**) 2003 c. 43. The powers in sections 176, 195(1), 200 and 201 are conferred on the appropriate authority. See section 176(6), 200(2) and 201(2) which provide that, in relation to Wales, the appropriate authority is the Assembly.
(**2**) 1990 c. 19.
(**3**) S.I. 1992/635.
(**4**) S.I. 2003/1250.

"the 2004 Regulations" means the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004(**5**);

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

"the Assembly" means the National Assembly for Wales;

"bank holiday" means any day that is specified or proclaimed as a bank holiday pursuant to section 1 of the Banking and Financial Dealings Act 1971(**6**);

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

"core hours" means the period beginning at 8am and ending at 6.30pm on any day from Monday to Friday except Good Friday, Christmas Day or bank holidays;

"default contract" means a contract under article 13 of the Transitional Order and "default contractor" shall, except in Part 3, where it has the meaning given in article 40(3), be construed accordingly;

"essential services" means the services described in regulation 15(3), (5), (6) and (8) of the 2004 Regulations;

"FHSAA" means the Family Health Services Appeal Authority constituted under section 49S of the 1977 Act(**8**);

"general medical services contract" means a contract under section 28Q of the 1977 Act and general medical services contractor shall, except in Part 3, where it has the meaning given in article 40(3), be construed accordingly;

"list of patients" means—

(a) in relation to a person providing general medical services under section 29 of the 1977 Act(**9**), the list of patients of a medical practitioner prepared by the Local Health Board under regulation 19 of the 1992 Regulations; and

(b) in relation to a general medical services contractor or a default contractor, the list prepared and maintained by the Local Health Board under the term of a general medical services contract which gives effect to paragraph 14 of Schedule 6 to the 2004 Regulations or under the equivalent term of a default contract;

"Local Medical Committee" means—

(a) until 1st April 2004, a committee recognised under section 44 of the 1977 Act(**10**);

(b) from that date, a committee recognised under section 45A of that Act(**11**);

(**5**) S.I. 2004/478 (W.48).
(**6**) 1971 c. 80.
(**7**) S.I. 1998/668 as amended by S.I. 1999/3179 and 2000/1708 (W.115).
(**8**) Section 49S was inserted into the 1977 Act by section 27(1) of the Health and Social Care Act 2001 (c. 15) ("the 2001 Act").
(**9**) Section 29 was amended by the Health Services Act 1980 (c. 53), section 7, the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 6, paragraph 2, the Medical Act 1983 (c. 54), Schedule 5, paragraph 16(a), the Health Authorities Act 1995 (c. 17) ("the 1995 Act"), Schedule 1, paragraph 18, the Medical (Professional Performance) Act 1995 (c. 51), Schedule, paragraph 28(b), the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 8, the Health and Social care Act 2001 (c. 15), sections 17 and 23, the National Health Service Reform and Health Care Professions Act 2002 (c. 17) Schedule 2, paragraph 3 and Schedule 8, paragraph 2 and S.I.s 1985/39 and 2002/3135. It is to be repealed from 1st April 2004 by section 175(2) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) ("the 2003 Act").
(**10**) Section 44 was amended by the Health and Social Security Act 1984 (c. 48), section 24 and Schedule 8, Part 1, the National Health Service and Community Care Act 1990 (c. 19), section 12(4), the 1995 Act, Schedule 1, paragraph 32(a), the Health Act 1999 (c. 8), section 11, the 2001 Act, section 5 and by the 2003 Act, Schedule 11, Paragraph 21.
(**11**) Section 45A was inserted into the 1977 Act by paragraph 23 of Schedule 11 to the 2003 Act.

"medical list" means the list of medical practitioners undertaking to provide general medical services for persons in its area kept by a Local Health Board under regulations made under section 29(2)(a) of the 1977 Act(**12**);

"medical performers list" means a list of medical practitioners prepared and published pursuant to regulation 3(1) of the Performers Lists Regulations;

"the NHS dispute resolution procedure" means, except in Part 4, the procedure for resolution of disputes specified in paragraphs 99 and 100 of Schedule 6 to the 2004 Regulations;

"Performers Lists Regulations" means the National Health Service (Performers Lists) (Wales) Regulations 2004(**13**);

"practice premises" , in relation to a person providing services under section 29 of the 1977 Act has the same meaning as in regulation 2(1) of the 1992 Regulations 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;

"registered patient" means—

(a) a person who is recorded by the Local 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 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 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 6 to the 2004 Regulations (or under the equivalent term of its default contract) and for whom the contractor's responsibility has not been terminated in accordance with the terms of the general medical services contract or default contract;

"the Transitional Order" means the General Medical Services Transitional and Consequential Provisions (Wales) Order 2004(**14**).

PART 2

TRANSTIONAL PROVISIONS RELATING TO GENERAL MEDICAL SERVICES

Application and interpretation of this Part

2.—(1) In this Part—

(a) articles 3 to 31 apply to a default contract or a general medical services contract entered into on or before 31st March 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) two or more individuals practising in partnership who have entered into the general medical services contract pursuant to an entitlement under article 5 of that Order or the default contract pursuant to article 13 of that Order, or

(**12**) Section 29(2)(a) was substituted by the 2002 Act, Schedule 2, paragraph 3(3)(a).
(**13**) S.I. 2004/1020 (W.117).
(**14**) S.I. 2004/477 (W.47).

(iii) a company in which one or more of the legal and beneficial shareholders is, on the date on which the general medical services contract is signed, providing services under section 29 of the 1977 Act;

(b) articles 29 and 30 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 31 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 34.

(3) In this Part—

"relevant medical practitioner" means a medical practitioner who—

(a) on 31st March 2004, or on the date on which a default contract or a general medical services contract is entered into, if earlier, is providing services under section 29 of the 1977 Act; and

(b) on or before 31st March 2004—

(i) has entered into a default contract or a general medical services contract as an individual medical practitioner or as one of two or more individuals practising in partnership, or

(ii) is a legal and beneficial shareholder in a company which has entered into a general medical services contract;

"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 either as an individual medical practitioner or as one of two or more individuals practising in partnership; or

(b) 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 his or her list of patients pursuant to regulation 2 or 3(1) of the Choice Regulations 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 6 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 his or her list of patients pursuant to paragraph 6 of Schedule 2 to the 1992 Regulations(**15**) but on 31st March 2004 he or she had not yet sent the signed medical card or the application to the Local Health Board in accordance with sub-paragraph (3) of that paragraph, that

(**15**) Paragraph 6 was amended by S.I. 1998/682, 2002/1896 (W.197) and 2002/916 (W.104).

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 Local Health Board in accordance with—

(a) the term of its general medical services contract which gives effect to paragraph 15(5) of Schedule 6 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 regulation 2(1) of the 2004 Regulations.

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

5. Where, on or before 31st March 2004, a Local Health Board had received notice from a patient under regulation 23(1)(a) of the 1992 Regulations(**16**) that he or she 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 regulation 23(1)(b) of those Regulations, 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 Local Health Board in accordance with—

(a) the term of the succeeding contractor's 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 its default contract subject to a modification to the same effect.

Removal from the list of patients at the request of the relevant medical practitioner

6.—(1) Where, on or before 31st March 2004, a relevant medical practitioner had notified the Local Health Board that he or she wished to have a patient removed from his or her list of patients in accordance with paragraph 9 of Schedule 2 to the 1992 Regulations(**17**) but that removal had, on 31st March 2004, not yet taken effect, paragraph (2) shall apply.

(2) Except where paragraph (3) applies, the removal shall take effect as a removal from the list of patients of the succeeding contractor under—

(a) the term of its general medical services contract which gives effect to paragraph 20(8) of Schedule 6 to the 2004 Regulations, subject to the modification that the reference in that term to the eighth day after the Local Health Board receives the notice 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 its default contract, subject to a modification to the same effect.

(3) Where, on or before 31st March 2004, the Local Health Board had been—

(a) informed by the relevant medical practitioner under paragraph 9(2) of Schedule 2 to the 1992 Regulations that he or she was treating the patient at intervals of less than seven days but had not yet been notified by him or her that the patient no longer needed such treatment; or

(b) notified by the relevant medical practitioner under that paragraph that the person no longer needed treatment at intervals of less than seven days,

(**16**) Regulation 23(1) was amended by S.I. 2002/1896 (W.197).
(**17**) Paragraph 9 was amended by S.I. 1994/633, 1998/682 and 2002/1896 (W.197).