WELSH STATUTORY INSTRUMENTS

2004 No. 477 (W.47)

NATIONAL HEALTH SERVICE, WALES

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

Made - - - -	*26th February 2004*
Coming into force - -	*17th March 2004*

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 176, 195, 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) Order 2004 and shall come into force on 17th March 2004.

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

(3) In this Order—

"the 1983 Act" means the Medical Act 1983(**2**);

"the 1990 Act" means the National Health Service and Community Care Act 1990(**3**);

"the 1992 Regulations" means the National Health Service (General Medical Services) Regulations 1992(**4**);

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

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

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

(**1**) 2003 c. 43.
(**2**) 1983 c. 54.
(**3**) 1990 c. 19.
(**4**) S.I.1992/635.
(**5**) S.I. 2004/478 (W.48).

"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**);

"contractor's list of patients" means 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 or of contractual arrangements made under article 15;

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

"default contract" means a contract entered into under article 13 and "default contractor" shall 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 Act(**8**);

"global sum" has the same meaning as in the Statement of Financial Entitlements;

"immediate family member" has the same meaning as in the 2004 Regulations;

"Local Medical Committee" means—

(a) until 1st April 2004, a committee recognised under section 44 of the 1977 Act(**9**), and

(b) from that date, a committee recognised under section 45A of that Act(**10**);

"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(**11**);

"medical performers list" means a list of medical practitioners prepared in accordance with regulations made under section 28X of the 1977 Act(**12**);

"Medical Register" means the registers kept under section 2 of the 1983 Act(**13**);

"out of hours period" means—

(a) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day,

(b) the period between 6.30pm on Friday and 8am on the following Monday, and

(c) Good Friday, Christmas Day and bank holidays;

"out of hours services" means services required to be provided in all or part of the out of hours period which—

(**6**) 1971 c. 80.
(**7**) S.I. 1998/668 as amended by S.I. 1999/3179 and S.I. 2000/1708 (W.115).
(**8**) Section 495 was inserted into the 1977 Act by section 27(1) of the Health and Social Care Act 2001 (c. 15) ("the 2001 Act") and amended by the National Health Service Reform and Health Care Professions Act 2002 (c. 17) ("the 2002 Act"), Schedule 1, paragraph 18.
(**9**) Section 44 was amended by the Health and Social Security Act 1984 (c. 48). Section 24 and Schedule 8, the 1990 Act, section 12(4), the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 32(a), the Health Act 1999 (c. 8), section 11, the 2001 Act, section 43(6) and Schedule 5, paragraph 5(7), the 2002 Act, section 5 and was repealed in relation to Local Medical Committees by the 2003 Act, Schedule 11, paragraph 21.
(**10**) Section 45A was inserted into the 1977 Act by paragraph 23 of Schedule 1 to the 2003 Act.
(**11**) Section 29(2)(a) was inserted into the 1977 Act by paragraph 23 of Schedule 1 to the 2003 Act.
(**12**) Section 28X was inserted into the 1977 Act by section 179(1) of the 2003 Act.
(**13**) 1983 c. 54.

(a) would be essential services if provided in core hours, or

(b) are included—

(i) in a default contract as additional services funded under article 36, or

(ii) in a general medical services contract as additional services funded under the global sum;

"practice premises" means the addresses specified in the contract as ones at which services are to be provided under the contract;

"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;

"relevant service" means—

(a) whole-time service in the armed forces of the Crown in a national emergency as a volunteer or otherwise,

(b) compulsory whole-time service in those forces, including service resulting from any reserve liability, or

(c) any equivalent service by a person liable for compulsory whole-time service in those forces;

"Statement of financial entitlements" has the meaning given in article 35:

"temporary resident" means a person accepted by the contractor as a temporary resident under the term of a general medical services contract which gives effect to paragraph 16 of Schedule 6 to the 2004 Regulations, or the equivalent term of a default contract, and for whom the contractor's responsibility has not been terminated in accordance with that term;

"vacancy" means a vacancy declared by a Local Health Board under regulation 13 of the 1992 Regulations(**14**).

(4) In this order, the use of the term "it" in relation to the contractor shall be deemed to include a reference to a contractor that is an individual medical practitioner or two or more individuals practising in partnership and related expressions shall be construed accordingly.

PART 2

ENTITLEMENT TO CONTRACTS

Entitlement to a general medical services contract

2. For the purposes of section 176(2) of the Act, the circumstances in which a Local Health Board must enter into a general medical services contract with a person who, on 31st March 2004, is providing services under section 29 of the 1977 Act (general medical services)(**15**) are those specified in articles 3 to 12.

(**14**) Regulation 13 was substituted by S.I. 1998/2838 and amended by S.I. 2002/916 (W.104)

(**15**) 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), 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 2001

Entitlement to a general medical services contract as an individual medical practitioner

3.—(1) Subject to paragraphs (3) and (6) and articles 6 and 12, a Local Health Board must, if a person so wishes, enter into a general medical services contract with that person as an individual medical practitioner if—

(a) on 31st March 2004, or on the date on which the contract is to be signed, if earlier, he or she is included in the medical list of that Local Health Board by virtue of regulation 4(1)(a) of the 1992 Regulations(**16**) and has a list of patients under regulation 19 of those Regulations(**17**);

(b) on the date on which the contract is to be signed, that person is practising as an individual medical practitioner and no other medical practitioner has been approved by the Local Health Board to be in partnership with him or her under regulation 18A or 18B of the 1992 Regulations(**18**); and

(c) in the case of a contract which is to be signed after 31st March 2004, he or she is, at the date on which the contract is to be signed, included in a medical performers list.

(2) A person shall be regarded as practising for the purposes of paragraph (1)(b) if he or she would have been so practising on the date in question except for the fact that on that date—

(a) he or she is suspended from the Medical Register in the circumstances specified in paragraph (4) or from the Local Health Board's medical list or a medical performers list; or

(b) the Local Health Board has in place for him or her temporary arrangements under regulation 25(6) of the 1992 Regulations(**19**) or contractual arrangements under article 15 which replace such temporary arrangements.

(3) Where a person is suspended from the Medical Register in the circumstances specified in paragraph (4), or suspended from its medical list or a medical performers list, a Local Health Board shall only be required under paragraph (1) to enter into a general medical services contract with him or her during the period of that suspension if it is satisfied that—

(a) in the case of a suspension on grounds relating to the practitioner's physical or mental health, he or she is able to provide (but not perform) services under the contract;

(b) having regard to the grounds of suspension, the letting of the contract would not—

(i) put at risk the safety of the contractor's patients, or

(ii) be prejudicial to the efficiency of the provision of primary medical services in the area of the Local Health Board; and

(c) the practitioner has in place adequate arrangements for the provision of services under the contract during the period of his or her suspension.

(4) The circumstances referred to in paragraphs (2)(a) and (3) are suspension—

(a) by the Committee on Professional Performance of the General Medical Council under section 36A (professional performance) or 38(1) (power to order immediate suspension after a finding of professional misconduct or unfitness to practise) of the 1983 Act or under rules made under paragraph 5A(3) of Schedule 4 (proceedings before professional conduct, health and preliminary proceedings committees) to that Act(**20**);

Act, sections 17 and 23, the 2002 Act 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 by section 175(2) of the 2003 Act.

(**16**) Regulation 4(1)(a) was amended by S.I. 1998/682 and 2838 and 2002/2469.

(**17**) Regulation 19 was amended by S.I. 1994/633, 1998/682 and 2002/2469.

(**18**) Regulations 18A and 18B were substituted by S.I. 1998/2838 and amended by S.I. 2002/554 and 2469.

(**19**) Regulation 25(6) was amended by S.I. 2002/2469.

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

(b) by the Health Committee of the General Medical Council under section 37 (unfitness to practise through illness etc.)(**21**) or 38(1) of the 1983 Act; or

(c) under section 41A (interim orders) of the 1983 Act(**22**).

(5) In relation to any suspension which occurs after the coming into force of articles 13 and 14 of the Medical Act 1983 (Amendment) Order 2002(**23**), sub-paragraphs (a) and (b) of paragraph (4) shall be read as if they referred to suspension by a Fitness to Practise Panel constituted under Part 3 of Schedule 1 to the 1983 Act in a case relating to deficient professional performance or adverse physical or mental health under—

(a) section 35D (functions of a fitness to practise panel) of the 1983 Act;

(b) section 38(1) (power to order immediate suspension etc after a finding of impairment of fitness to practise) of that Act; or

(c) rules made under paragraph 5A(3) of Schedule 4 (proceedings before the investigation committee, interim orders panels, and fitness to practise panels) to that Act.

(6) A Local Health Board shall not be required under paragraph (1) to enter into a general medical services contract with a person for whom it has in place—

(a) temporary arrangements under regulation 25(6) of the 1992 Regulations; or

(b) contractual arrangements under article 15 which replace such temporary arrangements,

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

(7) Whenever a Local Health Board is considering refusing to enter into a general medical services contract under paragraph (3) or (6), it shall consult the Local Medical Committee (if any) for its area before making its decision and, in a case where it is considering refusal under paragraph (6), it shall have regard to any written report made to it by the Local Medical Committee under regulation 25(9) of the 1992 Regulations(**24**).

(8) Where a Local Health Board is refusing to enter into a general medical services contract pursuant to paragraph (3) or (6) it shall notify the prospective contractor in writing of its decision, its reasons for that decision and of the practitioner's right of appeal under article 4.

Appeal against refusal of a contract under article 3

4.—(1) A person who has been notified by a Local Health Board under article 3(8) of its refusal to enter into a general medical services contract may appeal to the Assembly by giving notice in writing to the Assembly within a period of 28 days beginning on the day that the Local Health Board notified him or her of the refusal.

(2) A notice of appeal under paragraph (1) shall include—

(a) the names and addresses of the parties to the dispute;

(b) a copy of the notification received from the Local Health Board under article 3(8); and

(c) a brief statement of the grounds for appeal.

(3) The Assembly may determine the appeal himself or, if it considers it appropriate, appoint a person or persons to consider and determine it.

(4) Before reaching a decision as to who should determine the dispute, the Assembly shall, within the period of 7 days beginning with the date on which the notice of appeal was sent to it, send a

(**21**) Section 37 was amended by the Medical (Professional Performance) Act 1995 (c. 51), Schedule, paragraph 6(2) to (4). It is prospectively substituted by S.I. 2002/3135.
(**22**) Section 41A was inserted by S.I. 2000/1803. It is prospectively substituted by S.I. 2002/3135
(**23**) S.I. 2002/3135. This Order substitutes the sections referred to in article 3(5).
(**24**) Regulation 25(9) was amended by S.I. 2002/2469.