Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2004 No. (N.I.)

NORTHERN IRELAND

The Primary Medical Services (Northern Ireland) Order 2004

Made - - - - 2004
Coming into operation in accordance with Article 1(2) and (3)

At the Court at Buckingham Palace, the ** day of ** 2004

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

Introductory

Title and commencement

1.—(1) This Order may be cited as the Primary Medical Services (Northern Ireland) Order 2004.

(2) This Article, and Articles 2, 5 and 11, shall come into operation on the expiration of 7 days from the day on which this Order is made.

(3) The other provisions of this Order shall come into operation on such day or days as the Department may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) shall apply to Article 1 and the following provisions of this Order as it applies to an Act of the Assembly.

(2) In this Order—

"the Department" means the Department of Health, Social Services and Public Safety;

"the 1972 Order" means the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14).

Primary medical services

Provision of primary medical services

3. For Article 56 of the 1972 Order (arrangements for general medical services) and the heading "General medical services" preceding that Article there shall be substituted—

"Primary medical services

Primary medical services

56.—(1) Each Health and Social Services Board shall, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to provide primary medical services within its area, or secure their provision within its area.

(2) A Health and Social Services Board may (in addition to any other power conferred on it)—

(a) provide primary medical services itself (whether within or outside its area);

(b) make such arrangements for their provision (whether within or outside its area) as it thinks fit, and may in particular make contractual arrangements with any person.

(3) Each Health and Social Services Board shall publish information about such matters as may be prescribed in relation to the primary medical services provided under this Part.

(4) A body on which functions are conferred under this Article shall co-operate with any other such body in the discharge of their respective functions relating to the provision of primary medical services under this Part.

(5) Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary medical services for the purposes of this Part.

(6) Regulations under this Article may in particular describe services by reference to the manner or circumstances in which they are provided.".

General medical services contracts

4. For Articles 57 and 57A of the 1972 Order (remuneration of general medical practitioners) there shall be substituted—

"General medical services contracts

General medical services contracts: introductory

57.—(1) A Health and Social Services Board may enter into a contract under which primary medical services are provided in accordance with the following provisions of this Part.

(2) A contract under this Article is called in this Order a "general medical services contract".

(3) Subject to any provision made by or under this Part, a general medical services contract may make such provision as may be agreed between the Health and Social Services Board and the contractor or contractors in relation to—

(a) the services to be provided under the contract,

(b) remuneration under the contract, and

(c) any other matters.

(4) The services to be provided under a general medical services contract may include—

(a) services which are not primary medical services;

(b) services to be provided outside the area of the Health and Social Services Board.

(5) In this Part, "contractor", in relation to a general medical services contract, means any person entering into the contract with the Health and Social Services Board.

Requirement to provide certain primary medical services

57A.—(1) A general medical services contract shall require the contractor or contractors to provide, for his or their patients, primary medical services of such descriptions as may be prescribed.

(2) Regulations under paragraph (1) may in particular describe services by reference to the manner or circumstances in which they are provided.

Persons eligible to enter into general medical services contracts

57B.—(1) A Health and Social Services Board may, subject to such conditions as may be prescribed, enter into a general medical services contract with—

(a) a medical practitioner;

(b) two or more individuals practising in partnership where the conditions in paragraph (2) are satisfied; or

(c) a company limited by shares where the conditions in paragraph (3) are satisfied.

(2) The conditions referred to in paragraph (1)(b) in relation to a partnership are that—

(a) at least one partner is a medical practitioner; and

(b) any partner who is not a medical practitioner is either—

(i) an HSS employee;

(ii) an Article 15B employee, a section 28C employee or a section 17C employee;

(iii) a health care professional who is engaged in the provision of services under this Order; or

(iv) an individual falling within Article 15C(1)(b)(iii).

(3) The conditions referred to in paragraph (1)(c) in relation to a company are that—

(a) at least one share in the company is legally and beneficially owned by a medical practitioner; and

(b) any share which is not so owned is legally and beneficially owned by a person referred to in paragraph (2)(b)(i) to (iv).

(4) Regulations may make provision as to the effect, in relation to a general medical services contract entered into by individuals practising in partnership, of a change in the membership of the partnership.

(5) In this Article—

"health care professional" has the same meaning as in Article 15C;

"HSS employee", "Article 15B employee", "section 28C employee" and "section 17C employee" have the same meaning as in Article 15C.

General medical services contracts: payments

57C.—(1) The Department may give directions as to payments to be made under general medical services contracts.

(2) A general medical services contract must require payments to be made under the contract in accordance with directions for the time being in force under this Article.

(3) Without prejudice to the generality of the power under paragraph (1) directions under that paragraph may—

(a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;

(b) provide for payments to be made by reference to—

(i) any scheme or scale specified in the direction; or

(ii) a determination made by any person in accordance with factors specified in the direction;

(c) provide for the making of payments in respect of individual practitioners;

(d) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by a Health and Social Services Board only if it is satisfied as to certain conditions);

(e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.

(4) Before giving a direction under paragraph (1), the Department—

(a) shall consult any body appearing to it to be representative of persons to whose remuneration the direction would relate, and

(b) may consult such other persons as it thinks appropriate.

(5) References in this Article to payments include fees, allowances, reimbursements, loans and repayments.

General medical services contracts: prescription of drugs, etc.

57D.—(1) A general medical services contract shall contain provision requiring the contractor or contractors to comply with any directions given by the Department for the purposes of this Article as to the drugs, medicines or other substances which may or may not be ordered for patients in the provision of medical services under the contract.

(2) A direction under this Article shall, subject to paragraph (3), be given by regulations.

(3) A direction under this Article may be given by an instrument in writing where it gives effect to a request made in writing to the Department by a person who is a holder of a Community marketing authorisation or United Kingdom marketing authorisation in respect of the drug, medicine or other substance to which the request relates.

(4) A direction under this Article given by an instrument in writing may be varied or revoked by a further direction under this Article (whether given by an instrument in writing or by regulations).

(5) In this Article "Community marketing authorisation" and "United Kingdom marketing authorisation" have the meanings given by regulation 1 of the Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994 (S.I.1994/3144).

General medical services contracts: other required terms

57E.—(1) A general medical services contract shall contain such provision as may be prescribed (in addition to the provision required by the preceding provisions of this Part).

(2) Regulations under paragraph (1) may in particular make provision as to—

(a) the manner in which, and standards to which, services are to be provided;

(b) the persons who perform services;

(c) the persons to whom services are to be provided;

(d) the variation of contract terms (other than terms required by or under this Part);

(e) rights of entry and inspection (including inspection of clinical records and other documents);

(f) the circumstances in which, and the manner in which, the contract may be terminated;

(g) enforcement;

(h) the adjudication of disputes.

(3) Regulations making provision under paragraph (2)(c) shall make provision as to the circumstances in which a contractor or contractors—

(a) shall or may accept a person as a patient to whom services are provided under the contract; or

(b) may decline to accept a person as such a patient; or

(c) may terminate his or their responsibility for a patient.

(4) Regulations under paragraph (2)(d) may—

(a) make provision as to the circumstances in which a Health and Social Services Board may impose a variation of contract terms;

(b) make provision suspending or terminating any duty under the contract to provide services of a prescribed description.

(5) Regulations making provision of the kind described in paragraph (4)(b) may prescribe services by reference to the manner or circumstances in which they are provided.

(6) Regulations under paragraph (1) shall make provision as to the right of patients to choose the persons from whom they are to receive services.

General medical services contracts: disputes and enforcement

57F.—(1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general medical services contract.

(2) Regulations under paragraph (1) may make provision—

(a) for the referral of the terms of the proposed contract to the Department; and

(b) for the Department, or a person appointed by it, to determine the terms on which the contract may be entered into.

(3) Regulations may make provision for a person or persons entering into a general medical services contract to be regarded as a health and social services body for any