STATUTORY RULES OF NORTHERN IRELAND

2004 No. 141

HEALTH AND PERSONAL SOCIAL SERVICES

The General Medical Services Transitional and Consequential Provisions (No. 1) (Northern Ireland) Order 2004

Made - - - -	*29th March 2004*
Coming into operation	*29th March 2004*

The Department of Health, Social Services and Public Safety(**1**), in exercise of the powers conferred on it by Articles 5 and 11 of the Primary Medical Services (Northern Ireland) Order 2004(**2**) and of all other powers enabling it in that behalf, hereby makes the following Order:

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) This Order may be cited as the General Medical Services Transitional and Consequential Provisions (No. 1) (Northern Ireland) Order 2004 and shall come into operation on 29th March 2004.

(2) In this Order –

"the 1972 Order" means the Health and Personal Social Services (Northern Ireland) Order 1972(**3**);

"the 1983 Act" means the Medical Act 1983(**4**);

"the 1991 Order" means the Health and Personal Social Services (Northern Ireland) Order 1991(**5**);

"the 1997 Regulations" means the General Medical Services Regulations (Northern Ireland) 1992(**6**);

(**1**) *See*S.I. 1999/283 (N.I. 1) Article 3(6)
(**2**) S.I 2004/311 (N.I. 2)
(**3**) S.I. 1972/1265 (N.I.14)
(**4**) 1983 c. 54.
(**5**) S.I. 1991/194 (N.I. 1)
(**6**) S.R. 1997 No. 380.

"the 2004 Regulations" means the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004(**7**);

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

"the Agency" means the Northern Ireland Central Services Agency for the Health and Social Services established under Article 26 of the 1972 Order;

"Board" means the Heath and Social Services Board which is a party, or prospective party, to the contract;

"the Choice Regulations" means the Health Services (Choice of Medical Practitioner) Regulations (Northern Ireland) 1998(**8**);

"contractor" has the same meaning as in Article 57 of the 1972 Order(**9**);

"contractor's list of patients" means the list prepared and maintained by the 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 or of contractual arrangements made under Article 15;

"core hours" means the period beginning at 8 am and ending at 6.30 pm on any day from Monday to Friday except a public holiday and a local holiday agreed with the Board;

"default contract" means a contract entered into under Article 13;

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

"general medical services contract" shall be construed in accordance with Article 57 of the Order;

"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 Article 55 of the 1972 Order(**10**), and

(b) from that date, a committee recognised under Article 55B of that Order(**11**);

"medical list" means a list prepared by a Board under regulation 4 (medical list) of the 1997 Regulations;

"Medical Register" means the registers kept under section 2 of the 1983 Act(**12**);

"the Order" means the Primary Medical Services (Northern Ireland) Order 2004;

"out of hours period" means –

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

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

(c) any public holiday or local holiday agreed with the Board;

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

(**7**) S.R. 2004 No. 140
(**8**) S.R. 1998 No. 412
(**9**) Article 57 was inserted by Article 4 of S.I. 2004/311 (N.I. 2)
(**10**) Article 55 was replaced by section 42 of the Health and Personal Social Services Act (Northern Ireland) 2001 and was repealed, in relation to Local Medical Committees, by paragraph 7 of Schedule 1 to the Order
(**11**) Article 55B was inserted by paragraph 9 of Schedule 1 to the Order
(**12**) Section 2 was amended by S.I. 1996/1591 and 2002/3135

(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 35(2), or

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

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

"primary medical services performers list" means the list of persons performing primary medical services prepared in accordance with regulations made under Article 57G of the 1972 Order (persons performing primary medical services)(**13**);

"registered patient" means –

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

(b) a person whom the contractor has accepted for inclusion on his list of patients, whether or not notification of that acceptance has been received by the Board and who has not been notified by the 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 5 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 Board under regulation 8 of the 1997 Regulations(**14**).

PART 2

ENTITLEMENT TO CONTRACTS

Entitlement to a general medical services contract

2. For the purposes of Article 5(2) of the Order, the circumstances in which a Board must enter into a general medical services contract with a person who, on 31st March 2004, is providing services under Article 56 of the 1972 Order (arrangements for general medical services)(**15**) are those specified in Articles 3 to 12.

(**13**) Article 57G was inserted by Article 4 of the Order
(**14**) Regulation 8 was amended by S.R. 1999 No. 100
(**15**) Article 56 was amended by S.I. 1991/194 (N.I. 1) and S.I. 1997/1177(N.I. 7)

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 Board must, if a person so wishes, enter into a general medical services contract with him 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 is included in the medical list of the Board by virtue of regulation 4(1)(a) of the 1997 Regulations(**16**) and has a list of patients under regulation 18 of those Regulations(**17**);

(b) on the date on which the contract is to be signed, he is practising as an individual medical practitioner and no other medical practitioner has been approved by the Board to be in partnership with him under regulation 12 of the 1997 Regulations; and

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

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

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

(b) the Board has in place for him temporary arrangements under regulation 24(6) of the 1997 Regulations 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 the medical list of the Board or from its primary medical services performers list, a Board shall only be required under paragraph (1) to enter into a general medical services contract with him 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 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 Board; and

(c) the practitioner has in place adequate arrangements for the provision of services under the contract during the period of his 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(**18**);

(b) by the Health Committee of the General Medical Council under section 37 (unfitness to practise through illness etc.)(**19**) or 38(1) of the 1983 Act, or

(c) under section 41A (interim orders) of the 1983 Act(**20**).

(**16**) Regulation 4(1)(a) was amended by S.R. 1999 No. 100
(**17**) Regulation 18 was amended by S.R. 1999 No. 100
(**18**) 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
(**19**) 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
(**20**) Section 41A was inserted by S.I. 2000/1803. It is prospectively substituted by S.I. 2002/3135

(5) In relation to any suspension which occurs after the coming into operation of Articles 13 and 14 of the Medical Act 1983 (Amendment) Order 2002(**21**), 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 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 24(6) of the 1997 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 is able to provide (but not perform) services under the contract.

(7) Whenever a 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 24(9) of the 1997 Regulations.

(8) Where a Board refuses 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 Board under Article 3(8) of its refusal to enter into a general medical services contract may appeal to the Department by giving notice in writing to the Department within a period of 28 days beginning on and including the day that the Board notified him 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 Board under Article 3(8); and

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

(3) The Department may determine the appeal itself 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 Department shall, within the period of 7 days beginning with and including the date on which the notice of appeal was sent to it, send a written request to the parties to make in writing, within a specified period, any representations which they may wish to make about the matter under dispute.

(5) The Department shall give, with the notice given under paragraph (4), to the Board which is a party to the appeal, a copy of the notice of appeal.

(6) The Department shall give a copy of any representations received from a party to the other party and shall in each case request (in writing) a party to whom a copy of the representations is

(**21**) S.I. 2002/3135. This Order substitutes the sections referred to in Article 3(5)