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STATUTORY INSTRUMENTS

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**2004 No. 311**

**The Primary Medical Services (Northern Ireland) Order 2004**

*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 purposes of Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991, in circumstances where he or they so elect.
  - (4) Regulations under paragraph (3) may include provision as to the application of Article 8 of that Order in cases where—
    - (a) persons practising in partnership elect to become a health and social services body; and
    - (b) there is a change in the membership of the partnership.
  - (5) Where—
    - (a) by virtue of regulations under paragraph (3), paragraph (8) of Article 8 of that Order applies in relation to a general medical services contract, and
    - (b) a direction as to payments is made under that paragraph in relation to the contract,the direction is to be enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.”.

#### **General medical services: transitional**

- 5.**—(1) The Department shall by order make transitional provision in respect of persons who, immediately before the coming into operation of Article 4, are providing services under Article 56 of the 1972 Order (general medical services).
- (2) An order under this Article may provide that, in such circumstances as the order may prescribe, a Health and Social Services Board shall, if any such person so wishes, enter into a general medical services contract with him; and the order may make provision as to the terms of any such contract.
  - (3) An order under this Article may provide that, in such circumstances as the order may prescribe, a Health and Social Services Board shall, if any such person so wishes, enter into a contract with him, containing such terms as the order may specify, for the provision of medical services.

(4) An order under this Article may make provision for the resolution of disputes in relation to any contract entered into, or proposed to be entered into, under paragraph (2) or (3), including provision for the determination of disputes by the Department or a person appointed by it.

(5) An order under this Article may make provision in respect of a period beginning before the coming into operation of the provision (or of Article 4), provided that the provision is not as a whole detrimental to the remuneration of the persons to whom it relates.

(6) In this Article “general medical services contract” means a contract under Article 57 of the 1972 Order (as inserted by Article 4).

(7) An order made under this Article shall be subject to negative resolution.

### **Provision of medical services: Article 15B arrangements**

6.—(1) The 1972 Order shall be amended as follows.

(2) In Article 15B (provision of personal medical or dental services)—

(a) for the headings that precede the Article, there shall be substituted—

*“Provision of primary medical services or personal dental services*

#### **Primary medical services or personal dental services”;**

(b) in paragraphs (1)(a) and (2)(a) and (b)(i), for the words “personal medical services”, in each place where they occur, there shall be substituted “primary medical services”;

(c) sub-paragraph (a) of paragraph (3), in paragraph (4) the words “personal medical services or”, and in paragraph (6) the definition of “personal medical services” shall be omitted.

(3) In Article 15C (persons with whom agreements under Article 15B may be made) for sub-paragraph (b) of paragraph (1) there shall be substituted—

“(b) in the case of an agreement under which primary medical services are provided—

(i) a medical practitioner who satisfies the prescribed conditions;

(ii) a health care professional who satisfies the prescribed conditions;

(iii) an individual who is providing services—

(A) under a general medical services contract;

(B) in accordance with Article 15B arrangements, section 28C arrangements or Article 17C arrangements; or

(C) under section 28Q of the National Health Service Act 1977 or section 19 of the National Health Service (Scotland) Act 1978;

or has so provided them within such period as may be prescribed;”.

(4) After paragraph (1) of that Article there shall be inserted—

“(1A) The power under paragraph (1) to make an agreement with a person falling within sub-paragraph (b)(iii), or (in the case of an agreement under which primary medical services are provided), sub-paragraph (d), of that paragraph is subject to such conditions as may be prescribed.”.

(5) In paragraph (2) of that Article—

(a) at the appropriate place alphabetically there shall be inserted—

““Article 15B employee” means a person who, in connection with the provision of services in accordance with Article 15B arrangements, is employed by an individual providing or performing those services;

“health care professional” means a member of a profession which is regulated by a body mentioned (at the time the agreement is made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17);

“section 28C employee” means a person who, in connection with the provision of services in accordance with arrangements under section 28C of the National Health Service Act 1977, is employed by an individual providing or performing those services;

“section 17C employee” means a person who, in connection with the provision of services in accordance with arrangements under section 17C of the National Health Service (Scotland) Act 1978, is employed by an individual providing or performing those services;” and

- (b) the definitions of “qualifying medical practitioner” and “Article 15C employee” shall be omitted.
- (6) In paragraph (2) of that Article, in the definition of “HSS employee”—
- (a) after the words “health services” there shall be inserted “in Northern Ireland, England and Wales or Scotland”;
- (b) in paragraph (a), after the word “trust” there shall be inserted “in Northern Ireland, or an NHS trust or NHS foundation trust in England and Wales”;
- (c) for paragraph (b) there shall be substituted—
- “(b) a Health and Social Services Board in Northern Ireland, a Primary Care Trust in England, a Local Health Board in Wales or a Health Board in Scotland;
- (bb) a person who is providing services under a general medical services contract;
- (bc) an individual who is providing services as specified in paragraph (1)(bc)(iii);”.
- (7) In Article 15D (regulations concerning Article 15B arrangements)—
- (a) in the heading, for the words “Personal medical or” there shall be substituted “Primary medical services or personal”; and
- (b) in paragraph (2)(b), the words “medical practitioners performing personal medical services, and” shall be omitted.
- (8) In paragraph (3) of that Article—
- (a) after sub-paragraph (c) there shall be inserted—
- “(ca) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons performing primary medical services in accordance with Article 15B arrangements;”;
- (b) sub-paragraphs (f) and (g) shall be omitted; and
- (c) in sub-paragraph (j) after “make” there shall be inserted “with respect to the provision of personal dental services”.
- (9) After paragraph (3) of that Article there shall be inserted—
- “(3A) The regulations may also require payments to be made under Article 15B arrangements in accordance with directions given for the purpose by the Department.
- (3B) A direction under paragraph (3A) may 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.
- (3C) The regulations may also include provision requiring a Health and Social Services Board, in prescribed circumstances and subject to prescribed conditions, to enter into a

general medical services contract on prescribed terms with any person providing services under Article 15B arrangements who so requests.

(3D) The regulations may also include provision for the resolution of disputes as to the terms of any proposed Article 15B arrangements, and in particular may make provision—

- (a) for the referral of the terms of the proposed arrangements to the Department; and
- (b) for the Department, or a person appointed by it, to determine the terms on which the arrangements may be entered into.

(3E) The regulations shall provide for the circumstances in which a person providing primary medical services under Article 15B arrangements—

- (a) shall or may accept a person as a patient to whom such services are so provided;
- (b) may decline to accept a person as such a patient;
- (c) may terminate his responsibility for a patient.

(3F) The regulations shall make provision as to the right of patients to choose the persons from whom they are to receive services under Article 15B arrangements.”.

(10) Paragraphs (5) and (7) of that Article shall be omitted and in paragraph (6) of that Article for “personal medical services” there shall be substituted “primary medical services”.

(11) Article 15E (choice of medical practitioner) shall cease to have effect.

#### **Revocation of power to make pilot schemes**

7. The power of a Health and Social Services Board under Part II of the [Health Services \(Primary Care\) \(Northern Ireland\) Order 1997 \(NI 7\)](#) to make pilot schemes for the provision of personal medical services shall cease to have effect.

#### **Persons performing primary medical services**

8.—(1) The 1972 Order shall be amended as follows.

(2) After Article 57F (as inserted by Article 4) there shall be inserted—

*“Persons performing primary medical services*

#### **Persons performing primary medical services**

**57G.**—(1) Regulations may provide that a health care professional of a prescribed description may not perform any primary medical service for which a Health and Social Services Board is responsible unless that professional is included in a list maintained under the regulations by the Health and Social Services Board.

(2) For the purposes of this Article—

- (a) “health care professional” has the same meaning as in Article 15C;
- (b) a Health and Social Services Board is responsible for a primary medical service if it provides the service, or secures provision of the service, under or by virtue of Article 56.

(3) Regulations under paragraph (1) may make provision in relation to such lists and in particular as to—

- (a) the preparation, maintenance and publication of a list;
- (b) eligibility for inclusion in a list;

- (c) applications for inclusion (including provision as to the Health and Social Services Board to which an application must be made, and for the procedure for applications and the documents to be supplied on application);
  - (d) the grounds on which an application for inclusion may or must be granted or refused;
  - (e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits);
  - (f) suspension or removal from a list or references to the Tribunal (including the grounds for and consequences of suspension or removal, or reference);
  - (g) circumstances in which a person included in a list may not withdraw from it;
  - (h) payments to be made in respect of a person suspended from the list (including provision for the amount of, or the method of calculating, the payment to be determined by the Department, or a person appointed by it);
  - (i) the criteria to be applied in making decisions under the regulations;
  - (j) appeals against decisions made by a Health and Social Services Board under the regulations;
  - (k) disclosure of information about applicants for inclusion, refusals of applications, or suspensions, removals or references.
- (4) Regulations making provision as to the matters referred to in paragraph (3)(k) may in particular authorise the disclosure of information—
- (a) by a Health and Social Services Board to the Department; and
  - (b) by the Department to a Health and Social Services Board.”.
- (3) In paragraph 1 of Schedule 11 (disqualification of persons providing services)—
- (a) for paragraph (a) of sub-paragraph (8) there shall be substituted—
    - “(a) a list of health care professionals of a prescribed description performing primary medical services;”,
  - (b) after that sub-paragraph there shall be inserted—
    - “(8A) In sub-paragraph (8)(a), “health care professional” has the same meaning as in Article 15C.”.

### **Assistance and support**

9. After Article 57G of the 1972 Order (as inserted by Article 8) there shall be inserted—

#### **“Assistance and support**

- 57H.—**(1) A Health and Social Services Board may provide assistance or support to—
- (a) any person providing, or proposing to provide primary medical services under a general medical services contract;
  - (b) any person providing, or proposing to provide, such services in accordance with Article 15B arrangements.
- (2) Assistance or support provided by a Health and Social Services Board under paragraph (1) shall be provided on such terms, including terms as to payment, as the Board thinks fit.
- (3) In this Article “assistance” includes financial assistance.”.

*Supplementary*

**Minor and consequential amendments**

10. Schedule 1 (which contains minor and consequential amendments) shall have effect.

**Supplementary provision**

11.—(1) The Department may by order make such transitional or transitory provisions and savings as it considers appropriate in connection with the coming into operation of any provision of this Order.

(2) Nothing in Article 5 restricts the power under paragraph (1) to make other transitional provisions.

(3) The Department may by order make such supplementary, incidental, or consequential provision as it considers appropriate for the purposes of, in consequence of or for giving full effect to any provision of this Order.

(4) An order under paragraph (1) or (3) may modify any statutory provision.

(5) In paragraph (4)—

“modify” includes add to, omit and amend; and

“statutory provision” has the meaning given in section 1(1)(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

(6) An order made under this Article shall be subject to negative resolution.

**Repeals**

12. The provisions mentioned in Schedule 2 are repealed to the extent specified.

*A. K. Galloway*  
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