

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

**Department of Health, Social Services and Public Safety
Guidance**

***NB: It should be noted that this is guidance on the draft Order only and
may be subject to some variation.***

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

Introduction

1. This guidance must be read alongside:-
 - i. The draft General Medical Services Transitional and Consequential Provisions No.1 (Northern Ireland) Order 2004 (the Transitional Order);
 - ii. The Default Contract
 - iii. The Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004 (the Contract Regulations), and
 - iv. Delivering Investment in General Practice (to follow)
2. Its purpose is to cover issues that relate to the transition from the old section 29 statutory arrangements for GMS (old GMS) to the new contractually based GMS (new GMS) set out in the Contract Regulations.
3. The Transitional Order and this guidance are predicated on the basis that they protect the rights of GPs, who are included on the Board's medical list on 31 March 2004 and are providing old GMS, and the rights of patients who are receiving those services.
4. The Transitional Order provides legal rights but those rights, unless otherwise stated in the Order, subsist only at the point of transition. Therefore, to be protected by the conditions of the Order a GP providing services under old GMS must sign a new GMS contract, or a Default Contract, no later than 31 March 2004. After that date, unless covered by one of the few exceptions, the doctor loses all transitional rights. Of course the loss of that legal protection does not prevent the Board and the doctor agreeing a new contract but the obligation on the Board to offer a contract has gone.
5. In all cases relating to legal entitlement the Transitional Order is the definitive source of reference, not this guidance.

Background

6. The Primary Medical Services (Northern Ireland) Order 2004 (“the 2004 Order”) places Health and Social Services (Boards) under a new duty to secure the provision of primary medical services from 1st April 2004. The Order provides that Boards must commission or provide primary medical services to the extent that it considers necessary to meet all reasonable requirements. Boards will have greater flexibility over how, and from whom, they commission primary medical services using four routes: General Medical Services (GMS) Personal Medical Services (PMS)¹, alternative providers (APMS) or direct Board provision (HSSBMS).
7. The statutory arrangements governing the provision of GMS, under Article 56 of Health and Personal Social Services Order 1972 (old GMS), come to an end on 31 March 2004. Old GMS was a set of

¹ Subject to the introduction of the necessary regulations.

statutory arrangements with individual General Practitioners (GPs). The 2004 Order introduces new arrangements for the provision of GMS (new GMS). New GMS is a contract between a Board and a GMS contractor, who can be either a single GP or a partnership or a limited company, and is subject to statutory rules and procedures. These are contained in the Contract Regulations, the 2004/05 Statement of Financial Entitlements (the SFE) and associated documents.

8. The starting proposition for transition is that GPs who are on the Board medical list and who currently provide services under old GMS will normally have a right to be offered a new GMS contract (or if necessary a Default Contract) if they wish to continue to provide GMS. Such GPs will also be protected from the new provider conditions set out in Regulation 5 of the Contract Regulations at the point at which they enter into their new GMS contract (or their Default Contract). Schedule 5 paragraph 105 of the Contract Regulations, or the equivalent provisions in the Default Contract, would then apply should there be a breach of the provider conditions during the existence of the contract. Subject to Article 7 of the Transitional Order, they will have similar protection at the point at which they move from their default contract to their new GMS contract. Therefore, a doctor providing old GMS who, for example, is an undischarged bankrupt on 31 March 2004 will still be able to enter into a new GMS contract but they would not, at some future point, be entitled to enter into any subsequent contract.

General Medical Practitioners Rights - Transition from old GMS to new GMS

9. As indicated above GPs who currently provide services under old GMS will have a right to be offered a new GMS contract (or if necessary a Default Contract) if they are to continue to provide GMS.
10. In most cases existing GMS contractors will be offered a new GMS Contract, or in a few exceptional cases a Default Contract. These two contract types are briefly explained below. More detailed information can be found in other guidance, such as Delivering Investment in General Practice. In a very small number of cases there will be practitioners who are unable to be party to the new GMS contract or Default Contract on 1 April 2004. To protect their right to a contract, special provisions have been included in the Transitional Order. These are discussed later.

The GMS Contract

11. The GMS contract must comply in full with the Contract Regulations. To help contractors and Boards the Department has produced a model GMS contract, which is based on that developed at national level by the Department of Health in conjunction with lawyers acting for the General Practitioners Committee of the BMA. The Model Contract can be downloaded from the Department's website at:-

http://www.dhsspsni.gov.uk/hss/gp_contracts/

This is a standard contract that contains all the requirements set out in the Contract Regulations and it is expected that all parties to new GMS contracts will want to use it. Under the Transitional Order, Boards are placed under a duty to offer a new GMS contract to specified GMS GPs who wish to enter into such a contract. Boards should already have entered into discussions with potential contractors with a view to agreeing provisional contracts and any remaining issues should be resolved during March 2004. If provisional agreement is not reached, potential contractors must either complete their Standard Contract with the Board on a "Subject to Dispute" basis, the strongly advised course of action, or, as a last resort, enter into a Default Contract. Regulation 9 of the Contract Regulations make specific provision for the determination of pre-contract disputes and if the parties cannot agree, this procedure should be followed in all cases.

The Default Contract

12. As explained in paragraph 11 the Default Contract is intended to be a final contingency measure. Once completed, this can be downloaded from the Department's website at:

http://www.dhsspsni.gov.uk/hss/gp_contracts

It is time limited (normally three months extendable by a further three months) and in most cases will cease to have effect on or before 30 September 2004. The Default Contract is a restricted version of the model contract and removes most areas of flexibility available in the Standard Contract. The Default Contract is intended to be a short-term measure to allow services to be delivered and restricted payments to continue until a new GMS contract is signed. It is anticipated that the Default Contract will be used only in very exceptional cases.

13. It is likely that the Department will monitor the use of Default Contracts as part of their performance management role. Where Default Contracts are used they are expected to be phased out at the earliest opportunity.
14. The main differences between the new GMS contract and the Default Contract are set out in Annex 1 to this guidance.

Entitlement to a GMS contract

15. Articles 3 and 5 of the Transitional Order set out the rights to be offered a contract that appertain to general medical practitioners practising as single handers (Article 3) or in partnership (Article 5). There are no transitional rules in respect of limited companies because companies could not be contractors under old GMS. Under old GMS there are a number of partnerships that contain individuals who are not general medical practitioners. Such persons have no transitional rights to a new GMS contract. Under the Transitional Order the Board is only obliged to offer a GMS contract to general medical practitioners. However, where existing partners who are not general medical practitioners satisfy the relevant conditions and the general medical practitioner(s) wish to contract as a partnership with them we would expect the Board to offer a GMS contract. There is little to recommend a different approach as the GMS contractor could seek a variation of the GMS contract on "day 2" to include these individuals as partners. This would create unwelcome bureaucracy for everyone.

Individual General Medical Practitioners

16. Article 3 of the Transitional Order applies. Briefly, in order to qualify for entitlement to a GMS contract a single medical practitioner must:
- i. be practising as an individual medical practitioner (and not have another medical practitioner approved by the Board to be in partnership with him/her);
 - ii. be on the medical list of the Board on 31 March 2004 (or on date the contract is signed if that is before 31 March);
 - iii. be on the Board's primary medical services performers list where the contract is being signed after 31 March, 2004; and
 - iv. have a list of patients.

17. There are special provisions for certain general medical practitioners who are practising as single-handed practitioners under old GMS. These recognise that it might not always be possible or practical for all such individuals to sign contracts. In all such circumstances, the Board and the doctor should do all they can to complete contract negotiations, signing either a GMS contract or a Default Contract. However, factors such as the doctor's health may prevent this. The special provisions include:-
- i. a suspended doctor (whether by the GMC in specified circumstances or by the Tribunal);
 - ii. a doctor suffering from ill health who is subject to the existing Regulation 24 procedures;
 - iii. a doctor on "relevant" service (as defined in the Transitional Order) – broadly a doctor away on whole-time armed forces service.
18. These are likely to be complex cases and Boards are recommended to seek the assistance of the LMC in dealing with them. The full provisions are listed in Article 3 of the Transitional Order and Boards should read these provisions with care. Boards' attention is particularly drawn to Articles 3(3) and 3(6), which cover the circumstances in which a Board is not required to offer a GMS contract.
19. If the Board intends to refuse to offer a contract under these provisions it is required to consult the LMC (Article 3(7)).
20. Article 8 of the Transitional Order sets out the protection available for a general medical practitioner who has been approved by a Board to fill a vacancy for a sole practitioner where the Board has not had sufficient time to enter the practitioner's name onto their medical list before the 31 March 2004. In this case, and subject to there being no successful appeal in respect of the Board's approval of the doctor, the nominee will be entitled to a general medical services contract as an individual medical practitioner. Where, following an appeal, the Board is ordered to re-advertise or re-run the selection process the practice vacancy procedures under old GMS shall be deemed to have ended and the vacancy shall be dealt with under the new GMS procedures.

Appeals (Article 3 cases)

21. A general medical practitioner may appeal against a refusal by the Board to enter into a contract on the specific grounds set out in Article 3(3) and Article 3(6).
22. A practitioner shall make an appeal in writing within 28 days of the Board notifying him/her of the refusal. The appeal should be sent to the Department of Health, Social Services and Public Safety. A notice of appeal must include:-
- i. the names and addresses of the parties to the disputes;
 - ii. a copy of the notification received from the Board; and
 - iii. a statement of the grounds for appeal.
23. The Department will adjudicate on appeals in accordance with the dispute resolution procedure as set out in the Contract Regulations. Appeals should be sent to:-

Department of Health, Social Services and Public Safety
GMS Branch
Room D:3
Castle Buildings
Stormont Estate

BELFAST BT4 3SQ

Two or More General Medical Practitioners

24. Article 5 of the Transitional Order applies. Briefly in order to qualify for entitlement to a GMS contract under this Article a general medical practitioner must on 31 March 2004, or on the date on which the contract is signed, if earlier, be:

- i. included in the medical list of the Board; or
- ii. a medical practitioner who has been approved by the Board to be in partnership with one or more other medical practitioners but whose name has not yet been entered on the medical list of that Board.

25. General Medical Practitioners qualified by virtue of (i) above must additionally, on the date the contract is signed, be providing services under old GMS or under a Default Contract:-

- i. as part of a partnership of general medical practitioners
- ii. as an individual medical practitioner with whom another general medical practitioner has been approved to be in partnership (under regulation 12 procedures in the 1997 GMS Regulations)

26. Under new GMS, the Board contracts with persons practising in partnership. Consequently there are no special provisions here for suspended or sick doctors or those on relevant service. The partnership should make arrangements to handle its affairs in such a way that it can both contract with the Board and deliver the services as set out in that contract. Boards are able to support practices that have difficulties under new support and assistance powers set out in Article 57H of the Health and Personal Social Services (Northern Ireland) Order 1972 (as inserted by the 2004 Order).

Duration of protected entitlement to a GMS contract

27. Article 6 of the Transitional Order details the circumstances under which a practitioner's transitional right to be offered a GMS contract may be extended beyond 31 March 2004.

28. Any general medical practitioner who has not entered into a new GMS contract on or before 31 March 2004 will only continue to be entitled to a contract if:-

- i. he/she has entered into a Default Contract with the Board which remains in force until immediately before the date on which services are to start to be provided under the contract;
- ii. he/she has remained a party to the Default Contract up to the date of signing of the contract; and
- iii. he/she or the partnership has signed the GMS contract on or before 30 September 2004.

29. This period is extended:-

- i. where there are outstanding disputes under the Default Contract or about the terms of the prospective general medical services contract;
- ii. for general medical practitioners who have been refused a contract under Article 3(3) or Article 3(6), or
- iii. where an individual medical practitioner has been absent on "relevant service".

Entitlement to a GMS contract following termination of a Default Contract

30. Article 7 provides that a practitioner's entitlement to a general medical services contract is extinguished if a Default Contract to which he was party is terminated. The only exception is an agreed termination so that the contractor and the Board can enter into a GMS contract.
31. A practitioner who loses his entitlement to a GMS contract in this way may appeal to the Department within 28 days of the notice of termination of the Default Contract and the Department may restore his entitlement to a GMS contract if it decides that the Default Contract was wrongly terminated.
32. Where all the contractors to a Default Contract lose their entitlement in this way there is nothing to stop the Board awarding a GMS contract to one or more of the former partners where it believes that such action is appropriate and in accordance with the Contract Regulations. However, there is no legal duty on the Board to act in this way.

Appeals by individual medical practitioners under Regulation 15 of the 1997 GMS Regulations

33. Articles 9 and 10 provide for the continuation of outstanding applications involving single-handed practice vacancies. Article 9 protects the appeal rights of applicants who have not been approved for the vacancy. Article 10 provides for a successful appellant (who was the only applicant for the vacancy) to have protected rights to be entered onto the medical performers list and to enter into a GMS contract as an individual practitioner.

Appeals – failure by the Board to enter into a contract

34. Appeals are covered in Article 11.
35. If a general medical practitioner, who is entitled to be offered a GMS contract under the terms of the Transitional Order, has, as a result of a failure to act by the Board, been unable to sign the a contract before his/her period of protected entitlement expires, the prospective contractor must, if he/she wishes to enter into a GMS contract, apply in writing to the Department within 14 days of the expiry of his/her entitlement. An application must specify:
 - i. the names and addresses of the parties to the dispute;
 - ii. the grounds on which the applicant claims to be entitled to a GMS contract; and
 - iii. the grounds for alleging default by the Board.

36. The Department will adjudicate on appeals in accordance with the dispute resolution procedure as set out in the Contract Regulations. Appeals should be sent to:-

Department of Health, Social Services and Public Safety
GMS Branch
Room D:3
Castle Buildings
Stormont Estate
BELFAST BT4 3SQ

37. A failure to act by the Board includes a refusal by the Board to enter into a contract on the basis that it believes the general medical practitioner has no transitional right under Articles 3 or 5.

Effect of events taking place after 31 March 2004 on entitlement to enter into a GMS contract.

38. Article 12 covers the small minority of single-handed practitioners with whom, for various reasons, the Board has not been able to contract (either under a GMS or a Default Contract) despite the practitioner having an underlying entitlement to a GMS contract. If during the period for which the practitioner has an entitlement to a GMS contract under Article 6 of the Transitional Order, there is an event that causes the practitioner to fall foul of the rules set out in Schedule 5 paragraph 105(2) of the Contract Regulations – essentially the provider conditions – then subject to the limited discretion in paragraph 105(3) to (5) the practitioner’s right to enter into a GMS contract is extinguished.

Entitlement to a Default Contract

39. This is covered by Article 13 of the Transitional Order. Entitlement to a Default Contract more or less mirrors entitlement to a GMS contract but there are one or two additional provisions such as the rules on commencement (Article 13(4)(a)) and the fact that the terms of the Default Contract are mandatory (Article 13(4)(b)).

40. Parties entering into a Default Contract should read Article 13 carefully.

Duration of a Default Contract

41. This is covered by Article 14 of the Transitional Order. Except in specified circumstances the Default Contract cannot run beyond 30 September 2004. The specified circumstances are:-

- i. there is an outstanding matter in relation to the Default Contract that has been referred to the Department which has not been determined;
- ii. there is an outstanding matter in relation to the proposed GMS contract that has been referred to the Department under the pre-contract dispute resolution process which has not been determined;
- iii. where the Default Contract is with an individual medical practitioner with whom the Board declined to enter into a GMS contract under Article 3(3) or Article 3(6), but who, under the provisions of Article 6, still has a right to a GMS contract that continues beyond 30 September 2004;
- iv. where the Default Contract is with an individual medical practitioner who is performing relevant service;
- v. where there is an outstanding appeal under Article 11 that has been referred to the Department which has not been determined.

42. The Transitional Order specifies the limit of the extension in each of these circumstances.

43. Practitioners and Boards should note that where there are matters outstanding under sub paragraphs (i) and (ii) above, Article 14(1) provides that the Default Contract shall continue unless the contract is terminated in accordance with any specific term of the Default Contract. It is, therefore, possible for the Board and the contractor to jointly agree to terminate the Default Contract and enter into a GMS contract before the outstanding matters are determined. However, before agreeing to a termination by agreement in these circumstances, a Board (and indeed a contractor) may wish to consider the nature of the outstanding matter(s) and whether, or not, it is more appropriate for all matters to be resolved before moving to the new GMS contract. The Department believes that the best approach is to resolve all

outstanding matters under the dispute or pre-contract dispute resolution process before moving from a Default Contract to a GMS new contract.

Temporary Arrangements

44. This is covered by Article 15 of the Transitional Order.
45. Where (under old GMS) the Board has put in place temporary arrangements under regulation 24(2) (in the case of suspended doctors only) or 24(6) of the 1997 GMS Regulations and :-
- i. they have not given notice to terminate those arrangements on 1 April 2004;
 - ii. the Board has not entered into a GMS or Default Contract with the medical practitioner whose practice is being temporarily covered,

the Board may continue the temporary arrangements it has made. To do so, it should enter into appropriate arrangements with the provider of the temporary arrangements. This cannot be as a freestanding GMS contract or Default Contract. It can, for example, be an addition to an existing GMS or Default Contract or a contract under the Board's general powers to secure the provision of primary medical services (APMS).

46. The contract can be of any duration but must not continue once the entitlement of the absent contractor to a GMS contract under Article 6 has expired.
47. Attention is drawn to Article 15(4) & (5) of the Transitional Order, which requires that any contractual arrangements that commence on 1 April 2004 should be in respect of those patients who were on the list of the absent practitioner on 31 March 2004 and provides for that list of patients to be maintained separately from any other list of registered patients held by the temporary contractor.

Transitional Rules in Relation to Additional Services – Registered Patients

48. Articles 16-18 of the Transitional Order cover these matters.
49. Contractors entering into a new GMS contract who were delivering the equivalent of any of the additional services are required to continue to deliver that service from 1 April 2004 unless the Board agrees otherwise. After that, the opt-out rules in the GMS Contract Regulations apply.
50. The Transitional Order covers three further scenarios.
51. Article 16 provides that when agreeing a Default Contract, all the additional services must be provided unless the practice (single handed or partnership) was not providing the equivalent service under old GMS and does not intend to ask for it to be included in the GMS contract which will follow the Default Contract.
52. Article 17 provides that where a single-handed practitioner succeeds to a practice vacancy under the limited provisions of Article 8 or 10, the additional services to be provided, under the new GMS contract, are those specified when the vacancy was published. If no such services were specified, then the services to be provided are those equivalent services that were being provided by the general medical practitioner who previously operated the practice under Article 56 arrangements. The Board may agree to alternative arrangements if it wishes.

53. Article 18 provides that in moving from a Default Contract to a GMS contract those additional services provided under the Default Contract must carry forward into the GMS contract unless the Board agrees otherwise. After that, the opt-out rules in the GMS Contract Regulations apply.

Transitional Rules in Relation to Maternity Medical Services, Contraceptive Services and Child Health Surveillance – Non- Registered Patients

54. Articles 23 and 24 of the Transitional Order cover this.
55. Under old GMS, patients could obtain certain services from practitioners other than their registered practitioner. These included maternity medical services, contraceptive services and child health surveillance. It would generally be wrong if, on the transition from old GMS to new GMS, a patient had, for example, to change the practitioner who was providing their maternity medical services. Therefore, when agreeing either a GMS or a Default Contract, the contract must provide that non-registered patients who were receiving these three services on 31 March 2004, continue to receive them from the contractor from 1 April 2004.
56. On agreeing a GMS contract that follows a Default Contract these patients must be similarly protected.
57. Where, at the outset of a GMS contract, the Board agrees to a request from the prospective contractor that any or all of the additional services should not be included in the GMS contract, then that service(s) does not have to be delivered to non-registered patients in the same way as it would not have to be delivered to registered patients.
58. Where, under a GMS contract, a contractor opts out of any of these services, the opt out shall apply equally to any non-registered patients included in the contract by virtue of these rules.
59. These provisions apply to companies limited by shares entering into a GMS contract as well as to individual medical practitioners and partnerships.

Transitional Rules in Relation to Approved Premises

60. This is covered by Article 25 of the Transitional Order.
61. The transitional rules are the same for both a GMS contract and a Default Contract. Premises approved under old GMS (under paragraph 36 of Schedule 2 to the 1997 GMS Regulations) should be specified in the contract at its commencement. The Board may agree in writing to vary this provision.
62. The Board and the Contractor may also agree to a plan of improvements for the premises to bring them up to any standard the Board might apply for new contractors after 1 April 2004. Any such plan should be in accordance with regulation 18(3) of the Contract Regulations.
63. This Article applies to companies limited by shares entering into a GMS contract as well as to individual medical practitioners and partnerships.

Transitional Rules – Patient Lists

64. Articles 27-29 of the Transitional Order cover these matters.
65. Article 27 provides that on entering into a Default Contract or a GMS contract, the contractor's list of registered patients under the new contract must include all the patients (including assigned patients) who were on the list of the general medical practitioners who are party to the contract. Where there is a practice vacancy or where, for example, a general medical practitioner retires on 31 March 2004, the Board would be expected to include all the associated patients on the contractor's list.
66. Article 28 provides that in moving from a Default Contract to a GMS contract the patient list should transfer automatically to the new contract.
67. Article 29 deals with the situation where temporary arrangements under Regulation 24 of the 1997 GMS Regulations or under Article 15 of the Transitional Order come to an end.
68. Article 27 applies to companies limited by shares entering into a GMS contract as well as to individual medical practitioners and partnerships.
69. As part of agreeing a GMS contract, the Board and the contractor may agree to vary the "practice area". This might involve the contractor ceasing to provide services in part of its former area. Where this is the case, the patients that reside in that locality will not automatically form part of the contractor's list of patients, unless those patients had been assigned to the contractor under:-
- i. regulation 4 of the Health Services (Choice of Medical Practitioner) Regulations (Northern Ireland) 1998;
 - ii. under the terms of a Default Contract;
 - iii. under the terms of temporary arrangements entered into under Article 15.

in which case they will be automatically included.

70. As part of the process of agreeing any changes to "practice areas" from the outset of a GMS contract, the Board is advised to agree with the contractor, a suitable period during which patients adversely affected by any change to the "practice area" remain part of the contractor's list of patients. This will allow a reasonable opportunity for the patients to obtain an alternative doctor. The Board has a responsibility to keep such patients fully apprised of the position and to offer them every assistance in registering with a new provider.
71. Equally, where several GMS contractors are seeking to amend their "practice area" in a way that withdraws services from certain localities, the Board may wish to discuss the staggering of the proposed changes. It is recommended that the Board involves the LMC in such discussions. A sudden large migration of patients could put the local health economy under an avoidable strain. It is in no-one's interest to create a situation where large numbers of patients are effectively without a doctor on 1 April 2004.

Transitional Rules – List Status on entering into a GMS contract.

72. This is covered by Article 31 of the Transitional Order.
73. The default position on entering into a GMS contract (either directly or from a Default Contract), is that the list status is "open". However, once the GMS contract is operational, the contractor can apply to have its list closed as set out in the Contract Regulations. The only exception is set out in Article 31(2)

and relates to practitioners previously exempt (under old GMS) from patient assignments. In these cases where the Board has determined, in the light of the circumstances in which the original exception(s) were granted, that it is appropriate that their list status will, be "closed"; unless the contractor wishes to open the list for both registration and assignment purposes. Once "open", the list must remain open unless it is closed under the procedures for list closure in the GMS contract. Closure of a list under this provision cannot extend beyond 31 March 2005.

Default Contract – Provision of OOHs

74. Articles 19 to 22 of the Transitional Order cover this.
75. Article 19 requires that a contractor entering into a Default Contract must be required to provide out-of-hours services throughout the out-of-hours period unless:-
- i. in the case of a single hander the general medical practitioner was, on 31 March 2004, relieved of his obligation under old GMS;
 - ii. in the case of practitioners practising in partnership all the general medical practitioners were, on 31 March 2004, relieved of their obligation under old GMS.
76. Article 19 also provides, that in certain cases, a contractor must, where it enters a Default Contract, continue to provide the out-of-hours services they had previously provided to another practice's patients. This applies where the contractor is an individual, or a partnership which includes an individual who, on 31 March 2004 is (or was) undertaking out-of-hours responsibilities for a practitioner relieved of the obligation under old GMS to provide out of hours care, provided that the practitioner in question has entered (or intends to enter) a GMS contract or Default Contract, as an individual, a member of a partnership or (in the case of a GMS contract) a member of a company, which (because the practitioner was relieved of out-of-hours obligations) does not include the provision of out-of-hours services. This responsibility lasts as long as the Default Contract lasts, and in most cases, the responsibility will continue once the contractor moves to a GMS contract, as a result of regulation 30 of the Contract Regulations.
77. Article 20 makes similar provision in relation to practitioners who were undertaking out-of-hours responsibilities for practitioners relieved of their obligations under old GMS, where those practitioners have entered (or intend to enter) a Default Contract. However, in this case the responsibility continues only until any of the events listed in Article 20(3) occur.
78. Articles 21 and 22 make technical modifications to paragraph 65(2)(a) of Schedule 5 of the Contract Regulations so that general medical services contractors may sub-contract or transfer out of hours responsibilities to the holder of a Default Contract (or a contractor who has entered into temporary arrangements under Article 15), as if that contractor were also a holder of a GMS contract.

Default Contract – Practice Area

79. This is covered by Article 26 of the Transitional Order. The practice area covered by a Default Contract must be the area of the contractor's practice as it was on 31 March 2004. It cannot be different.

Default Contract – List Status

80. This is covered by Article 30 of the Transitional Order. The patient list of contractors who sign a Default Contract must be "open". The rules relating to list closure in the Contract Regulations do not apply. The contractor will be liable to receive patient assignments by the Board throughout the duration of the Default Contract.
81. The only exception is set out in Article 30(2) and relates to practitioners previously exempt (under old GMS) from patient assignments. In these cases, where the Board has determined, in the light of the circumstances in which the original exception(s) were granted, that it is appropriate, their list status will be "closed"; unless the contractor wishes to open the list for both registration and assignment purposes. Once "open", it must remain open for the duration of the Default Contract.

Default Contract – Dispute Resolution

82. This is covered by Article 32 of the Transitional Order. A Default Contract cannot be a HSS contract: it is a private law contract. Any disputes arising out of the terms of the Default Contract will be dealt with in the same way as applies to private law GMS contracts. There will be a choice of using the dispute resolution procedure or using an appropriate Court. A condition of opting for the dispute resolution procedure is that the parties agree to be bound by the outcome.

Additional Ground for Termination of a General Medical Services Contract

83. This is covered in Article 33 of the Transitional Order. This Article will only apply in a very few cases. A Board might, under the provisions in this Article, enter into a GMS contract with an individual medical practitioner (or one or more medical practitioners) where the practitioner (or one or more of the practitioners) has, subsequent to 31 March 2004, been dismissed from employment in the circumstances set out in Schedule 5 paragraph 105(2)(d) to the Contract Regulations. Entering into such a contract would be permissible because, under paragraph 105(4), the Board cannot take account of the dismissal for a period of three months or until any proceedings in relation to the dismissal before a Tribunal or Court are concluded.
84. What Article 33 provides is that once the three month period has expired, or once proceedings are concluded (other than in a finding of unfair dismissal), the GMS contract can be terminated under Schedule 5 paragraph 105 of the Contract Regulations.

Default Contract – Financial Arrangements

85. This is covered by Articles 35-40 of the Transitional Order and should be read alongside the SFE.
86. The SFE, which replaces the Red Book, sets out the entitlement to payments of contractors who enter into a GMS contract from 1 April 2004. Contractors entering into a Default Contract will only be entitled to certain of the payments set out in the SFE in accordance with Article 35 of the Transitional Order.
87. The bulk of a contractor's income under the Default Contract will be calculated as per the Global Sum Equivalent as set out in Part 1 of the SFE (Article 35(2)). The only other payments are:-
- i. locum cover for absent general medical practitioners as set out in Part 4 of the SFE (Article 35(3));

- ii. seniority pay as set out in Part 4 of the SFE (Article 35(4));
- iii. payments under the doctor's retainer scheme, dispensing scheme and educational allowance payments as set out in Part 4 of the SFE (Article 35(5));
- iv. those premises and IT payments set out in Article 35(6) & (7), as they cross-refer to Part 5 of the SFE and the Premises Costs Directions.

88. In addition, a Default Contractor is entitled to a reasonable fee in relation to those services to non-registered patients that they are required to perform by virtue of Articles 20 and 23 of the Transitional Order. In assessing what is a reasonable fee, the Board should consider the extent to which the contractors Global Sum Equivalent, which may reflect earnings for these services during the last three quarters of 2002/3 and the first quarter of 2003/04, adequately recompenses the contractor.

89. Boards and contractors are asked to read:-

- i. Article 36 – due dates for payment;
- ii. Article 37 – part payments due where a Default Contract terminates mid month;
- iii. Article 38 – general conditions of payment;
- iv. Article 39 – arrangements on entering a GMS contract following a Default Contract;
- v. Article 40 – payments to persons who cannot enter into a Default Contract.

90. GPs who were formerly paid under the provisions of the Statement of Fees and Allowances will continue to be able to make claims for payment for up to 6 years as set out in Article 41.

Annex 1

Substantive Differences Between a Default Contract and the Model GMS Contract

Duration

The Default Contract is a time-limited contract, for most people this is will be six months up to 30 September 2004.

Additional Services

There can be no opt-outs from additional services, and, at the outset, the Default Contract must cover all those services that were being delivered by the practice prior to 31 March 2004.

Out-of-hours Services

There can be no opt-out from out-of-hours services, except for those currently exempt from providing out of hours services, although the contractor can transfer its responsibilities as it can in old GMS.

List Closure

Apart from a very small exception, contractors with a Default Contract must keep their list open to new patients and will be liable to patient assignments.

Practice Area

A Default Contractor cannot vary its practice area.

Sub Contracting

A Default Contractor cannot enter into new sub-contracting arrangements, although individual locum arrangements can continue.

Limited Companies

A limited company cannot hold a Default Contract.

Finance

Payments under the Default Contract will be restricted to:-

- global sum equivalent as set out in Part 1 of the SFE (Article 35(2) of the Order);
- locum cover for absent general medical practitioners as set out in Part 4 of the SFE (Article 35(3) of the Order);
- seniority pay as set out in Part 4 of the SFE (Article 35(4)of the Order);
- payments under the doctor's retainer scheme, dispensing scheme and educational allowance payments as set out in Part 4 of the SFE (Article 35(5)of the Order);
- those premises and IT payments set out in Article 35(6) & (7) of the Order, as they cross-refer to Part 5 of the SFE and the Premises Costs Directions.