

2004 No. 116

NATIONAL HEALTH SERVICE

**The National Health Service (Primary Medical Services Section
17C Agreements) (Scotland) Regulations 2004**

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The Scottish Ministers, in exercise of the powers conferred by sections 9(6), 17D, 17E, 28(1), 105(7), 106(a) and 108(1) of the National Health Service (Scotland) Act 1978(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004 and shall come into force on 1st April 2004.

Interpretation

2. In these Regulations—

“the Act” means the National Health Service (Scotland) Act 1978;

“the 2004 Act” means the Primary Medical Services (Scotland) Act 2004(b);

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(c);

“additional services” means one or more of—

(a) 1978 c.29; section 17D was inserted by the National Health Service (Primary Care) Act 1997 (c.46) (“the 1997 Act”), section 21(2) and amended by the Primary Medical Services (Scotland) Act (asp 1) (“the 2004 Act”), section 2(3); section 17E was inserted by the 1997 Act, section 22(2) and amended by the Health Act 1999 (c.8), Schedule 4, paragraph 47 and the 2004 Act, section 2(4); section 28 was amended by the National Health Service (Amendment) Act 1986 (c.66), section 3(4) and the National Health Service and Community Care Act 1990 (c.19) Schedule 9, paragraph 19(8); section 105(7) was amended by the Health Services Act 1980 (c.53), Schedule 5, paragraph 5 and by the Health Services and Social Security Adjudications Act 1983 (c.41), Schedule 7, paragraph 24; section 108(1) defines “prescribed” and “regulations”. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 2004 asp 1.

(c) S.I. 2003/1250.

- (a) cervical screening services;
- (b) contraceptive services;
- (c) vaccinations and immunisations;
- (d) childhood vaccinations and immunisations;
- (e) child health surveillance services;
- (f) maternity medical services; and
- (g) minor surgery;

“adjudicator” means the Scottish Ministers or a panel of 3 persons appointed by the Scottish Ministers under paragraph 56 of Schedule 1;

“agreement” means, unless the context otherwise requires, an agreement pursuant to section 17C of the Act^(a) (personal medical or dental services) under which primary medical services are provided;

“appliance” means an appliance which is included in a list for the time being approved by the Scottish Ministers for the purposes of section 27(1)^(b) of the Act;

“approved medical practice” shall be construed in accordance with section 11(4) of the Medical Act 1983^(c);

“area medical committee” means the committee of that name recognised under section 9 of the Act (local consultative committees) in the area of the Health Board;

“area pharmaceutical committee” means the committee of that name recognised under section 9 of the Act (local consultative committees) in the area of the Health Board;

“assessment panel” means a committee or sub-committee of a Health Board (“the first Health Board”) (other than the Health Board (“the second Health Board”) which is a party to the agreement in question) appointed by the first Health Board at the request of the second Health Board to exercise functions under paragraph 23 or paragraph 27 of Schedule 2 and which shall consist of—

- (a) the Chief Executive of the first Health Board or an Executive Director of that Health Board nominated by that Chief Executive;
- (b) a person representative of patients in an area other than that of the second Health Board; and
- (c) a person representative of the area medical committee which does not represent practitioners in the area of the second Health Board;

“CCT” means a Certificate of Completion of Training awarded under article 8 of the 2003 Order, including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in article 20(3)(a) of that Order;

“cervical screening services” means the services described in paragraph 2(2) of Schedule 3;

“charity trustee” means one of the persons having the general control and management of the administration of a charity;

“child” means a person who has not attained the age of 16 years;

“child health surveillance services” means the services described in paragraph 6(2) of Schedule 3;

“childhood vaccinations and immunisations” means the services described in paragraph 5(2) of Schedule 3;

^(a) Section 17C was inserted by the National Health Service (Primary Care) Act 1997 (c.46), section 21(2) and was amended by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 2(2).

^(b) Section 27 was amended by the National Health Service and Community Care Act 1990 (c.19), Schedule 9, the Medicine Products: Prescription by Nurses etc. Act 1992 (c.28), section 3, the National Health Service (Primary Medical Services) Act 1997 (c.46), Schedule 2, paragraph 44, the Health and Social Care Act 2001 (c.15), section 44 and S.I. 2003/1590.

^(c) 1983 c.54; section 11(4) was amended by the National Health Service (Primary Care) Act 1997 (c.46), section 35(4) and Schedule 1, paragraph 61(2).

“closed”, in relation to a provider’s list of patients, means closed to applications for inclusion in the list of patients other than from immediate family members of registered patients;

“contraceptive services” means the services described in paragraph 3(2) of Schedule 3;

“core hours” means the period beginning at 8 a.m. and ending at 6.30 p.m. on any working day;

“dispensing services” means the provision of drugs, medicines and appliances;

“disqualified” means, unless the context otherwise requires, local or national disqualification by the Tribunal (or a decision under provisions in force in England, Wales or Northern Ireland corresponding to local or national disqualification), but does not include conditional disqualification;

“Drug Tariff” means the statement published under regulation 9 (payments to pharmacists and standards of drugs and appliances) of the Pharmaceutical Regulations;

“enhanced services” are–

- (a) services other than essential services, additional services or out of hours services; or
- (b) essential services or additional services or out of hours services or an element of such a service that a provider agrees in the agreement to provide in accordance with specifications set out in a plan, which requires of the provider an enhanced level of service provision compared to that which the provider needs generally to provide in relation to that service or element of service;

“essential services” means the services described in paragraph 1(2),(4), (5) and (7) of Schedule 2;

“general medical practitioner” means–

- (a) from the coming into force of article 10 of the 2003 Order, a medical practitioner whose name is included in the General Practitioner Register otherwise than by virtue of paragraph 1(d) of Schedule 6 to that Order; and
- (b) until the coming into force of that article, a medical practitioner who is either–
 - (i) until the coming into force of paragraph 22 of Schedule 8 to the 2003 Order, suitably experienced within the meaning of section 21(2) of the Act, section 31(2) of the National Health Service Act 1977(a) or Article 8(2) of the Health and Personal Social Services (Northern Ireland) Order 1978(b); or
 - (ii) upon the coming into force of paragraph 22 of Schedule 8 to the 2003 Order, an eligible general practitioner pursuant to that paragraph other than by virtue of having an acquired right under paragraph 1(d) of Schedule 6 to the 2003 Order;

“general medical services contract” means a general medical services contract under section 17J of the Act(c) (Health Boards power to enter into general medical services contracts);

“general medical services contractor” means a person who is providing primary medical services in accordance with a general medical services contract;

“General Practitioner Register” means the register kept by the General Medical Council under article 10 of the 2003 Order;

“GMS Contracts Regulations” means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(d);

“GP Registrar”–

- (a) until the coming into force of article 5 of the 2003 Order, means a medical practitioner who is being trained in general practice by a medical practitioner who–

(a) 1977 c.49.

(b) S.I. 1978/1907 (N.I. 26).

(c) Section 17J was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 4.

(d) S.S.I. 2004/115.

- (i) has been approved for that purpose by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998(a); and
 - (ii) performs primary medical services; and
- (b) from the coming into force of that article, means a medical practitioner who is being trained in general practice by a GP Trainer whether as part of training leading to the award of a CCT or otherwise;

“GP Trainer” means a general medical practitioner who is–

- (a) until the coming into force of article 4(5)(d) of the 2003 Order, approved as a GP Trainer by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998; or
- (b) from the coming into force of that article, approved by the Postgraduate Medical Education and Training Board under article 4(5)(d) of the 2003 Order for the purposes of providing training to a GP Registrar under article 5(1)(c)(i) of that Order;

“Health and Social Services Board” means a Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972(b);

“Health and Social Services trust” means a Health and Social Services trust established under Article 10(1) of the Health and Personal Social Services (Northern Ireland) Order 1991(c);

“Health Authority” means a Health Authority established under section 8 of the National Health Service Act 1977;

“Health Board” means, unless the context otherwise requires, the Health Board which is a party, or prospective party, to an agreement;

“health care professional” has the same meaning as in section 17D(2) of the Act(d) and

“health care profession” shall be construed accordingly;

“health service body” means any person or body referred to in section 17A(2)(e) of the Act (NHS contracts) and includes, except where otherwise expressly provided, any provider who is to be treated as a health service body in accordance with regulation 8;

“immediate family member” means–

- (a) a spouse;
- (b) a person (whether or not of the opposite sex) whose relationship with the registered patient has the characteristics of the relationship between husband and wife;
- (c) a parent or step-parent;
- (d) a son;
- (e) a daughter;
- (f) a child of whom the registered patient is–
 - (i) the guardian; or
 - (ii) the carer duly authorised by the local authority to whose care the child has been committed under the Children (Scotland) Act 1995(f); or
- (g) a grandparent;

“independent nurse prescriber” means a person–

(a) S.I. 1998/5 as amended by S.I. 1998/669 and S.S.I. 2000/23.
 (b) S.I. 1972/1265 (N.I. 14).
 (c) S.I. 1991/194 (N.I. 1).
 (d) Section 17D(2) was inserted by the National Health Service (Primary Care) Act 1997 (c.46), section 21(2) and was amended by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 23(d) and schedule, paragraph 1(3).
 (e) Section 17A(2) was inserted by the National Health Service and Community Care Act 1990 (c.19), section 30 and amended by the Health Authorities Act 1995 (c.17) Schedule 1, paragraph 102(2), the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2, paragraph 36, the Health Act 1999 (c.8), Schedule 4, paragraph 46 and S.I. 1991/195.
 (f) 1995 c.36 .

- (a) who is either engaged or employed by the provider, is a party to the agreement or is a partner in a partnership that is a party to the agreement;
- (b) who is registered in the Nursing and Midwifery Register; and
- (c) in respect of whom an annotation is also recorded in that register signifying that the person is qualified to order drugs, medicines and appliances from–
 - (i) the Nurse Prescribers’ Formulary for District Nurses and Health Visitors in Part 8B of the Drug Tariff; or
 - (ii) the Nurse Prescribers’ Extended Formulary in Part 8C of the Drug Tariff;

“licensing authority” shall be construed in accordance with section 6(3) of the Medicines Act 1968(a);

“licensing body” means any body that licenses or regulates any profession;

“limited partnership” means a partnership registered in accordance with section 5 of the Limited Partnerships Act 1907(b);

“list” has, unless the context otherwise requires, the meaning assigned to it in section 29(8) of the Act(c) and includes a list corresponding to such a list in England, Wales or Northern Ireland;

“Local Health Board” means a Local Health Board established under section 16BA of the National Health Service Act 1977(d) (local health boards);

“local or national disqualification” has the meaning indicated in section 29B(2) of the Act(e)

“maternity medical services” means the services described in paragraph 7 of Schedule 3;

“medical card” means a card issued by a Health Board, Primary Care trust, Local Health Board, Health Authority or Health and Social Services Board to a person for the purpose of enabling that person to obtain, or establishing that person’s title to receive, primary medical services;

“medical officer” means a medical practitioner who is–

- (a) employed or engaged by the Department for Work and Pensions; or
- (b) provided by an organisation in pursuance of a contract entered into with the Secretary of State for Work and Pensions;

“Medical Register” means the registers kept under section 2 of the Medical Act 1983(f);

“minor surgery” means the services described in paragraph 8(2) of Schedule 3;

“national disqualification” means–

- (a) a national disqualification by the Tribunal; or
- (b) a decision under provisions in force in England, Wales or Northern Ireland corresponding to a national disqualification by the Tribunal;

“NHS contract” means an agreement which is an NHS contract within the meaning of section 17A(3) of the Act as a result of the provider being treated as a health service body pursuant to regulation 8(1) or (5);

“NHS dispute resolution procedure” means the procedure for resolution of disputes specified in paragraphs 56 and 57 of Schedule 1;

(a) 1968 c.67.

(b) 1907 c.24.

(c) Section 29(8) was substituted by the Health Act 1999 (c.8), section 58(1) and amended by the Community Care and Health (Scotland) Act 2002 asp 5, Schedule 2, paragraph 2(4)(b) and the Primary Medical Services (Scotland) Act 2004 (asp 1), section 5(3).

(d) 1977 c.49. Section 16B was inserted by the National Health Service Reform and Health Care Professions Act 2002 (c.17), section 6.

(e) Section 29B(2) was inserted by the Health Act 1999 (c.8), section 58 and amended by the Community Care and Health (Scotland) Act 2002 (asp 5), schedule 2, paragraph 2 and the Primary Medical Services (Scotland) Act 2004 (asp 1), schedule, paragraph 1(13).

(f) 1983 c.54; section 2 was amended by S.I. 1996/1591 and 2002/3135.

“NHS foundation trust” has the same meaning as in section 1 of the Health and Social Care (Community Health and Standards) Act 2003(a);

“NHS trust” means a National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990(b);

“normal hours” means those days and hours on which and the times at which services under the agreement are normally made available and may be different for different services;

“Nursing and Midwifery Register” means the register maintained by the Nursing and Midwifery Council under the Nursing and Midwifery Order 2001(c);

“open” in relation to a provider’s list of patients, means open to applications from patients in accordance with paragraph 9 of Schedule 2;

“out of hours period” means–

- (a) the period beginning at 6.30 p.m. on any day from Monday to Thursday and ending 8 a.m. on the following day;
- (b) the period between 6.30 p.m. on Friday and 8 a.m. on the following Monday; and
- (c) Christmas Day, New Year’s Day and other public or local holiday,

and “part” of an out of hours period means any part of any one or more of the periods described in sub-paragraphs (a) to (c);

“out of hours services” means services agreed to be provided in all or part of the out of hours period which would be essential services or additional services if provided in core hours, and in the case of a provider who does not provide essential services or additional services in core hours, would be such services if the provider provided them;

“parent” includes, in relation to any child, any adult who, in the opinion of the provider, is for the time being discharging in respect of that child the obligations normally attaching to a parent in respect of a child;

“party to the agreement” means where a Health Board makes an agreement with–

- (a) one person, the provider; and
- (b) more than one person, one of those persons;

“patient” means–

- (a) where the provider has a provider’s list of patients–
 - (i) a registered patient;
 - (ii) a temporary resident; and
 - (iii) person to whom the provider is required to provide immediately necessary treatment under paragraph 1(5) or (7) of Schedule 2 respectively; and
- (b) in all cases any person (or, where the provider has a provider’s list of patients, any other person) to whom the provider has agreed to provide services under the agreement;

“Pharmaceutical Regulations” means the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995(d);

“pharmacist” means–

- (a) a registered pharmacist within the meaning of the Medicines Act 1968(e) who provides pharmaceutical services; or
- (b) a person lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968(f) who provides such services; or

(a) 2003 c.43.

(b) 1990 c.19.

(c) S.I. 2002/253.

(d) S.I. 1995/414 as amended by S.I. 1996/840 and 1504, 1997/696, 1998/2224 and 3031 and S.S.I. 1999/57, 2001/70, 2002/111 and 153, 2003/296.

(e) 1968 c.67.

(f) Section 67 was amended by the Statute Law (Repeals) Act 1993 (c.50) and the Pharmacists (Fitness to Practice) Act 1997 (c.19), Schedule 4, paragraph 5.

- (c) a supplier of appliances,
 who is included in the list of a Health Board under section 27 of the Act (arrangements for provision of pharmaceutical services);
- “the POM Order” means the Prescription Only Medicines (Human Use) Order 1997(a);
- “practice” means the business operated by the provider for the purpose of delivering services under the agreement;
- “practice area” means the area referred to in regulation 11(1)(a);
- “practice premises” means an address specified in the agreement as one at which services are to be provided under the agreement;
- “prescriber” means–
- (a) a medical practitioner;
 - (b) an independent nurse prescriber; and
 - (c) a supplementary prescriber,
- who is either engaged or employed by the provider or is a party to the agreement or is a partner in a partnership that is a party to the agreement;
- “prescription form” means a form provided by a Health Board and issued by a prescriber to enable a person to obtain pharmaceutical services;
- “prescription only medicine” means a medicine referred to in article 3 of the POM Order (medicinal products on prescription only);
- “Primary Care trust” means a Primary Care trust established under section 16A of the National Health Service Act 1977(b) (primary care trusts);
- “primary medical services performers list” means the list of primary medical services performers prepared in accordance with regulations made under section 17P of the Act(c) (persons performing primary medical services);
- “provider”, means, unless the context otherwise requires, where the Health Board makes an agreement with–
- (a) one person, that person; and
 - (b) more than one person, all those persons, but references to employment, engagement or sub-contracting by those persons shall be deemed to include employment, or engagement or sub-contracting by any one of them;
- “provider’s list of patients” means the list prepared and maintained by the Health Board under paragraph 8 of Schedule 2;
- “public or local holiday” means any public or local holiday which is agreed in writing between the Health Board and the provider and which shall, in aggregate, be no less than those available to NHS staff employed by the Health Board;
- “registered patient” means–
- (a) a person who is recorded by the Health Board as being on a provider’s list of patients; or
 - (b) a person whom a provider has accepted for inclusion on the provider’s list of patients, whether or not notification of that acceptance has been received by the Health Board and who has not been notified by the Health Board as having ceased to be on that list;
- “relevant register” means–
- (a) in relation to a nurse, the Nursing and Midwifery Register; and
 - (b) in relation to a pharmacist, the register maintained in pursuance of section 2(1) of the Pharmacy Act 1954(a) or the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976(b);

(a) S.I. 1997/1830 as amended by S.I. 1997/2044, 1998/168, 1170 and 2081, 1999/1044 and 3463, 2000/1919, 2889 and 3231, 2001/2779, 2889 and 3942, 2002/549 and 2469 and 2003/696.

(b) 1977 c.49. Section 16A was inserted by the Health Act 1999 (c.8), section 2(1).

(c) Section 17P was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 5(2).

“restricted availability appliance” means an appliance which is approved for particular categories of persons or particular purposes only;

“Scheduled Drug” means–

- (a) a drug, medicine or other substance specified in any directions given by the Scottish Ministers under section 17N(6) of the Act(e) as being a drug, medicine or other substance which may not be ordered for patients in the provision of primary medical services under a general medical services contract; or
- (b) a drug, medicine or other substance which is specified in any directions given by the Scottish Ministers under section 17N(6) of the Act as being a drug, medicine or other substance which can only be ordered for specified patients and specified purposes in the provision of primary medical services under a general medical services contract;

“supplementary prescriber” means a person–

- (a) who is either engaged or employed by the provider or is a party to the agreement or a partner in a partnership that is a party to the agreement; and
- (b) whose name is registered in–
 - (i) the Nursing and Midwifery Register;
 - (ii) the Register of Pharmaceutical Chemists maintained in pursuance of section 2(1) of the Pharmacy Act 1954; or
 - (iii) the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976, and

against whose name is recorded in the relevant register an annotation signifying that that person is qualified to order drugs medicines and appliances as a supplementary prescriber;

“temporary resident” means a person accepted by a provider as a temporary resident under paragraph 10 of Schedule 2 and for whom the provider’s responsibility has not been terminated in accordance with that paragraph;

“working day” means any day apart from Saturday, Sunday, Christmas Day, New Year’s Day and any other public or local holiday;

“writing” includes, unless otherwise expressly provided, transmission by electronic means and “written” should be construed accordingly.

(2) In these Regulations , the use of the term “it” in relation to–

- (a) a provider, shall be deemed to include a reference to a provider who is
 - (i) comprised of more than one party to the agreement; or
 - (ii) an individual; and
- (b) the adjudicator, shall be deemed to refer either to the Scottish Ministers or the panel of 3 persons appointed by them as the case may be,

and related expressions shall be construed accordingly.

(3) Any reference in these Regulations to a numbered regulation or Schedule or to a numbered paragraph of such a Schedule is, unless otherwise expressly provided, a reference to a regulation or Schedule bearing that number in these Regulations or, as the case may be, to a paragraph bearing that number in such a regulation or Schedule.

(a) 1954, c.61.

(b) S.I. 1976/1213.

(c) Section 17N was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 4.

PART 2

PROVIDERS

General conditions relating to providers

3.—(1) Subject to the provisions of any order made by the Scottish Ministers under section 7 (ancillary provision) of the 2004 Act a Health Board may only make an agreement with one or more of the persons falling within section 17D(1)(b), (d) or (e) of the Act^(a), where—

- (a) if a person is an individual, the individual;
- (b) if a person is a partnership, any member of the partnership and the partnership; and
- (c) if a person is a company limited by shares—
 - (i) the company;
 - (ii) any person legally and beneficially owning a share in the company; and
 - (iii) any director or secretary of the company,

satisfies the condition set out in paragraph (2).

(2) It is a condition that the person must not—

- (a) be the subject of a national disqualification;
- (b) subject to paragraph (3), be disqualified or suspended (otherwise than by an interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;
- (c) within the period of 5 years prior to the signing of the agreement or commencement of the agreement, whichever is the earlier, have been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless the person has subsequently been employed by that health service body or another health service body and paragraph (4) applies to that person, or that dismissal was the subject of a finding of unfair dismissal by any competently established tribunal or court;
- (d) within the period of 5 years prior to signing the agreement or commencement of the agreement, whichever is the earlier, have been disqualified from a list unless the person's name has subsequently been included in such a list;
- (e) have been convicted in the United Kingdom of murder;
- (f) have been convicted in the United Kingdom of a criminal offence, other than murder, and been sentenced to a term of imprisonment of over 6 months;
- (g) subject to paragraph (5), have been convicted elsewhere of an offence which would if committed in Scotland, constitute—
 - (i) murder; or
 - (ii) a criminal offence other than murder, and been sentenced to a term of imprisonment of over 6 months;
- (h) have been convicted of an offence referred to in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children under the age of 17 years to which special provisions apply)^(b) or Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons with respect to which special provisions apply)^(c);
- (i) have—

^(a) 1978, c.29. Section 17D(1) was inserted by the National Health Service (Primary Care) Act 1997 (c.46), section 21(2) and amended by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 2(3).

^(b) 1995 c.46.

^(c) 1933 c.12 as amended by the Sexual Offences Act 1956 (c.69), sections 48 and 51 and Schedules 3 and 4 and the Criminal Justice Act 1988 (c.33) ("the 1988 Act"), section 170, Schedule 15, paragraph 8 and Schedule 16, paragraph 16; and as modified by the 1988 Act, section 170(1) Schedule 15, paragraph 9.

- (i) had sequestration of the person's estate awarded or been adjudged bankrupt unless (in either case) the person has been discharged or the bankruptcy order has been annulled;
- (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986(a) unless that order has ceased to have effect or has been annulled; or
- (iii) made a composition or arrangement with, or granted a trust deed for, the person's creditors unless the person has been discharged in respect of it;
- (j) have an administrator, administrative receiver or receiver appointed in respect of the person;
- (k) have been–
 - (i) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(b) (powers of the Court of Session to deal with the management of charities), from being concerned in the management or control of any body; or
 - (ii) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which the person by that person's conduct contributed to or facilitated;
- (l) be subject to a disqualification order under the Company Directors Disqualification Act 1986(c), the Companies (Northern Ireland) Order 1986(d) or to an order made under section 429(2)(b) of the Insolvency Act 1986(e) (failure to pay under county court administration order); or
- (m) fall within regulation 5(2)(m) of the GMS Contracts Regulations.

(3) A person shall not fall within paragraph (2)(b) where the Health Board is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and it does not make the person unsuitable to be–

- (a) a party to the agreement;
- (b) in the case where the person is a partner in a partnership that is a proposed party to the agreement, a partner in that partnership;
- (c) in the case where the person is–
 - (i) a person legally and beneficially holding a share in a company limited by shares that is a proposed party to the agreement; or
 - (ii) a director or secretary of a company limited by shares that is a proposed party to the agreement,
a person legally and beneficially holding a share in that company, or a director or secretary of that company (as the case may be).

(4) Where a person has been employed as a member of a health care profession any subsequent employment must also be as a member of that profession.

(5) A person shall not fall within paragraph (2)(g) where the Health Board is satisfied that the conviction does not make the person unsuitable to be–

- (a) a party to the agreement;
- (b) in the case where the person is a partner in a partnership that is a proposed party to the agreement, a partner in that partnership;
- (c) in the case where the person is–

(a) 1986 c.45. Schedule 4A was inserted by section 257 of and Schedule 20 to the Enterprise Act 2002 (c.40).
 (b) 1990 c.40.
 (c) 1986 c.45.
 (d) S.I. 1986/1032 (N.I. 6).
 (e) 1986 c.46 as amended by the Insolvency Act 2000 (c.39).

- (i) a person legally and beneficially holding a share in a company limited by shares that is a proposed party to the agreement; or
- (ii) a director or secretary of a company limited by shares that is a proposed party to the agreement,

a person legally and beneficially holding a share in that company, or a director or secretary of that company (as the case may be).

(6) In this regulation, “health service body” does not include any provider who is to be treated as a health service body in accordance with regulation 8.

Reasons

4.—(1) Where a Health Board is of a view that a person does not satisfy the condition in regulation 3(2), it shall notify in writing the person intending to make an agreement of the Health Board’s view and its reasons for that view, and of that person’s right of appeal under regulation 5.

(2) The Health Board shall also notify in writing of its view and its reasons for that view—

- (a) any other persons intending to make the agreement;
- (b) any partner in a partnership that is notified under paragraph (1); and
- (c) any person legally and beneficially owning a share in, or a director or secretary of, a company that is notified under paragraph (1) where its reasons for that view relate to that person or persons.

Appeal

5. A person who has been served with a notice under regulation 4(1) may appeal to the Scottish Ministers against the decision of the Health Board by giving notice in writing to the Scottish Ministers within the period of 28 days beginning on the day that the Health Board served its notice.

Prescribed period under section 17D(3) of the Act

6. The period prescribed for the purposes of section 17D(3) of the Act (persons with whom agreements may be made)(a) is 6 months.

PART 3

PRE-AGREEMENT DISPUTE RESOLUTION

Pre-agreement dispute resolution

7.—(1) Except where the proposed provider is a health service body (in which case section 17A(5)(b) of the Act applies), if, in the course of negotiations intending to lead to any agreement, the proposed parties to that agreement are unable to agree on a particular term of the agreement, either the Health Board or the proposed provider may refer the terms of the proposed agreement to the Scottish Ministers to consider and determine the matter.

(2) Disputes as to the terms of any proposed agreement referred to the Scottish Ministers in accordance with paragraph (1) shall be determined in accordance with—

- (a) the NHS dispute resolution procedure, as if, in Schedule 1—
 - (i) in paragraph 56(3)(b) “agreement” read “terms of the proposed agreement”; and
 - (ii) paragraph 57(2) and (3) were omitted; and

(a) Section 17D(3) was inserted by the Primary Medical Services (Scotland) Act 2002 (asp 1), section 2(3)(e).

(b) 1978, c.29. Section 17A was inserted by the National Health Service and Community Care Act 1990 (c.19), section 30 and amended by the Health Authorities Act 1995 (c.17); Schedule 1, paragraph 102(2), the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2, paragraph 36, the Health Act 1999 (c.8), Schedule 4, paragraph 46 and S.I. 1991/195.

(b) paragraph (3) of this regulation.

(3) In a dispute referred to the Scottish Ministers under paragraph (1), the determination of the adjudicator—

- (a) may specify terms to be included in the proposed agreement;
- (b) may require the Health Board to proceed with the proposed agreement, but may not require the proposed provider to proceed with the proposed agreement; and
- (c) shall be binding on the proposed parties to the agreement.

(4) In this regulation “health service body” does not include any provider who is to be treated as a health service body in accordance with regulation 8.

PART 4

HEALTH SERVICE BODY STATUS

Health service body status

8.—(1) Where a proposed provider elects in a written notice served on the Health Board at any time prior to the agreement being entered into to be treated as a health service body for the purposes of section 17A of the Act (NHS contracts), the proposed provider shall be so treated from the date on which the agreement is made.

(2) If, pursuant to paragraph (1) or (5), a provider is to be treated as a health service body, it shall not be treated as a health service body to the extent that—

- (a) the nature of, or any rights or liabilities arising under, any other arrangement or proposed arrangement with a health service body entered into or to be entered into by a provider is affected; and
- (b) a matter referred to the Scottish Ministers for the purposes of section 17A(4) of the Act shall be determined under the provisions of section 17A.

(3) Where an agreement is made with a provider, and that provider is to be treated as a health service body in accordance with paragraph (1) or (5), the provider shall, subject to paragraph (4) continue to be treated as a health service body for the purposes of section 17A of the Act, for as long as that agreement continues irrespective of any change in—

- (a) where a partnership is a party to the agreement, the membership of the partnership; and
- (b) the parties to the agreement comprising the provider.

(4) A provider may at any time request in writing to be treated or cease to be treated as a health service body for the purposes of section 17A of the Act, and if the provider does so—

- (a) the procedure in paragraph 59(1) of Schedule 1 shall have effect; and
- (b) the Health Board shall agree to the variation.

(5) If the provider makes a request under paragraph (4), the provider shall

- (a) be treated; or
- (b) subject to paragraph (7) cease to be treated,

as a health service body for the purposes of section 17A of the Act from the date that variation is to take effect pursuant to paragraph 59(1) of Schedule 1.

(6) Subject to paragraph (7) a provider shall cease to be treated as a health service body for the purposes of section 17A of the Act if the agreement terminates.

(7) Where a provider ceases to be treated as a health service body pursuant to—

- (a) paragraph (5), the provider shall, if the provider or the Health Board has referred any matter to the Scottish Ministers for the purposes of section 17A(4) of the Act before the provider ceases to be a health service body, be bound by the determination of the adjudicator;

- (b) paragraph (6), the provider shall continue to be treated as a health service body for the purposes of the NHS dispute resolution procedure where that procedure has been commenced—
- (i) before the termination of the agreement; or
 - (ii) after the termination of the agreement, whether in connection with or arising out of the termination of the agreement or otherwise,
- for which purpose the provider shall cease to be treated as such a body on the conclusion of that procedure.

PART 5

PROVISION OF PRIMARY MEDICAL SERVICES

Provision of primary medical services

9.—(1) Whether or not the agreement includes arrangements for the provision of services which are not primary medical services, an agreement must include arrangements for the provision of one or more of the following primary medical services:—

- (a) essential services;
- (b) additional services;
- (c) enhanced services;
- (d) out of hours services, in respect of, subject to regulation 26 and paragraph 3 of Schedule 4, part or all of the out of hours period and some or all services.

Primary medical services and content of agreements

10.—(1) An agreement shall contain terms which have the same effect as those specified in Schedule 1 (content of agreements), unless it is of a type or nature to which a particular provision does not apply, except paragraphs 56(5) to (15), and 57.

(2) The paragraphs specified in paragraph (1) shall have effect in relation to matters set out in those paragraphs.

Essential services and content of agreements

11.—(1) An agreement which includes the provision of essential services shall specify—

- (a) the area as respects which persons resident in it will, subject to any other terms of the agreement relating to patient registration, be entitled to—
 - (i) register with the provider; or
 - (ii) seek acceptance by the provider as a temporary resident; and
- (b) whether, at the date on which the agreement comes into force, the provider's list of patients is open or closed.

(2) Where, in accordance with sub-paragraph (1), the agreement specifies that the provider's list of patients is closed it must also specify in relation to that closure each of the items listed in paragraph 22(8)(a) to (d) of Schedule 2 (agreements to provide essential services).

(3) An agreement which includes the provision of essential services shall, in addition to any other terms required by these Regulations, unless it is of a type or nature to which a particular provision does not apply contain terms with the same effect as those specified in Schedule 2, except paragraphs 23(6) to (8) and 28(3).

(4) The paragraphs specified in paragraph (3) shall have effect in relation to matters set out in those paragraphs.

(5) An agreement which does not include the provision of essential services shall not specify the matters referred to in paragraph (1) nor contain terms with the same effect as those specified in Schedule 2.

Additional services and content of agreements

12. An agreement which includes the provision of additional services must, in addition to any other terms required by these Regulation—

- (a) in relation to all such services included in the agreement, contain a provision which has the same effect as that specified in paragraph 1 of Schedule 3;
- (b) in relation to each such service included in the agreement, contain provisions which have the same effect as those specified in Schedule 3, which are relevant to that service.

Out of hours services and content of agreements

13. An agreement which includes the provision of out of hours services by virtue of this regulation or regulation 26 must, in addition to any other terms required by these Regulations, unless it is of a type or nature to which a particular provision does not apply, contain terms with the same effect as those specified in Schedule 4.

PART 6

CONTENT OF AGREEMENTS

Parties to the agreement

14. An agreement must specify—

- (a) the names of the parties;
- (b) where a party to the agreement is a partnership—
 - (i) whether or not that partnership is a limited partnership; and
 - (ii) the names of the partners and, in the case of a limited partnership, their status as general or limited partner; and
- (c) in the case of the Health Board and the provider and each party to the agreement comprising the provider, the address to which official correspondence and notices should be sent.

NHS contracts

15. If the provider is to be treated as a health service body the agreement must state that it is an NHS contract.

Agreements with one or more partnerships

16.—(1) Where a partnership is a party to the agreement, the agreement shall be treated as made with that partnership as it is from time to time constituted, and the agreement shall make specific provision to this effect.

(2) Where a partnership is a party to the agreement, the provider must be required by the terms of the agreement to ensure that any person who becomes a member of the partnership after the agreement has been made is bound automatically by the agreement, whether by virtue of the partnership deed or otherwise.

Arrangements on termination

17. An agreement shall make suitable provision for arrangements on termination of an agreement, including the consequences (whether financial or otherwise) of the agreement ending.

Services generally

18.—(1) An agreement must specify—

- (a) the services to be provided;
- (b) subject to paragraph (2), the address of each of the premises to be used by the provider or any sub-contractor for the provision of such services;
- (c) to whom such services are to be provided;
- (d) the period (if any) for which the services are to be provided; and
- (e) where the agreement does not include the provision of essential services, the area (if any) in which the provider agrees to attend on patients outside the practice premises.

(2) The premises referred to in paragraph (1)(b) do not include—

- (a) the homes of patients;
- (b) any other premises where services are provided on an emergency basis.

(3) Where on the date on which the agreement is to be made, the Health Board is not satisfied that all or any of the premises specified in accordance with sub-paragraph (1)(b) meet the requirements set out in paragraph 1 of Schedule 1, the agreement may not be made unless it includes a plan, drawn up jointly by the Health Board and the provider, which specifies—

- (a) the steps to be taken by the provider to bring the premises up to the relevant standard;
- (b) any financial support that may be made available from the Health Board; and
- (c) the timescale on which the steps referred to in sub-paragraph (a) will be taken.

Certificates

19.—(1) An agreement must contain a term which has the effect of requiring the provider to issue free of charge to a patient or a patient's personal representatives any medical certificate of a description prescribed in column 1 of Schedule 3 (list of prescribed medical certificates) to the GMS Contracts Regulations, which is reasonably required under or for the purposes of the enactments specified in relation to the certificate in column 2 of that Schedule, except where, for the condition to which the certificate relates, the patient—

- (a) is being attended by a medical practitioner who is not—
 - (i) employed or engaged by the provider;
 - (ii) a party to the agreement;
 - (iii) in the case where a partnership is a party to the agreement, a partner in such a partnership; or
 - (iv) in the case where a company limited by shares is a party to the agreement, a person legally or beneficially owning shares in such a company; or
- (b) is not being treated by or under the supervision of a health care professional.

(2) The exception in paragraph (1)(a) shall not apply where the certificate is issued pursuant to regulation 2(1)(b) of the Social Security (Medical Evidence) Regulations 1976^(a) (which provides for the issue of a certificate in the form of a special statement by a doctor on the basis of a written report made by another doctor).

^(a) S.I. 1976/615. Relevant amending instruments are S.I. 1982/699, 1992/647, 1994/2975, 1995/987 and 2000/950.

Finance

20.—(1) Subject to paragraph (2), the agreement must contain a term which has the effect of requiring the Health Board to make payments to the provider under the agreement promptly and in accordance with both the terms of the agreement and, as respects the provision or performance of primary medical services, any other conditions relating to the payment contained in directions by the Scottish Ministers under section 17E(3A) of the Act^(a).

(2) The obligation referred to in paragraph (1) is subject to any right the Health Board may have to set off, against any amount payable to the provider under the agreement, any amount—

- (a) that is owed by the provider to the Health Board under the agreement; or
- (b) that the Health Board may withhold from the provider in accordance with the terms of the agreement or any other applicable provisions contained in directions given by the Scottish Ministers under section 17E(3A) of the Act.

Finance

21. An agreement must contain a term to the effect that where, pursuant to directions of the Scottish Ministers under sections 2(5)^(b) or section 17E(3A) of the Act, a Health Board is required to make a payment to a provider under an agreement but subject to conditions, those conditions shall be a term of the agreement.

Fees and charges

22.—(1) An agreement must contain terms relating to fees and charges to the effect that, subject to provisions of paragraph 7 of Schedule 2, the provider shall not, directly or indirectly, demand or accept a fee or other remuneration from any patient of the provider for—

- (a) the provision of any treatment whether under the agreement or otherwise; or
- (b) any prescription for any drug, medicine or appliance,

except in the circumstances set out in sub-paragraphs (a) to (d) and (f) to (l) of Schedule 4 (Fees and Charges) to the GMS Contracts Regulations, subject to the modifications specified in paragraph (2).

(2) The modifications to referred to in paragraph (1) of sub-paragraphs (a) to (d) and (f) to (l) of Schedule 4 are—

- (a) for “contractor” read “provider” in each place where it occurs;
- (b) for “contract” read “agreement” in each place where it occurs; and
- (c) in sub-paragraph (k) for “paragraph 44 of Schedule 5” read “paragraph 15 of Schedule 1”.

PART 7

FUNCTIONS OF AREA MEDICAL COMMITTEE

Functions of area medical committee

23.—(1) The functions of an area medical committee which are prescribed for the purposes of section 9(6) of the Act (local consultative committees) are—

- (a) the functions which are conferred upon it by these Regulations or by any order made under section 7 of the 2004 Act;
- (b) the making of arrangements for the medical examination of a medical practitioner specified in paragraph (2), where the provider or the Health Board is concerned that the

^(a) 1978 c.29. Section 17E(3A) was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 2(4)(c).

^(b) Section 2(5) was amended by the National Health Service and Community Care Act 1990 (c.19), Schedule 9, paragraph 9(1).

medical practitioner is incapable of adequately providing services under the agreement and the provider so requests with the agreement of the medical practitioner concerned; and

- (c) the consideration of the report of any medical examination arranged in accordance with sub-paragraph (b) and the making of a written report as to the capability of the medical practitioner of adequately providing services under the agreement to the medical practitioner concerned, the provider and the Health Board with whom the provider has made the agreement.
- (2) The medical practitioner referred to in paragraph (1)(b) is a medical practitioner who is—
- (a) a party to the agreement;
 - (b) a partner in a partnership that is a party to the agreement;
 - (c) a legal and beneficial shareholder in a company that is a party to the agreement.

PART 8

RIGHT TO A GENERAL MEDICAL SERVICES CONTRACT

Right to a general medical services contract

24.—(1) A provider which is providing essential services under an agreement and which wishes a general medical services contract to be entered into pursuant to this regulation shall notify the Health Board in writing at least three months before the date on which it wishes the general medical services contract to be entered into.

(2) A notice under paragraph (1) shall—

- (a) state that the provider wishes to terminate the agreement and the date on which the provider wishes the agreement to terminate, which must be at least three months after the date of service of the notice;
- (b) subject to paragraph (3), give the name of the person with whom the provider wishes the Health Board to enter into a general medical services contract; and
- (c) confirm that the person so named meet the conditions set out in section 17L of the Act (eligibility to be contractor under general medical services contract)(a) and regulations 4 (conditions relating solely to medical practitioners) and 5 (general conditions relating to all contracts) of the GMS Contracts Regulations or, where the provider is not able so to confirm, the reason why it is not able to do so and confirmation that the person immediately prior to entering into the general medical services contract will meet those conditions.

(3) A person's name may only be given in a notice referred to in paragraph (1) if that person is a party to the agreement.

(4) The Health Board shall acknowledge receipt of the notice served under paragraph (1) within the period of 7 days beginning on the day that it received the notice.

(5) Provided that the conditions set out in section 17L of the Act and regulations 4 and 5 of the GMS Contracts Regulations are met, the Health Board shall enter into a general medical services contract with the person named in the notice served under paragraph (1).

(6) In addition to the terms required by the Act and the GMS Contracts Regulations, a general medical services contract entered into pursuant to this regulation shall provide for—

- (a) the general medical services contract to commence immediately after the termination of the agreement;
- (b) the names of the patients included in the provider's list of patients immediately before the termination of the agreement to be included in the first list of patients to be

(a) Section 17L was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 4.

prepared and maintained by the Health Board pursuant to paragraph 14 of Schedule 5 to the GMS Contracts Regulations; and

- (c) the same services to be provided under the general medical services contract as were provided under the agreement immediately before it was terminated unless the parties otherwise agree.

(7) An agreement shall terminate on the date stated in the notice given by the provider under paragraph (1) unless a different date is agreed by the provider and the Health Board or no general medical services contract is entered into by the Health Board pursuant to this regulation.

(8) Where the Health Board is of the view that the conditions in section 17L of the Act or regulation 4 or 5 of the GMS Contracts Regulations are not met it shall notify in writing the provider of its view and its reasons for that view and of the provider's right of appeal under subparagraph (9).

(9) The provider may appeal to the Scottish Ministers against the decision of the Health Board by giving notice in writing to the Scottish Ministers within the period of 28 days beginning on the day that the Health Board served its notice.

(10) Any other dispute relating to this regulation may be referred by the prospective party to the general medical services contract or the Health Board to the Scottish Ministers to consider and determine the matter in accordance with regulation 9(2) and (3) of the GMS Contracts Regulations.

PART 9

TRANSITIONAL PROVISIONS

Commencement

25. An agreement shall provide for services to be provided under it from any date on or after 1st April 2004.

Out of hours services

26. Subject to paragraph 1 of Schedule 4, where a party to the agreement to provide essential services is a person who, on 31st March 2004, was providing personal medical services under section 17C of the Act, the agreement under which services are to be provided before 1st January 2005 (whether or not such services will be provided after that date) must provide for services which would be essential services, if provided in core hours, to be provided throughout the out of hours period unless—

- (a) the Health Board has accepted in writing, prior to the signing of the agreement, a written request from the provider that the agreement should not require the provider to make such provision; or
- (b) the agreement has been otherwise varied to exclude a requirement to make such provision.

Revocation

27. Subject to the provisions of any order made by the Scottish Ministers section 7 of the 2004 Act (ancillary provisions), the National Health Service (Personal Medical Services) (Scotland) Regulations 2001(a) are hereby revoked.

St Andrew's House,
Edinburgh
10th March 2004

MALCOLM CHISHOLM
A member of the Scottish Executive

(a) S.S.I. 2001/72.

CONTENT OF AGREEMENTS

PART 1

PROVISION OF SERVICES

Premises

1. Subject to any plan which is included in the agreement pursuant to regulation 18(3), the provider shall ensure that the premises used for the provision of services under the agreement are—

- (a) suitable for the delivery of those services; and
- (b) sufficient to meet the reasonable needs of the provider's patients.

Attendance outside practice premises

2.—(1) In the case of a patient whose medical condition is such that in the reasonable opinion of the provider—

- (a) attendance on the patient is required; and
- (b) it would be inappropriate for the patient to attend at the practice premises,

the provider shall provide services to that patient at whichever in the provider's judgement is the most appropriate of the places set out in sub-paragraph (2).

(2) The places referred to in sub-paragraph (1) are—

- (a) the place recorded in the patient's medical records as being the patient's last home address or (where the patient's medical record is not immediately available) the place confirmed by the patient as being the patient's home address;
- (b) such other place as the provider has informed the patient and the Health Board is the place where the provider has agreed to visit and treat the patient;
- (c) where the provider has a list of patients, some other place in the provider's practice area; or
- (d) where the provider has no list of patients, some other place within the area specified in the agreement pursuant to regulation 18(1)(e).

(3) Nothing in this paragraph prevents the provider from—

- (a) arranging for the referral of the patient without first seeing the patient, in a case where the medical condition of that patient makes that course of action appropriate; or
- (b) visiting the patient in circumstances where this paragraph does not place the provider under an obligation to do so.

Clinical reports

3.—(1) Where the provider provides any clinical services other than under a private arrangement, to a patient and either—

- (a) the provider has no list of patients; or
- (b) the patient is not on the provider's list of patients,

the provider shall, as soon as reasonably practicable, provide a clinical report relating to the consultation and any treatment provided, to the Health Board.

- (2) The Health Board shall send any report received under sub-paragraph (1)–
- (a) to the person with whom the patient is registered for the provision of essential services (or their equivalent); or
 - (b) if the person referred to in paragraph (a) is not known to it, to the Health Board in whose area the patient is resident.

Storage of vaccines

4. The provider shall ensure that–
- (a) all vaccines are stored in accordance with the manufacturer’s instructions; and
 - (b) all refrigerators in which vaccines are stored have a maximum/minimum thermometer and that readings are taken on all working days.

Infection control

5. The provider shall ensure that the provider has effective arrangements for infection control and decontamination.

Duty of co-operation in relation to primary medical services

- 6.—(1) A provider which does not provide to its patients–
- (a) essential services;
 - (b) a particular additional service;
 - (c) a particular enhanced service; or
 - (d) out of hours services, either at all or in respect of some periods or services,

shall comply with the requirements specified in paragraph (2).

- (2) The requirements referred to in paragraph (1) are that the provider shall–
- (a) co-operate, insofar as is reasonable, with any person responsible for the provision of that service or those services;
 - (b) comply in core hours with any reasonable request for information from such a person or from the Health Board relating to the provision of that service or those services; and
 - (c) in the case of out of hours services, take reasonable steps to ensure that any patient who contacts the practice premises during the out of hours period is provided with information about how to obtain services during that period.

(3) Nothing in this paragraph shall require a provider, whose agreement does not include the provision of out of hours services, to make itself available during the out of hours period.

Duty of co-operation in relation to primary medical services

- 7.—(1) Where a provider will cease to be required to provide to its patients–
- (a) essential services;
 - (b) a particular additional service;
 - (c) a particular enhanced service; or
 - (d) out of hours services, either at all or in respect of some periods of services,

the provider shall comply with any reasonable request for information relating to the provision of that service or those services made by the Health Board or by any person with whom the Board intends to make arrangements for the provision of such services.

PART 2 PATIENTS

Patient preference of practitioner

- 8.—(1) Where the provider has accepted a person as a patient the provider shall—
- (a) subject to sub-paragraph (3), notify the patient of the patient’s rights to express a preference to receive services from a particular performer or class of performer either generally or in relation to any particular condition; and
 - (b) record in writing any such preference expressed by or on behalf of the patient.
- (2) The provider shall endeavour to comply with any preference expressed under sub-paragraph (1) but need not do so if the preferred performer—
- (a) has reasonable grounds for refusing to provide services to the patient; or
 - (b) does not routinely perform the service in question within the practice.
- (3) Where the patient is—
- (a) a child, the provider may notify—
 - (i) a parent, guardian, or other adult person who has care of the care of the child;
 - (ii) a person duly authorised by a local authority, where the child is in the care of the local authority under the Children (Scotland) Act 1995(a); or
 - (iii) a person duly authorised by a voluntary organisation, by which the child is being accommodated under the provisions of that Act;
 - (b) an adult person who is incapable of expressing such a preference or authorising such a preference to be made on their behalf, the provider may notify the primary carer of that person or by the person authorised under the Adults with Incapacity (Scotland) Act 2000(b) to act on the patients behalf,

of the right to express a preference for the patient to receive services from a particular performer or class of performer either generally or in relation to any particular condition.

Termination of responsibility for patients not registered with the provider

- 9.—(1) Where the provider—
- (a) has no provider’s list of patients but is required in terms of the agreement to accept a person as a patient for the provision of an additional service, an enhanced service or out of hours services; or
 - (b) has a provider’s list of patients and has received an application for the provision of clinical services other than essential services—
 - (i) from a person who is not included in the provider’s list of patients;
 - (ii) from a person whom the provider has not accepted as a temporary resident; or
 - (iii) on behalf of a person mentioned in (i) or (ii) above, from one of the persons specified in paragraph 9(4) of Schedule 2;

and has accepted that person as a patient for the provision of the service in question, the provider’s responsibility for that patient may be terminated in one of the circumstances referred to in sub-paragraph (2).

(a) 1995, c.36.
(b) 2000 asp 4.

- (2) The circumstances referred to in sub-paragraph (1) are–
- (a) the patient informs the provider that the patient no longer wishes the provider to be responsible for the provision of the service in question;
 - (b) in cases where the provider has reasonable grounds for terminating the provider’s responsibility which do not relate to the person’s race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition, the provider informs the patient that the provider no longer wishes to be responsible for providing the patient with the service in question;
 - (c) the patient has committed an act of violence against–
 - (i) an individual that is a party to the agreement;
 - (ii) a partner in a partnership that is a party to the agreement;
 - (iii) a legal and beneficial owner of shares in a company that is a party to the agreement;
 - (iv) a member of the provider’s staff;
 - (v) a person engaged by the provider to perform or assist in the performance of services under the agreement; or
 - (vi) any other person present–
 - (aa) on the practice premises; or
 - (bb) in the place where services were provided to the patient under the agreement, or behaved in such a way that any such person has feared for that person’s own safety and, in either case, the provider has reported that incident to the police or the Procurator Fiscal;
 - (d) it comes to the notice of the provider that the patient–
 - (i) no longer resides in the area for which the provider has agreed to provide the service; or
 - (ii) is no longer a person to which the provider has agreed to provide the service.
- (3) A provider who wishes to terminate its responsibility for a patient under sub-paragraph (2)(b) or (c) shall notify the patient of the termination and the reason for it.
- (4) The provider shall keep a written record of terminations under this paragraph and of the reason for them and shall make this record available to the Health Board on request.
- (5) A termination under–
- (a) sub-paragraph (2)(b) shall take effect 14 days from the date on which notice is given; and
 - (b) sub-paragraph (2)(c) shall take effect from the date on which notice is given.

PART 3

PRESCRIBING AND DISPENSING

Prescribing

10. The provider shall ensure that any prescription form for drugs, medicines or appliances issued by a prescriber complies as appropriate with the requirements in paragraphs 11 to 13.

Prescribing

11.—(1) Subject to paragraphs 13 and 14, a prescriber shall order any drugs, medicines or appliances which are needed for the treatment of any patient who is receiving treatment under the agreement by issuing to that patient a prescription form and such a prescription form shall not be used in any other circumstances.

(2) In issuing any such prescription form, the prescriber shall sign the prescription form in ink with the prescriber's initials, or forenames, and surname in the prescriber's own handwriting and not by means of a stamp and shall so sign only after particulars of the order have been inserted in the prescription form, and—

- (a) the prescription form shall not refer to any previous prescription form; and
- (b) a separate prescription form shall be used for each patient.

(3) In a case of urgency a prescriber may request a pharmacist to dispense a drug or medicine before a prescription form is issued, only if—

- (a) that drug or medicine is not a Scheduled drug;
- (b) that drug is not a controlled drug within the meaning of the Misuse of Drugs Act 1971(a), other than a drug which is for the time being specified in Schedules 4 or 5 to the Misuse of Drugs Regulations 2001(b); and
- (c) the prescriber undertakes to furnish the pharmacist, within 72 hours, with a prescription form or repeatable prescription completed in accordance with sub-paragraph (2).

(4) In a case of urgency a prescriber may request a pharmacist to dispense an appliance before a prescription form is issued only if—

- (a) that appliance does not contain a Scheduled drug or a controlled drug within the meaning of the Misuse of Drugs Act 1971, other than a drug which is for the time being specified in Schedule 5 to the Misuse of Drugs Regulations 2001;
- (b) in the case of a restricted availability appliance, the patient is a person, or it is for a purpose, specified in the Drug Tariff; and
- (c) the prescriber undertakes to furnish the pharmacist, within 72 hours, with a prescription form completed in accordance with sub-paragraph (2).

Restrictions on prescribing by medical practitioners

12.—(1) In the course of treating a patient to whom a medical practitioner is providing treatment under the agreement, the medical practitioner shall not order on a prescription form a drug, medicine or other substance specified in any directions given by the Scottish Ministers under section 17N(6) of the Act(c) as being drugs, medicines or other substances which may not be ordered for patients in the provision of primary medical services under a general medical services contract but may, subject to regulation 22, prescribe such a drug, medicine or other substance for that patient in the course of that treatment under a private arrangement.

(2) In the course of treating a patient to whom a medical practitioner is providing treatment under the agreement, the medical practitioner shall not order on a prescription form or repeatable prescription a drug, medicine or other substance specified in any directions given by the Scottish Ministers under section 17N(6) of the Act as being a drug, medicine or other substance which may only be ordered for specified patients and specified purposes in the provision of primary medical services under a general medical services contract unless:

- (a) that patient is a person of the specified description;
- (b) that drug, medicine or other substance is prescribed for that patient only for the specified purpose; and
- (c) the practitioner endorses the form with the reference “SLS”,

but may, subject to regulation 22, prescribe such a drug, medicine or other substance for that patient in the course of that treatment under a private arrangement.

(3) In the course of treating a patient to whom a medical practitioner is providing treatment under the agreement, the medical practitioner shall not order on a prescription form a restricted availability appliance unless—

(a) 1971 c.38.

(b) S.I. 2001/3998. Schedule 4 was amended by S.I. 2003/1432.

(c) Section 17N was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 4.

- (a) the patient is a person, or it is for a purpose, specified in the Drug Tariff; and
 - (b) the practitioner endorses the face of the form with the reference “SLS”,
- but may, subject to regulation 22, prescribe such an appliance for that patient in the course of that treatment under a private arrangement.

Restrictions on prescribing by supplementary prescribers

13.—(1) The provider shall have arrangements in place to secure that a supplementary prescriber will—

- (a) give a prescription for a prescription only medicine;
- (b) administer a prescription only medicine for parental administration; or
- (c) give directions for the administration of a prescription only medicine for parental administration,

as a supplementary prescriber under the conditions set out in sub-paragraph (2).

(2) The conditions referred to in sub-paragraph (1) are that—

- (a) the supplementary prescriber satisfies the applicable conditions set out in article 3B(3) of the POM Order (prescribing and administration by supplementary prescribers)(a), unless those conditions do not apply by virtue of any of the exemptions set out in the subsequent provisions of that Order;
- (b) the medicine is not a controlled drug within the meaning of the Misuse of Drugs Act 1971;
- (c) the drug, medicine or other substance is not specified in any directions given by the Scottish Ministers under section 17N(6) of the Act as being a drug, medicine or other substance which may not be ordered for patients in the provision of primary medical services under a general medical services contract;
- (d) the drug, medicine or other substance is not specified in any directions given by the Scottish Ministers under section 17N(6) of the Act as being a drug, medicine or other substance which can only be ordered for specified patients and specified purposes in the provision of primary medical services under a general medical services contract unless—
 - (i) the patient is a person of the specified description;
 - (ii) the medicine is prescribed for that patient only for the specified purposes; and
 - (iii) if the supplementary prescriber is giving a prescription, the supplementary prescriber endorses the face of the form with the reference “SLS”.

(3) Where the functions of a supplementary prescriber include prescribing, the provider shall have arrangements in place to secure that that person will only give a prescription for—

- (a) an appliance; or
- (b) a medicine which is not a prescription only medicine,

as a supplementary prescriber under the conditions set out in sub-paragraph (4).

(4) The conditions referred to in sub-paragraph (3) are that—

- (a) the supplementary prescriber acts in accordance with a clinical management plan which is in effect at the time the supplementary prescriber acts and which contains the following particulars:—
 - (i) the name of the patient to whom the plan relates;
 - (ii) the illness or conditions which may be treated by the supplementary prescriber;
 - (iii) the date on which the plan is to take effect, and when it is to be reviewed by the medical practitioner or dentist who is a party to the plan;

(a) Article 3B was inserted into the POM Order by S.I. 2003/696.

- (iv) reference to the class or description of medicines or types of appliances which may be prescribed or administered under the plan;
- (v) any restrictions or limitations as to the strength or dose of any medicine which may be prescribed or administered under the plan, and any period of administration or use of any medicine or appliance which may be prescribed or administered under the plan;
- (vi) relevant warnings about known sensitivities of the patient to, or known difficulties of the patient with, particular medicines or appliances;
- (vii) the arrangements for notification of–
 - (aa) suspected or known adverse reactions to any medicine which may be prescribed or administered under the plan, and suspected or known adverse reactions to any other medicine taken at the same time as any medicine prescribed or administered under the plan; and
 - (bb) incidents occurring with the appliance which might lead, might have led or has led to the death or serious deterioration of state of health of the patient; and
- (viii) the circumstances in which the supplementary prescriber should refer to, or seek the advice of, the medical practitioner or dentist who is a party to the plan;
- (b) the supplementary prescriber has access to the health records of the patient to whom the plan relates which are used by any medical practitioner or dentist who is a party to the plan;
- (c) if it is a prescription for a medicine, the medicine is not a controlled drug within the meaning of the Misuse of Drugs Act 1971;
- (d) if it is a prescription for a drug, medicine or other substance, that drug, medicine or other substance is not specified in any directions given by the Scottish Ministers under section 17N(6) of the Act as being a drug, medicine or other substance which may not be ordered for patients in the provision of primary medical services under a general medical services contract;
- (e) if it is a prescription for a drug, medicine or other substance, that drug, medicine or other substance is not specified in any directions given by the Scottish Ministers under section 17N(6) of the Act as being a drug, medicine or other substance which can only be ordered for specified patients and specified purposes in the provision of primary medical services under a general medical services contract unless–
 - (i) the patient is a person of the specified description;
 - (ii) the medicine is prescribed for that patient only for the specified purposes; and
 - (iii) when giving the prescription, the supplementary prescriber endorses the face of the form with the reference SLS;
- (f) if it is a prescription for a medicine–
 - (i) the medicine is the subject of a product licence, a marketing authorisation or a homeopathic certificate of registration granted by the licensing authority or the European Commission; or
 - (ii) subject to paragraph (6), the use of the medicine is for the purposes of a clinical trial and–
 - (aa) that trial is the subject of a clinical trial certificate issued in accordance with the Medicines Act 1968(a); or
 - (bb) a clinical trial certificate is not needed in respect of that trial by virtue of any exemption conferred by or under that Act;
- (g) if it is a prescription for an appliance, the appliance is listed in Parts 2 to 6 or 8 to 10 of the Drug Tariff; and
- (h) if it is a prescription for a restricted availability appliance–

(a) 1968 c.67.

- (i) the patient is a person of a description mentioned in the entry in Part 3 of the Drug Tariff in respect of that appliance;
- (ii) the appliance is prescribed only for the purposes specified in respect of that person in that entry; and
- (iii) when giving the prescription, the supplementary prescriber endorses the face of the form with the reference “SLS”.

(5) In sub-paragraph (4)(a), “clinical management plan” means a plan (which may be amended from time to time) relating to the treatment of an individual patient agreed by—

- (a) the patient to whom the plan relates;
- (b) the medical practitioner or dentist who is a party to the plan; and
- (c) any supplementary prescriber who is to prescribe, give directions for administration or administer under the plan.

(6) In relation to any time from the coming into force of any regulations made by the Secretary of State under section 2(2) of the European Communities Act 1972 (general implementation of treaties)(a) to implement Directive 2001/83/EC on the Community code relating to medicinal products for human use(b), sub-paragraph (4)(f)(ii) shall be read as if it referred to a clinical trial which has been authorised, or is treated as having been authorised by the licensing authority for the purposes of those regulations.

Excessive prescribing

14.—(1) The provider shall not prescribe drugs, medicines or appliances whose cost or quantity, in relation to any patient, is, by reason of the character of the drug, medicine or appliance in question in excess of that which was reasonably necessary for the proper treatment of that patient.

(2) In considering whether a provider has breached its obligations under sub-paragraph (1), the Health Board shall seek the views of the area medical committee for its area.

Provision of dispensing services

15.—(1) A provider may secure the provision of dispensing services to its patients under the agreement only if it is authorised or required to do so by the Health Board in accordance with the following provisions of this paragraph.

(2) Where the Health Board is satisfied, after consultation with the area pharmaceutical committee that a person, by reason of—

- (a) distance;
- (b) inadequacy of means of communication; or
- (c) other exceptional circumstances,

will have serious difficulty in obtaining from a pharmacist any drugs, medicines or appliances, other than Scheduled drugs, required for that person’s treatment, the Health Board shall require or authorise the provider with whom the person is a registered patient to supply such drugs, medicines and appliances to that person until further notice.

(3) Notwithstanding anything in sub-paragraph (2)—

- (a) a provider shall not be required to undertake the supply of drugs, medicines and appliances under sub-paragraph (2) if the provider satisfies the Health Board that the provider is not in the habit of dispensing drugs, medicines and appliances for the provider’s patients;
- (b) a provider shall be entitled to receive reasonable notice from the Health Board that the provider is required to undertake the supply of drugs, medicines and appliances under sub-paragraph (2) or that such supply is to be discontinued.

(a) 1972 c.68.

(b) O.J. L 311, 28.11.2001, p.67.

(4) Subject to sub-paragraph (6), a provider, who is required by the Health Board to supply drugs, medicines and appliances under sub-paragraph (2) to a patient, in the course of treating that patient under these Regulations–

- (a) shall, subject to sub-paragraph (7), record on a prescription form completed in accordance with paragraph 11, an order for supply of any drugs, medicines or appliances which are needed for the treatment of that patient, but shall not be required to issue that form to that patient;
- (b) shall supply those drugs, medicines or appliances for that patient under sub-paragraph (2) but–
 - (i) shall not supply under sub-paragraph (2) for that patient any Scheduled drug specified as being a drug, medicine or other substance which may not be ordered for patients in the provision of primary medical services under a general medical services contract, except that, where the provider has ordered a drug which has an appropriate non-proprietary name either by that name or by its formula, the provider may supply a drug which has the same specification notwithstanding that it is such a Scheduled drug (but, in the case of a drug which combines more than one drug, only if the combination has an appropriate non-proprietary name);
 - (ii) shall supply under sub-paragraph (2) for that patient any Scheduled drug specified as being a drug, medicine or other substance which may only be ordered for specific patients and purposes in the provision of primary medical services under a general medical services contract, only where–
 - (aa) that patient is a person of the specified description; and
 - (bb) that drug, medicine or other substance is supplied to that patient only for the specified purpose;
 - (iii) shall supply under sub-paragraph (2) for that patient a restricted availability appliance only if it is for a patient in a category of person or a purpose specified in the Drug Tariff;
- (c) may supply for that patient with the provider’s consent, in respect of that treatment but otherwise than under sub-paragraph (2), any Scheduled drug.

(5) A provider shall comply with any arrangements made by the Scottish Ministers, or made by the Health Board after consultation with the area medical committee and the area pharmaceutical committee and approved by the Scottish Ministers, under which the provider may obtain and have available any drugs, medicines or appliances which the provider is required or entitled to supply in terms of this paragraph.

(6) Sub-paragraph (4) does not apply to drugs, medicines or appliances ordered on a prescription form by a supplementary prescriber or an independent nurse prescriber.

(7) Where a patient presents an order on a prescription form for listed drugs or medicines, or appliances, signed by a supplementary prescriber or an independent nurse prescriber, to a provider who is required under sub-paragraph (2) to provide drugs or appliances to that patient, the provider may provide to the patient such drugs, medicines or appliances so ordered as the provider supplies in the normal course of the provider’s practice.

(8) A drug supplied by a provider unless administered in person shall be supplied in a suitable container.

(9) Before supplying the drugs, medicines or appliances recorded on a prescription form in accordance with sub-paragraph (4) or providing the drugs or medicines or appliances ordered on a prescription form signed by a supplementary prescriber or an independent nurse prescriber in accordance with sub paragraph (7) a provider who is required by the Health Board under sub-paragraph (2) to provide drugs, medicines or appliances to a patient shall request any person who makes a declaration on the prescription form claiming either charge exemption under regulation 7 of the National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2001(a) (“the 2001 Regulations”) or charge remission under the National Health

(a) S.S.I. 2001/430, as amended by S.S.I. 2002/100 and 2003/130 and 295.

Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Regulations 2003(a) to provide evidence of the patient's entitlement to such exemption or remission.

(10) Sub-paragraph (9) shall not apply in respect of claims for exemption under regulation 7(1)(a) to (f) of the 2001 Regulations where the dispensing provider has information in the provider's possession at the time of supplying the item which confirms that the patient is entitled to the exemption claimed.

(11) Where the person presenting the prescription form does not show valid evidence of entitlement and the dispensing provider, in respect of a claim for exemption made under regulation 7(1)(a) to (f) of the 2001 Regulations does not have evidence in the contractor's possession to confirm that the patient is entitled to make that claim, the dispensing provider shall mark the patient's prescription form accordingly before supplying the prescribed item.

(12) The provisions of regulation 22 apply in respect of the provision of any drugs, medicines or appliances by a provider providing dispensing services as they apply in respect of prescriptions for drugs, medicines or appliances.

(13) Nothing in this paragraph shall prevent a provider providing a Scheduled drug or a restricted availability appliance in the course of treating a patient under a private arrangement.

Provision of drugs, medicines and appliances for immediate treatment or personal administration

16.—(1) Subject to sub-paragraph (2), a provider—

- (a) shall provide to a patient any drug, medicine or appliance, not being a Scheduled drug, where such provision is needed for the immediate treatment of that patient before a provision can otherwise be obtained; and
- (b) may provide to a patient any drug, medicine or appliance, not being a Scheduled drug, which the provider personally administers or applies to that patient,

but shall, in either case, provide a restricted availability appliance only if it is for a person or a purpose specified in the Drug Tariff.

(2) Nothing in sub-paragraph (1) authorises a person to supply any drug or medicine to a patient otherwise than in accordance with Part 3 of the Medicines Act 1968(b) or any regulations or orders made thereunder.

PART 4

PERSONS WHO PERFORM SERVICES

Qualifications of performers

17.—(1) Subject to sub-paragraph (2), no medical practitioner shall perform medical services under the agreement unless the practitioner is—

- (a) included in the primary medical services performers list for the Health Board which is under a duty to provide or secure the provision of the service to be performed;
- (b) not suspended from that list or from the Medical Register; and
- (c) not subject to interim suspension under section 41A of the Medical Act 1983 (interim orders)(c).

(2) Sub-paragraph (1) shall not apply in the case of—

- (a) a medical practitioner employed in Scotland by a Health Board, in England and Wales by a NHS trust, a NHS foundation trust, or in Northern Ireland by a Health and Social

(a) S.S.I. 2003/460.

(b) 1968 c.67.

(c) 1983 c.54. Section 41A was inserted by S.I. 2000/1803.

Services trust who is providing services other than primary medical services at the practice premises;

- (b) a person who is provisionally registered under section 15 (provisional registration), 15A (provisional registration for EEA nationals) or 21 (provisional registration) of the Medical Act 1983(a) acting in the course of the person's employment in a resident medical capacity in an approved medical practice; or
- (c) a GP Registrar during the first two months of the GP Registrar's training period.

Qualifications of performers

18. No health care professional other than one to whom paragraph 17 applies shall perform clinical services under the agreement unless the health care professional is appropriately registered with the health care professional's relevant professional body and the health care professional's registration is not currently suspended.

Qualifications of performers

19. Where the registration of a health care professional or, in the case of a medical practitioner, the practitioner's inclusion in a list, is subject to conditions, the provider shall ensure compliance with those conditions insofar as they are relevant to the agreement.

Qualifications of performers

20. No health care professional shall perform any clinical services unless the health care professional has such clinical experience and training as are necessary to enable the health care professional properly to perform such services.

Conditions for employment and engagement

21.—(1) Subject to sub-paragraphs (2) and (3), a provider shall not employ or engage a medical practitioner (other than one falling within paragraph 17(2)) unless—

- (a) that practitioner has provided the provider with the name and address of the Health Boards on whose primary medical services performers lists the practitioner appears; and
- (b) the provider has checked that the practitioner meets the requirements in paragraph 17.

(2) Where the employment or engagement of a medical practitioner is urgently needed and it is not possible for the provider to check the matters referred to in paragraph 17 in accordance with sub-paragraph (1)(b) before employing or engaging the practitioner, the practitioner may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

(3) Where the prospective employee is a GP Registrar, the requirements set out in sub-paragraph (1) shall apply with the modifications that—

- (a) the name and address provided under sub-paragraph (1) may be the name and address of the Health Boards on whose primary medical services performers lists the GP Registrar has applied for inclusion; and
- (b) confirmation that the GP Registrar's name appears on those lists shall not be required until the end of the first two months of the GP Registrar's training period.

Conditions for employment and engagement

22.—(1) A provider shall not employ or engage—

(a) 1983 c.54. Section 15 was amended by the National Health Service (Primary Care) Act 1997 (c.46) ("the 1997 Act"), Schedule 1, Part 1, paragraph 61(9); section 15A was inserted by S.I. 2000/3041; section 21 was amended by the 1997 Act, Schedule 1, Part 1, paragraph 61(5) and by S.I. 1996/1591 and 2002/3135.

- (a) a health care professional (other than one to whom paragraph 17 applies) unless the provider has checked that the health care professional meets the requirements in paragraph 18;
- (b) a health care professional to perform clinical services unless the provider has taken reasonable steps to satisfy the provider that the health care professional meets the requirements in paragraph 20.

(2) Where the employment or engagement of a health care professional is urgently needed and it is not possible to check the matters referred to in paragraph 18 in accordance with sub-paragraph (1) before employing or engaging the health care professional, the health care professional may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

(3) When considering a health care professional's experience and training for the purposes of sub-paragraph (1)(b) the provider shall have regard in particular to—

- (a) any post-graduate or post-registration qualification held by the health care professional; and
- (b) any relevant training undertaken by the health care professional and any relevant clinical experience gained by the health care professional.

Conditions for employment and engagement

23.—(1) The provider shall not employ or engage a health care professional to perform medical services under the contract unless—

- (a) that person has provided two clinical references, relating to two recent posts (which may include any current post) as a health care professional which lasted for three months without a significant break, or where this is not possible, a full explanation and alternative referees; and
- (b) the provider has checked and is satisfied with the references.

(2) Where the employment or engagement of a medical practitioner is urgently needed and it is not possible to obtain and check the references in accordance with sub-paragraph (1)(b) before employing or engaging the practitioner, the practitioner may be employed or engaged on a temporary basis for a single period of up to 14 days whilst the practitioner's references are checked and considered, and for an additional single period of a further 7 days if the provider believes the person supplying those references is ill, on holiday or otherwise temporarily unavailable.

(3) Where the provider employs or engages the same person on more than one occasion within a period of three months, it may rely on the references provided on the first occasion, provided that those references are not more than twelve months old.

Conditions for employment and engagement

24.—(1) Before employing or engaging any person to assist the provider in the provision of services under the agreement, the provider shall take reasonable care to satisfy itself that the person in question is both suitably qualified and competent to discharge the duties for which the person is to be employed or engaged.

(2) The duty imposed by sub-paragraph (1) is in addition to the duties imposed by paragraphs 21 to 23.

(3) When considering the competence and suitability of any person for the purpose of sub-paragraph (1), the provider shall have regard, in particular, to—

- (a) that person's academic and vocational qualifications;
- (b) the person's education and training; and
- (c) the person's previous employment or work experience.

Training

25. The provider shall ensure that for any health care professional who is–

- (a) performing clinical services under the agreement; or
- (b) employed or engaged to assist in the performance of such services,

has in place arrangements for the purpose of maintaining and updating the health care professional's skills and knowledge in relation to the services which the health care professional is performing or assisting in performing.

Training

26. The provider shall afford to each employee reasonable opportunities to undertake appropriate training with a view to maintaining that employee's competence.

Arrangements for GP registrars

27.—(1) The provider shall only employ a GP Registrar for the purpose of being trained by a GP Trainer with the agreement of the Scottish Ministers and subject to the conditions in sub-paragraph (2).

(2) The conditions referred to in sub-paragraph (1) are that the provider shall not, by reason only of having employed or engaged a GP Registrar, reduce the total number of hours for which other medical practitioners perform primary medical services under the agreement or for which other staff assist them in the performance of those services.

(3) A provider which employs a GP Registrar shall–

- (a) offer the GP Registrar terms of employment in accordance with the rates and subject to the conditions contained in any directions given by the Scottish Ministers to Health Boards under 17E(3A) of the Act concerning the grants, fees travelling and other allowances payable to GP Registrars; and
- (b) take into account any guidance issued by the Scottish Ministers in relation to the GP Registrar Scheme(a).

Independent nurse prescribers and supplementary prescribers

28.—(1) Where–

- (a) a provider employs or engages a person who is an independent nurse prescriber or a supplementary prescriber whose functions will include prescribing;
- (b) a party to the agreement is an independent nurse prescriber or a supplementary prescriber whose functions will include prescribing;
- (c) a partner in a partnership that is a party to the agreement, is an independent nurse prescriber or a supplementary prescriber whose functions will include prescribing; or
- (d) the functions of a person who is an independent nurse prescriber or a supplementary prescriber whom it already employs or has already engaged are extended to include prescribing,

it shall notify the Health Board in writing within the period of seven days beginning with the date on which the provider employed or engaged the person, the person became a party to the agreement or a partner in a partnership that is a party to the agreement (unless, immediately before becoming such a party or a partner in a partnership that is such a party, the person fell under paragraph (1)(a)) or the person's functions were extended, as the case may be.

(2) Where–

(a) The current guidance is the GP Registrar Scheme Vocational Guide for General Medical practice - the UK Guide 2000 published by the Department of Health and available on their website at www.doh.gov.uk/medicaltrainingintheuk or by writing to the Department of Health, P.O. Box 777, London SE1 6XH.

- (a) the provider ceases to employ or engage a person who is an independent nurse prescriber or a supplementary prescriber whose functions included prescribing in the provider's practice;
- (b) the party to the agreement, who is an independent nurse prescriber or supplementary prescriber, whose functions include prescribing, ceases to be a party to the agreement;
- (c) the partner in a partnership that is a party to the agreement, who is an independent nurse prescriber or supplementary prescriber, whose function include prescribing, ceases to be a partner in that partnership;
- (d) the functions of a person who is an independent nurse prescriber or a supplementary prescriber whom the provider employs or engages in its practice are changed so that they no longer include prescribing in its practice; or
- (e) the provider becomes aware that a person who is an independent nurse prescriber or a supplementary prescriber whom the provider employs or engages has been removed or suspended from the relevant register,

it shall notify the Health Board in writing by the end of the second day after the day when the event occurred.

(3) The provider shall provide the following information when it notifies the Health Board in accordance with sub-paragraph (1)–

- (a) the person's full name;
- (b) the person's professional qualifications;
- (c) the person's identifying number which appears in the relevant register;
- (d) the date on which the person's entry in the relevant register was annotated to the effect that the person was qualified to order drugs, medicines and appliances for patients;
- (e) the date–
 - (i) on which the person was employed or engaged, if applicable;
 - (ii) the person became a party to the agreement, if applicable;
 - (iii) the person became a partner in a partnership that is a party to the agreement, if applicable; or
 - (iv) on which one of the person's functions became to prescribe in its practice.

(4) The provider shall provide the following information when it notifies the Health Board in accordance with sub-paragraph (2):–

- (a) the person's full name;
- (b) the person's professional qualifications;
- (c) the person's identifying number which appears in the relevant register;
- (d) the date–
 - (i) the person ceased to be employed or engaged in its practice,
 - (ii) the person ceased to be a party to the agreement;
 - (iii) the person ceased to be a partner in a partnership that is a party to the agreement;
 - (iv) the person's functions changed so as no longer to include prescribing; or
 - (v) on which the person was removed or suspended from the relevant register.

Signing of documents

29.—(1) In addition to any other requirements relating to such documents whether in these regulations or otherwise, the provider shall ensure that the documents specified in sub-paragraph (2) include–

- (a) the clinical profession of the health care professional who signed the document; and
- (b) the name of the provider on whose behalf it is signed.

- (2) The documents referred to in sub-paragraph (1) are–
- (a) certificates issued in accordance with regulation 19, unless regulations relating to particular certificates provide otherwise;
 - (b) prescription forms; and
 - (c) any other clinical documents.

Level of skill

30. The provider shall carry out its obligations under the agreement with reasonable skill and care.

Appraisal and assessment

31.—(1) The provider shall ensure that any medical practitioner performing services under the agreement–

- (a) participates in the appraisal system provided by the Health Board unless the practitioner participates in an appropriate appraisal system provided by another health service body or is an armed forces GP; and
- (b) co-operates with any assessment process which the Health Board operates in relation to poorly performing doctors, as set out in NHS circular PCA(M)(2001)17(a).

(2) The Health Board shall provide an appraisal system for the purposes of sub-paragraph (1)(a) after consultation with the area medical committee and such other persons as appear to it to be appropriate.

(3) In sub-paragraph (1)–

“armed forces GP” means a medical practitioner who is employed on a contract of service by the Ministry of Defence, whether or not as a member of the United Kingdom Armed Forces of Her Majesty; and

“health service body” does not include any provider who is to be treated as a health service body in accordance with regulation 8.

Sub-contracting of clinical matters

32.—(1) Subject to sub-paragraph (2) the provider shall not sub-contract any of its rights or duties under the agreement in relation to clinical matters unless–

- (a) in all cases, including those which fall within paragraph 4 of Schedule 4 (if applicable), it has taken reasonable steps to satisfy itself that–
 - (i) it is reasonable in all the circumstances; and
 - (ii) that person is qualified and competent to provide the service; and
- (b) except in cases which fall within paragraph 4 of Schedule 4 (if applicable), it has notified the Health Board of its intention to sub-contract as soon as reasonably practicable before the date on which the proposed sub-contract is intended to come into force.

(2) Sub-paragraph (1)(b) shall not apply to a contract for services with a health care professional for the provision by that person of clinical services.

(3) The notification referred to in sub-paragraph (1)(b) shall include–

- (a) the name and address of the proposed sub-contractor;
- (b) the duration of the proposed sub-contract;
- (c) the services to be covered; and
- (d) the address of any premises to be used for the provision of services.

(a) Copies of NHS Circular PCA(M)(2001)17 may be obtained in writing from the Scottish Executive Health Department, Primary Care Division, St. Andrew’s House, Regent Road, Edinburgh EH1 3DG.

(4) Following receipt of a notice in accordance with sub-paragraph (1)(b), the Health Board may request such further information relating to the proposed sub-contract as appears to it to be reasonable and the provider shall supply such information promptly.

(5) The provider shall not proceed with the sub-contract or, if it has already taken effect, shall take appropriate steps to terminate it, where, within 28 days of receipt of the notice referred to in sub-paragraph (1)(b), the Health Board has served notice of objection to the sub-contract on the grounds that—

- (a) the sub-contract would—
 - (i) put at serious risk the safety of the provider’s patients; or
 - (ii) put the Board at risk of material financial loss; or
- (b) the sub-contractor would be unable to meet the provider’s obligations under the agreement.

(6) Where the Health Board objects to a proposed sub-contract in accordance with sub-paragraph (5), it shall include with the notice of objection a statement in writing of the reasons for its objection.

(7) Sub-paragraphs (1) and (3) to (6) shall also apply in relation to any renewal or material variation of a sub-contract in relation to clinical matters.

(8) Where a Health Board does not object to a proposed sub-contract under sub-paragraph (5), the parties to the agreement shall be deemed to have consented to a variation of the agreement which has the effect of adding to the list of practice premises any premises whose address was notified to it under sub-paragraph (3)(d) and paragraph 59 shall not apply.

(9) A contract with a sub-contractor must prohibit the sub-contractor from sub-contracting the clinical services it has agreed with the provider to provide.

PART 5

RECORDS, INFORMATION, NOTIFICATIONS AND RIGHTS OF ENTRY

Patient records

33.—(1) In this paragraph, “computerised records” means records created by way of entries on a computer.

(2) The provider shall keep adequate records of its attendance on and treatment of its patients and shall do so—

- (a) on forms supplied to it for the purpose by the Health Board; or
- (b) with the written consent of the Health Board, by way of computerised records,

or in a combination of those two ways.

(3) The provider shall include in the records referred to in sub-paragraph (2) clinical reports sent in accordance with paragraph 3 or, where the provider has a provider’s list of patients, from any other health care professional who has provided clinical services to a person on the provider’s list of patients.

(4) The consent of the Health Board required by sub-paragraph (2)(b) shall not be withheld nor withdrawn provided the Health Board is satisfied, and continued to be satisfied, that—

- (a) the computer system upon which the provider proposes to keep the records has been accredited by the Scottish Ministers or another person on their behalf as suitable for that purpose in accordance with “RFA V.1. - Requirements for Accreditation in General Practice Computer Systems in Scotland”(a);

(a) RFA V.1 is published on Scottish Health on the Web (SHOW) at the following link: <http://www.show.scot.nhs.uk/publications/me/gpcomputerrecords/rfav1.pdf>.

- (b) the security measures, audit and system management function incorporated into the computer system as accredited in accordance with paragraph (a) have been enabled; and
- (c) the provider is aware of, and has signed an undertaking that it will have regard to any guidelines issued by the Scottish Ministers and notified to the provider by the Health Board concerning good practice in the keeping of electronic patient records.

(5) Where the provider keeps computerised records, the provider shall, as soon as possible following a request from the Health Board, allow the Board to access the information recorded on the provider's computer system by means of the audit function referred to in sub-paragraph (4)(b) to the extent necessary for the Board to confirm that the audit function is enabled and functioning correctly.

(6) A provider whose patient records are computerised records shall not disable, nor attempt to disable, either the security measures or the audit and system management functions referred to in sub-paragraph (4)(b).

Confidentiality of personal data

34. The provider shall nominate a person with responsibility for practices and procedures relating to the confidentiality of personal data held by it.

Practice leaflet

35. The provider shall—

- (a) compile a document (in this paragraph called a practice leaflet) which shall include the information specified in Schedule 6;
- (b) review its practice leaflet at least once in every period of 12 months and make any amendments necessary to maintain its accuracy; and
- (c) make available a copy of the leaflet, and any subsequent updates, to its patients and prospective patients.

Provision of information

36.—(1) Subject to sub-paragraph (2), the provider shall, at the request of the Health Board, produce to the Board or to a person authorised in writing by the Board or allow the Board, or a person authorised in writing by it, to access—

- (a) any information which is reasonably required by the Board for the purposes of or in connection with the agreement; and
- (b) any other information reasonably required in connection with the Health Board's functions.

(2) The provider shall not be required to comply with any request made in accordance with sub-paragraph (1) unless it has been made by the Health Board in accordance with directions relating to the provision of information by providers given to it by the Scottish Ministers under section 2(5) of the Act^(a).

Inquiries about prescriptions and referrals

37.—(1) The provider shall, subject to sub-paragraphs (2) and (3), sufficiently answer any inquiries whether oral or in writing from the Health Board concerning—

- (a) any prescription form issued by a prescriber;
- (b) the considerations by reference to which prescribers issue such forms;
- (c) the referral, by or on behalf of the provider, of any patient to any other services provided under the Act; or

^(a) 1978 c.29. Section 2(5) was amended by the National Health Service and Community Care Act 1990 (c.19), section 28(a)(i).

- (d) the considerations by which the provider makes such referrals or provides for them to be made on its behalf.

(2) An inquiry referred to in sub-paragraph (1) may only be made for the purpose either of obtaining information to assist the Health Board to discharge its functions or of assisting the provider in the discharge of its obligations under the agreement.

(3) The provider shall not be obliged to answer any inquiry referred to in sub-paragraph (1) unless it is made—

- (a) in the case of sub-paragraph (1)(a) or (b), by an appropriately qualified health care professional;
- (b) in the case of sub-paragraph (1)(c) or (d), by an appropriately qualified medical practitioner,

appointed in either case by the Health Board to assist the Board in the exercise of its functions under this paragraph and that person produces, on request, written evidence that the person is authorised by the Health Board to make such an inquiry on its behalf.

Reports to a medical officer

38.—(1) The provider shall, if it is satisfied that the patient consents—

- (a) supply in writing to a medical officer within such reasonable period as that officer, or an officer of the Department for Work and Pensions on that officer's behalf and at that officer's direction, may specify, such clinical information as the medical officer considers relevant about a patient to whom the provider or a person acting on the provider's behalf has issued or has refused to issue a medical certificate; and
- (b) answer any inquiries by a medical officer, or by an officer of the Department for Work and Pensions on that officer's behalf and at that officer's direction, about a prescription form or medical certificate issued by the provider or on the provider's behalf or about any statement which the provider or a person acting on the provider's behalf has made in a report.

(2) For the purpose of satisfying the provider that the patient has consented as required by paragraph (1), the provider may (unless it has reason to believe the patient does not consent) rely on an assurance in writing from the medical officer, or any officer of the Department for Work and Pensions, that that officer holds the patient's written consent.

Annual return and review

39.—(1) The provider shall submit an annual return relating to the agreement to the Health Board.

(2) Following receipt of the return referred to in sub-paragraph (1), the Health Board shall arrange with the provider an annual review of its performance in relation to the agreement.

(3) Either the provider or the Health Board may, if it wishes to do so, invite the area medical committee for the area of the Health Board to participate in the annual review.

(4) The Health Board shall prepare a draft record of the review referred to in sub-paragraph (2) for comment by the provider and, having regard to such comments, shall produce a final written record of the review.

(5) A copy of the final record referred to in sub-paragraph (4) shall be sent to the provider.

Notifications to the Health Board

40. In addition to any requirements of notification elsewhere in the regulations, the provider shall notify the Health Board in writing, as soon as reasonably practicable, of—

- (a) any serious incident that in the reasonable opinion of the provider affects or is likely to affect the provider's performance of its obligations under the agreement;

- (b) any circumstances which give rise to the Health Board's right to terminate the agreement under paragraph 66 or 67;
- (c) any appointments system which it proposes to operate and the proposed discontinuance of any such system;
- (d) where the provider has a provider's list of patients, any change of which it is aware in the address of a registered patient; and
- (e) the death of any patient of which it is aware.

Notifications to the Health Board

41. The provider shall, unless it is impracticable for it to do so, notify the Health Board in writing within 28 days of any occurrence requiring a change in the information about it published by the Health Board in accordance with regulations made under section 2C(3) of the Act (functions of Health Boards: primary medical services)(a).

Notice provisions specific to agreements with one or more companies limited by shares

42.—(1) Where a company limited by shares is a party to the agreement, the provider shall give notice to the Health Board forthwith when—

- (a) any share in the company is transmitted or transferred (whether legally or beneficially) to another person on a date after the agreement has come into force;
- (b) the company passes a resolution or a court of competent jurisdiction makes an order that one or more of those companies be wound up;
- (c) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the company;
- (d) circumstances arise which would enable the court to make a winding up order in respect of the company; or
- (e) the company is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986(b).

(2) A notice under sub-paragraph (1)(a) shall confirm that the new shareholder, or, as the case may be, the personal representative of a deceased shareholder—

- (a) where the company is a qualifying body, within the meaning of section 17D(2) of that Act, a person falling within section 17D(1)(a) to (d) of the Act (persons with whom agreements may be made); and
- (b) satisfies the condition imposed on shareholders by virtue of regulation 3 (general conditions relating to providers).

Notice provisions specific to an agreement with one or more partnerships

43.—(1) Where a partnership is party to the agreement, the provider shall give notice to the Health Board forthwith—

- (a) when a partner leaves or informs the other members of the partnership of which they are a member, that the partner intends to leave the partnership, and the date upon which the partner left or will leave the partnership;
- (b) when a new partner joins a partnership.

(2) A notice under sub-paragraph (1)(b) shall—

- (a) state the date that the new partner joined the partnership;
- (b) confirm that the new partner satisfies the condition imposed by regulation 3 (general conditions relating to providers); and

(a) Section 2C was inserted into the Act by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 1(2).
 (b) 1986, c.45.

- (c) state whether the new partner is a general or a limited partner.

Notification of deaths

44.—(1) The provider shall report, in writing, to the Health Board, the death on the provider's practice premises of any patient no later than the end of the first working day after the date on which the death occurred.

(2) The report shall include—

- (a) the patient's full name;
- (b) the patient's National Health Service number where known;
- (c) the date and place of death;
- (d) a brief description of the circumstances, as known, surrounding the death;
- (e) the name of any medical practitioner or other person treating the patient whilst on the practice premises; and
- (f) the name, where known, of any other person who was present at the time of the death.

(3) The provider shall send a copy of the report referred to in sub-paragraph (1) to any other Health Board in whose area the deceased was resident at the time of the patient's death.

Notifications to patients following variation of the agreement

45. Where the agreement is varied in accordance with Part 8 of this Schedule and, as a result of that variation—

- (a) there is to be a change in the range of services provided to the provider's patients; or
- (b) where the provider has a provider's list of patients, patients who are on that list are to be removed from that list,

the Health Board shall notify those patients in writing of the variation and its effect and inform them of the steps they can take to obtain elsewhere the services in question or, as the case may be, register elsewhere for the provision of essential services (or their equivalent).

Entry and inspection by the Health Board

46.—(1) Subject to the conditions in sub-paragraph (2), the provider shall allow persons authorised in writing by the Health Board to enter and inspect the practice premises at any reasonable time.

(2) The conditions referred to in sub-paragraph (1) are that—

- (a) reasonable notice of the intended entry has been given;
- (b) written evidence of the authority of the person seeking entry is produced to the provider on request; and
- (c) entry is not made to any premises or part of the premises used as residential accommodation without the consent of the resident.

(3) Either the provider or the Health Board may, if it wishes to do so, invite the area medical committee for the area of the Board to be present at an inspection of the practice premises which takes place under this paragraph.

PART 6 COMPLAINTS

Complaints procedure

47.—(1) The provider shall establish and operate a complaints procedure to deal with any complaints in relation to any matter reasonably connected with the provision of services under the agreement which shall comply with the requirements in paragraphs 48 to 51 and 53.

(2) The provider shall take reasonable steps to ensure that patients are aware of—

- (a) the complaints procedure; and
- (b) the role of the Health Board and other bodies in relation to complaints about services under the agreement.

(3) The provider shall take reasonable steps to ensure that the complaints procedure is accessible to all patients.

Making a complaint

48. A complaint may be made by or, with the patient's consent, on behalf of a patient, or former patient, who is receiving or has received services under the agreement or—

- (a) where the patient is a child—
 - (i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child,
 - (ii) by a person duly authorised by a local authority, where the child is in the care of a local authority under the Children (Scotland) Act 1995(a); or
 - (iii) by a person duly authorised by a voluntary organisation by which the child is being accommodated under the provisions of that Act;
- (b) where the patient is incapable of making a complaint, by a relative or other adult person who has an interest in the patient's welfare.

Making a complaint

49. Where a patient has died a complaint may be made by a relative or other adult who had an interest in the patient's welfare or, where the patient falls within paragraph 48(a)(ii) or (iii), by the authority or voluntary organisation.

Period for making complaints

50.—(1) Subject to sub-paragraph (2), the period for making a complaint is—

- (a) 6 months from the date on which the matter which is the subject of the complaint occurred; or
- (b) 6 months from the date on which the matter which is the subject of the complaint comes to the complainant's notice provided that the complaint is made no later than 12 months after the date on which the matter which is the subject of the complaint occurred.

(2) Where a complaint is not made during the period specified in sub-paragraph (1), it shall be referred to the person nominated under paragraph 51(2)(a) and if the person is of the opinion that—

- (a) having regard to all the circumstances of the case, it would have been unreasonable for the complainant to make the complaint within that period; and

(a) 1995 c.36.

(b) notwithstanding the time that has elapsed since the date on which the matter which is the subject matter of the complaint occurred, it is still possible to investigate the complaint properly,
the complaint shall be treated as if it had been received during the period specified in sub-paragraph (1).

Further requirements for complaints procedures

51.—(1) A complaints procedure shall also comply with the requirements set out in sub-paragraphs (2) to (6).

(2) The provider must nominate—

- (a) a person (who need not be connected with the provider and who, in the case of an individual, may be specified by the person's job title) to be responsible for the operation of the complaints procedure and the investigation of complaints; and
- (b) a senior person associated with the provider, to be responsible for the effective management of the complaints procedure and for ensuring that action is taken in the light of the outcome of any investigation.

(3) All complaints must be—

- (a) either made or recorded in writing;
- (b) acknowledged in writing within the period of 3 working days beginning with the day on which the complaint was made or, where that is not possible, as soon as is reasonably practicable; and
- (c) properly investigated.

(4) Within the period of 10 working days beginning with the day on which the complaint was received by the person specified under sub-paragraph (2)(a) or, where that is not possible, as soon as is reasonably practicable, the complainant must be given a written summary of the investigation and its conclusions.

(5) Where the investigation of the complaint requires consideration of the patient's medical records, the person specified under sub-paragraph (2)(a) must inform the patient or person acting on the patient's behalf if the investigation will involve disclosure of information contained in those records to a person other than the provider or an employee of the provider.

(6) The provider must keep a record of all complaints and copies of all correspondence relating to complaints, but such records must be kept separate from patients' medical records.

Co-operation with investigations

52.—(1) The provider shall co-operate with—

- (a) any investigation of a complaint in relation to any matter reasonably connected with the provision of services under the agreement undertaken by—
 - (i) the Health Board; and
 - (ii) the Scottish Public Services Ombudsman; and
- (b) any investigation of a complaint by an NHS body or local authority which relates to a patient or former patient of the provider.

(2) In sub-paragraph (1)—

“NHS body” means in Scotland a Health Board, in England and Wales, a Primary Care trust, a NHS trust, a NHS foundation trust, a Strategic Health Authority, a Local Health Board and in Northern Ireland, a Health and Social Services Board or a Health and Social Services trust; and

“local authority” means—

- (a) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (constitution of councils)(a);
 - (b) any of the bodies listed in section 1 of the Local Authority Social Services Act 1970 (local authorities)(b); or
 - (c) the Council of the Isles of Scilly.
- (3) The co-operation required by sub-paragraph (1) includes–
- (a) answering questions reasonably put to the provider by the Health Board;
 - (b) providing any information relating to the complaint reasonably required by the Health Board; and
 - (c) attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given) if the provider's presence at the meeting is reasonably required by the Health Board.

Provision of information about complaints

53. The provider shall inform the Health Board, at such intervals as required, of the number of complaints it has received under the procedure established in accordance with this Part.

PART 7

DISPUTE RESOLUTION

Local resolution of contract disputes

54.—(1) Subject to sub-paragraph (3), in the case of any dispute arising out of or in connection with the agreement, the provider and the Health Board must make every reasonable effort to communicate and co-operate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings).

(2) Either the provider or the Health Board may, if it wishes to do so, invite the area medical committee to participate in discussions which take place pursuant to sub-paragraph (1).

(3) In the case of a dispute which falls to be dealt with under the NHS dispute resolution procedure as modified by paragraph 28 of Schedule 2, sub-paragraph (1) does not apply where it is not practicable for the parties to attempt local resolution before the expiry of the period specified in paragraph 56(4) as so modified.

Dispute resolution: non-NHS contracts

55.—(1) In the case of an agreement which is not an NHS contract, any dispute arising out of or in connection with the agreement, except matters dealt with under the complaints procedure pursuant to Part 6 of this Schedule, may be referred for consideration and determination to the Scottish Ministers, if–

- (a) the Health Board so wishes and the provider has agreed in writing; or
 - (b) the provider so wishes (even if the Health Board does not agree).
- (2) In the case of a dispute referred to the Scottish Ministers under sub-paragraph (1)–
- (a) the procedure to be followed is the NHS dispute resolution procedure; and
 - (b) the parties agree to be bound by any determination made by the adjudicator.

(a) 1994 c.39.

(b) 1970 c.42; section 1 was amended by the Local Government Act 1972 (c.70), section 195 and by the Local Government (Wales) Act 1994 (c.19), Schedule 10, paragraph 7.

NHS dispute resolution procedure

56.—(1) Subject to sub-paragraph (2), the procedure specified in the following sub-paragraphs and paragraph 57 applies in the case of any dispute arising out of or in connection with the agreement, which is referred to the Scottish Ministers—

- (a) (where the agreement is an NHS contract) for the purposes of section 17A(4) of the Act; or
- (b) (where the agreement is not an NHS contract) in accordance with paragraph 55(1).

(2) In the case where—

- (a) a dispute is referred to the Scottish Ministers in accordance with regulation 7(1) (pre agreement disputes); or
- (b) a provider (or providers) refers a matter for determination in accordance with paragraph 28(1) or (2) of Schedule 2,

the procedure specified in the following sub-paragraphs and paragraph 57 is modified as mentioned in regulation 7 or, as the case may be, paragraph 28 of Schedule 2.

(3) Any party wishing to refer a dispute as mentioned in sub-paragraph (1), shall send to the Scottish Ministers a written request for dispute resolution which shall include or be accompanied by—

- (a) the names and addresses of the parties to the dispute;
- (b) a copy of the agreement; and
- (c) a brief statement describing the nature and circumstances of the dispute.

(4) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send the request under sub-paragraph (3) within a period of three years beginning with the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute.

(5) The Scottish Ministers may determine the dispute themselves or, if they consider it appropriate, appoint a panel consisting of three persons (referred to as “the panel”) to consider and determine the dispute.

(6) Before reaching a decision as to who should determine the dispute under sub-paragraph (5), the Scottish Ministers shall, within the period of 7 days beginning with the date on which the dispute was referred to them, 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.

(7) The Scottish Ministers shall give, with the notice given under sub-paragraph (6), to the party other than the one which referred the matter to dispute resolution a copy of any document by which the matter was referred to dispute resolution.

(8) The Scottish Ministers 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 given to make within a specified period any written observations which it wishes to make on those representations.

(9) Following receipt of any representations from the parties or, if earlier, at the end of the period for making such representations specified in the request sent under sub-paragraph (6) or (8), the Scottish Ministers shall, if they decide to appoint a panel to hear the dispute—

- (a) inform the parties in writing of the names of the persons whom he has appointed on the panel; and
- (b) pass to the panel any documents received from the parties under or pursuant to paragraph (3), (6) or (8).

(10) For the purpose of assisting it in its consideration of the matter, the adjudicator may—

- (a) invite representatives of the parties to appear before the adjudicator to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which it wishes them to give special consideration; or

- (b) consult other persons whose expertise the adjudicator considers will assist the adjudicator in the adjudicator's consideration of the matter.

(11) Where the adjudicator consults another person under sub-paragraph (10)(b), the adjudicator shall notify the parties accordingly in writing and, where the adjudicator considers that the interests of any party might be substantially affected by the result of the consultation, the adjudicator shall give to the parties such opportunity as it considers reasonable in the circumstances to make observations on those results.

(12) In considering the matter, the adjudicator shall consider—

- (a) any written representations made in response to a request under sub-paragraph (6), but only if they are made within the specified period;
- (b) any written observations made in response to a request under sub-paragraph (8), but only if they are made within the specified period;
- (c) any oral representations made in response to an invitation under sub-paragraph (10)(a);
- (d) the results of any consultation under sub-paragraph (10)(b); and
- (e) any observations made in accordance with an opportunity given under sub-paragraph (11).

(13) In this paragraph, “specified period” means such period as the Scottish Ministers shall specify in the request under sub-paragraph (6) or (8), being not less than 2, nor more than 4, weeks beginning with the date on which the request is sent, but the adjudicator may, if the adjudicator considers that there is good reason for doing so, extend any such period (even after it has expired) and, where it does so, a reference in this paragraph to the specified period is to the period as so extended.

(14) Subject to the other provisions of this paragraph and paragraph 57 and to any agreement by the parties, the adjudicator shall have wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.

(15) Where the adjudicator is a panel, any decision or determination by the panel for the purposes of this paragraph and paragraph 57 may be by a majority

Determination of dispute

57.—(1) The adjudicator shall record the its determination, and the reasons for it, in writing and shall give notice of the determination (including the record of the reasons) to the parties and, in the case where the adjudicator is a panel, to the Scottish Ministers.

(2) A determination of a reference to the Scottish Ministers for the purposes of section 17A(4) of the Act or in accordance with paragraph 55(1) may contain such directions (including directions as to payment) as the adjudicator considers appropriate to resolve the matter in the dispute, and it shall be the duty of the provider and the Health Board to comply with such directions.

(3) Without prejudice to the generality of the adjudicators powers on a reference to the Scottish Ministers for the purposes of section 17A(4) or referred in accordance with paragraph 55(1), the adjudicator may, by the adjudicators determination, in relation to an agreement vary the terms of the agreement or bring it to an end; and where the agreement is so varied or brought to an end—

- (a) subject to paragraph (b), the variation or termination shall be treated as being effected by agreement between the Health Board and the provider; and
- (b) directions included in the determination by virtue of sub-paragraph (2) may contain such provisions as the adjudicator considers appropriate in order satisfactorily to give effect to the variation or to bring the agreement to an end.

Interpretation of Part 7

58.—(1) In this Part, “any dispute arising out of or in connection with the agreement” includes any dispute arising out of or in connection with the termination of the agreement.

(2) Any term of the agreement that makes provision in respect of the requirements in this Part shall survive even where the agreement has terminated.

PART 8

VARIATION AND TERMINATION OF AGREEMENTS

Variation of an agreement: general

59.—(1) Subject to paragraphs 32(8), 60, 61 and 71 of this Schedule and paragraphs 4(8) and 9 of Schedule 4 no amendment or variation shall have effect unless it is in writing and signed by or on behalf of the Health Board and the provider.

(2) In addition to the specific provision made in paragraph 71 the Health Board may vary the agreement without the provider's consent where it—

- (a) is reasonably satisfied that it is necessary to vary the agreement so as to comply with the Act, any regulations made pursuant to that Act, or any direction given by the Scottish Ministers pursuant to that Act; and
- (b) notifies the provider in writing of the wording of the proposed variation and the date upon which that variation is to take effect,

and, where it is reasonably practicable to do so, the date that the proposed variation is to take effect shall not be less than 14 days after the date on which the notice under paragraph (b) is served on the provider.

(3) In sub-paragraph (1) “writing” does not include transmission by electronic means.

Termination by agreement

60. The Health Board and the provider may agree in writing to terminate the agreement, and if the parties so agree, they shall agree the date upon which that termination should take effect and any further terms upon which the agreement should be terminated.

Termination by the provider

61.—(1) A provider may terminate the agreement by serving notice in writing on the Health Board at any time.

(2) Where a provider serves notice pursuant to sub-paragraph (1), the agreement shall, subject to sub-paragraph (3), terminate 6 months after the date on which the notice is served (“the termination date”), save that if the termination date is not the last calendar day of a month, the agreement shall instead terminate on the last calendar day of the month in which the termination date falls.

(3) Where the provider is an individual, sub-paragraph (2) shall apply to the provider, save that the reference to “6 months” shall instead be to “3 months”.

(4) This paragraph and paragraph 63 are without prejudice to any other rights to terminate the agreement that the provider may have.

Withdrawal by parties to an agreement other than Health Boards

62.—(1) Where the provider comprises more than one party to the agreement, a party to the agreement may withdraw from the agreement by serving notice in writing on the Health Board and the other parties to the agreement at any time.

(2) Where a party serves notice pursuant to sub-paragraph (1), the agreement shall, subject to sub-paragraph (3), be varied to the extent that that party is no longer a party to the agreement 6 months after the date on which the notice is served (“the variation date”), save that if the

variation date is not the last calendar day of a month, the agreement shall instead vary on the last calendar day of the month in which the variation date falls.

(3) Where a party to the agreement is an individual, sub-paragraph (2) shall apply to that party, save that the reference to “6 months” shall instead be to “3 months”.

(4) This paragraph is without prejudice to the right of the Health Board to terminate an agreement in accordance with paragraph 70.

Late payment notices

63.—(1) The provider may give notice in writing (a “late payment notice”) to the Health Board if the Board has failed to make any payments due to the provider in accordance with a term of the agreement that has the effect specified in regulation 20 and the provider shall specify in the late payment notice the payments that the Board has failed to make in accordance with that regulation.

(2) Subject to sub-paragraph (3), the provider may, at least 28 days after having served a late payment notice, terminate the agreement by a further written notice if the Health Board has still failed to make the payments due to the provider, and that were specified in the late payment notice served on the Health Board pursuant to sub-paragraph (1).

(3) If, following receipt of a late payment notice, the Health Board refers the matter to the NHS dispute resolution procedure within 28 days of the date upon which it is served with the late payment notice, and it notifies the provider in writing that it has done so within that period of time, the provider may not terminate the agreement pursuant to sub-paragraph (2) until—

- (a) there has been a determination of the dispute pursuant to paragraph 57 and that determination permits the provider to terminate the agreement; or
- (b) the Health Board ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

Termination by the Health Board: general

64. The Health Board may only terminate the agreement with the provider or a party to the agreement in accordance with the provisions in this Part.

Termination by the Health Board for the provision of untrue etc information

65.—(1) The Health Board may serve notice in writing on a party to the agreement terminating the agreement with that party to the agreement forthwith, or from such dates as may be specified in the notice if, after the agreement has been made, it comes to the attention of the Health Board that written information provided to the Health Board by that party to the agreement before the agreement was entered into in relation to the condition set out in regulation 3 (and compliance with that condition) was, when given, untrue or inaccurate in a material respect.

(2) Where the provider comprises more than one party to the agreement, the Health Board shall send a copy of the notice served under sub-paragraph (1) to any other party to the agreement with which the agreement is not being terminated.

Other grounds for termination by the Health Board

66.—(1) The Health Board may serve notice in writing on a party to the agreement terminating the agreement with that party forthwith, or from such date as may be specified in the notice if—

- (a) where an individual is a party to the agreement, that individual;
- (b) where a partnership is a party to the agreement, any partner or the partnership; and
- (c) where a company limited by shares is a party to the agreement—
 - (i) the company;
 - (ii) any person legally or beneficially owning a share in the company; or
 - (iii) any director or secretary of the company,

falls within sub-paragraph (3) during the existence of the agreement.

(2) Where the provider comprises more than one party to the agreement, a Health Board that serves notice pursuant to sub-paragraph (1) shall send a copy of that notice to any other party to the agreement whose agreement is not being terminated.

(3) A person falls within this sub-paragraph if–

- (a) the person has been or is the subject of a national disqualification;
- (b) subject to sub-paragraph (4), the person is disqualified or suspended (other than by an interim suspension order or direction pending an investigation or a suspension on the grounds of ill-health) from practising by any licensing body anywhere in the world;
- (c) subject to sub-paragraph (5), the person has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless before the Health Board has served a notice terminating the agreement pursuant to this paragraph, the person is employed by the health service body that dismissed the person or by another health service body;
- (d) the person is disqualified from a list unless the person's name has subsequently been included in such a list;
- (e) the person has been convicted in the United Kingdom of murder;
- (f) the person has been convicted in the United Kingdom of a criminal offence other than murder, and has been sentenced to a term of imprisonment of over 6 months;
- (g) subject to sub-paragraph (5), the person has been convicted elsewhere of an offence which would, if committed in Scotland, constitute–
 - (i) murder; or
 - (ii) a criminal offence other than murder, and been sentenced to a term of imprisonment of over 6 months;
- (h) the person has been convicted of an offence referred to in Schedule 1 to the Criminal Procedure (Scotland) Act 1995(a) (offences against children under the age of 17 to which special provisions apply) or Schedule 1 to the Children and Young Persons Act 1933(b) (offences against children and young persons with respect to which special provisions apply);
- (i) the person has–
 - (i) had sequestration of the person's estate awarded or been adjudged bankrupt unless (in either case) the person has been discharged or the bankruptcy order has been annulled;
 - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986(c), unless that order has ceased to have effect or has been annulled;
 - (iii) made a composition or arrangement with, or granted a trust deed for, the person's creditors unless the person has been discharged in respect of it; or
 - (iv) been wound up under Part IV of the Insolvency Act 1986.
- (j) there is–
 - (i) an administrator, administrative receiver or receiver appointed in respect of it; or
 - (ii) an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986(d);
- (k) that person is a partnership and–

(a) 1995 c.46.

(b) 1933 c.12 as amended by the Criminal Justice Act 1988 (c.33), section 170, Schedule 15, paragraph 8 and Schedule 16, paragraph 16; the Sexual Offences Act 1956 (c.69), sections 48 and 51 and Schedules 3 and 4 as modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9.

(c) 1986 c.46. Schedule 4A was inserted by section 257 of and Schedule 2 to the Enterprise Act 2002 (c.40).

(d) Schedule B1 was inserted by section 248 of and Schedule 16 to the Enterprise Act 2002.

- (i) a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator; or
- (ii) an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership;
- (l) the person has been–
 - (i) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(a) (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body; or
 - (ii) removed from the office of charity trustee or a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which the person by the person's conduct contributed to or facilitated; or
- (m) the person is subject to a disqualification order under the Company Directors Disqualification Act 1986(b), the Companies (Northern Ireland) Order 1986(c) or to an order made under section 429(2)(b) of the Insolvency Act 1986(d) (failure to pay under county court administration order);
- (n) that person has refused to comply with a request by the Health Board for that person to be medically examined on the grounds that the Health Board is concerned that the person is incapable of adequately providing services under the agreement and, in a case where that person is a partner in a partnership, or a legal and beneficial owner of shares in a company, that is a party to the agreement, the Health Board is not satisfied that the partnership or company is taking adequate steps to deal with the matter; or
- (o) that person would otherwise fall within paragraph 101(2)(p) of Schedule 5 to the GMS Contracts Regulations.

(4) A Health Board shall not terminate the agreement pursuant to sub-paragraph (2)(c) where the Health Board is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the person unsuitable to be–

- (a) a party to the agreement;
- (b) in the case where the person is a partner in a partnership that is a party to the agreement, a partner in that partnership; or
- (c) in the case where the person is–
 - (i) a person legally or beneficially holding a share in a company limited by shares that is a party to the agreement; or
 - (ii) a director or secretary of a company limited by shares that is a party to the agreement,

a person legally or beneficially holding share in that company or a director or secretary of that company, as the case may be.

(5) A Health Board shall not terminate the agreement pursuant to sub-paragraph (2)(d)–

- (a) until a period of at least three months has elapsed since the date of the dismissal of the person concerned; or
- (b) if, during the period of time specified in paragraph (a), the person concerned brings proceedings in any competent tribunal or court in respect of the person's dismissal, until proceedings before that tribunal or court are concluded,

and the Health Board may only terminate the agreement at the end of the period specified in paragraph (b) if there is no finding of unfair dismissal at the end of those proceedings.

(a) 1990 c.40.

(b) 1986 c.45.

(c) S.I. 1986/1032 (N.I.6).

(d) 1986 c.46 as amended by the Insolvency Act 2000 (2000 c.39).

(6) A Health Board shall not terminate the agreement pursuant to sub-paragraph (2)(h) where the Health Board is satisfied that the conviction does not make the person unsuitable to be—

- (a) a party to the agreement;
- (b) in the case where the person is a partner in a partnership that is a party to the agreement, a partner in that partnership;
- (c) in the case where the person is—
 - (i) a person legally and beneficially holding a share in a company limited by shares that is a party to the agreement; or
 - (ii) a director or secretary of a company limited by shares that is a party to the agreement,

a person legally and beneficially holding share in that company or a director or secretary of that company, as the case may be.

(7) In this paragraph “health service body” does not include any provider who is to be treated as a health service body in accordance with regulation 8.

Other grounds for termination by the Health Board

67. The Health Board may serve notice in writing on the provider terminating the agreement with the provider forthwith or with effect from such date as may be specified in the notice if—

- (a) the provider has breached the agreement and, as a result of that breach, the safety of the provider’s patients is at serious risk if the agreement is not terminated; or
- (b) the provider’s financial situation is such that the Health Board considers that the Health Board is at risk of material financial loss.

Termination by the Health Board: remedial notices and breach notices

68.—(1) Where a provider has breached the agreement other than as specified in paragraphs 65 to 67 and the breach is capable of remedy, the Health Board shall, before taking any action it is otherwise entitled to take by virtue of the agreement, serve a notice on the provider requiring it to remedy the breach (“remedial notice”).

(2) A remedial notice shall specify—

- (a) details of the breach;
- (b) the steps the provider must take to the satisfaction of the Health Board in order to remedy the breach; and
- (c) the period during which the steps must be taken (“the notice period”).

(3) The notice period shall, unless the Health Board is satisfied that a shorter period is necessary to—

- (a) protect the safety of the provider’s patients; or
- (b) protect itself from material financial loss,

be no less than 28 days from the date that notice is given.

(4) Where a Health Board is satisfied that the provider has not taken the required steps to remedy the breach by the end of the notice period, the Health Board may terminate the agreement with the provider with effect from such date as the Health Board may specify in a further notice to the provider.

(5) Where a provider has breached the agreement other than as specified in paragraphs 65 to 67 and the breach is not capable of remedy, the Health Board may serve notice on the provider requiring the provider not to repeat the breach (“breach notice”).

(6) If, following a breach notice or a remedial notice, the provider—

- (a) repeats the breach that was the subject of the breach notice or the remedial notice; or

- (b) otherwise breaches the agreement resulting in either a remedial notice or a further breach notice,

the Health Board may serve notice on the provider terminating the agreement with effect from such date as may be specified in that notice.

(7) The Health Board shall not exercise its right to terminate the agreement under sub-paragraph (6) unless it is satisfied that the cumulative effect of the breaches is such that the Health Board considers that to allow the agreement to continue would be prejudicial to the efficiency of the services to be provided under the agreement.

(8) If the provider is in breach of any obligation and a breach notice or a remedial notice in respect of that default has been given to the provider, the Health Board may withhold or deduct monies which would otherwise be payable under the agreement in respect of that obligation which is the subject of the default.

Termination by the Health Board: additional provisions specific to agreements with one or more companies limited by shares

69.—(1) Where a company limited by shares is a party to the agreement, if the Health Board becomes aware that a company is carrying on any business which the Health Board considers to be detrimental to the provider's performance of its obligations under the agreement—

- (a) the Health Board shall be entitled to give notice to the company requiring that the company ceases carrying on that business before the end of a period of not less than 28 days beginning on the day on which the notice is given (“the notice period”); and
- (b) if the company has not satisfied the Health Board that the company has ceased carrying on that business by the end of the notice period, the Health Board may, by a further written notice, terminate the agreement with that company forthwith or from such date as may be specified in the notice.

(2) Where the provider comprises more than one party to the agreement, a Health Board that serves notice pursuant to sub-paragraph (1)(a) or (b) shall send a copy of that notice to any other party to the agreement.

Termination by the Health Board: changes in the provider

70.—(1) The Health Board shall be entitled to terminate the agreement with the provider by notice in writing on such date as may be specified in that notice where, during the existence of the agreement—

- (a) one or more parties to the agreement have withdrawn from or ceased to be parties to the agreement; or
- (b) where one or more partnerships are parties to the agreement, one or more partners have left that partnership or those partnerships,

if in its reasonable opinion, the Health Board considers that the change in the parties to the agreement or membership of the partnership (as the case may be) is likely to have a serious adverse impact on the ability of the provider or the Health Board to perform its obligations under the agreement.

(2) A notice given to the provider pursuant to sub-paragraph (1) shall specify—

- (a) the date upon which the agreement is to be terminated; and
- (b) the Health Board's reasons for considering that the change in the parties to the agreement or the membership of the partnership (as the case may be) is likely to have a serious adverse impact on the ability of the provider or the Health Board to perform its obligations under the agreement.

Agreement sanctions

71.—(1) In this paragraph and paragraph 72, “agreement sanction” means—

- (a) the termination of specified obligations under the agreement;
- (b) the suspension of specified obligations under the agreement for a period of up to six months; or
- (c) the withholding or deducting of monies otherwise payable under the agreement.

(2) Where the Health Board is entitled to terminate the agreement with the provider or with a party to the agreement pursuant to paragraph 65, 66, 67, 68(4) or (6), 69 or 70 it may instead impose any of the agreement sanctions if the Health Board is reasonably satisfied that the agreement sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the Health Board's entitlement to terminate the agreement.

(3) Where the agreement includes the provision of essential services, the Health Board shall not, under sub-paragraph (2), be entitled to impose any agreement sanction that has the effect of terminating or suspending any obligation to provide, or any obligation that relates to, essential services.

(4) If the Health Board decides to impose an agreement sanction, it must notify the provider of the agreement sanction that it proposes to impose, the date upon which that sanction will be imposed and provide in that notice an explanation of the effect of the imposition of that sanction.

(5) Subject to paragraph 72 the Health Board shall not impose the agreement sanction until at least 28 days after it has served notice on the provider pursuant to sub-paragraph (4) unless the Health Board is satisfied that it is necessary to do so in order to—

- (a) protect the safety of the provider's patients; or
- (b) protect itself from material financial loss.

(6) Where the Health Board imposes an agreement sanction, the Health Board shall be entitled to charge the provider the reasonable costs of additional administration that the Health Board has incurred in order to impose, or as a result of imposing, the agreement sanction.

Agreement sanctions and the dispute resolution procedure

72.—(1) If there is a dispute between the Health Board and the provider in relation to an agreement sanction that the Health Board is proposing to impose, the Health Board shall not, subject to sub-paragraph (4), impose the proposed agreement sanction except in the circumstances specified in sub-paragraph (2)(a) or (b).

(2) If the provider refers the dispute relating to the agreement sanction to the NHS dispute resolution procedure within 28 days beginning on the date on which the Health Board served notice on the provider in accordance with paragraph 71(4) (or such longer period as may be agreed in writing with the Health Board), and notifies the Health Board in writing that it has done so, the Health Board shall not impose the agreement sanctions unless—

- (a) there has been a determination of the dispute pursuant to paragraph 57 and that determination permits the Health Board to impose the agreement sanction; or
- (b) the provider ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(3) If the provider does not invoke the NHS dispute resolution procedure within the time specified in sub-paragraph (2), the Health Board shall be entitled to impose the agreement sanction forthwith.

(4) If the Health Board is satisfied that it is necessary to impose the agreement sanction before the NHS dispute resolution procedure is concluded in order to—

- (a) protect the safety of the provider's patients; or
- (b) protect itself from material financial loss,

the Health Board shall be entitled to impose the agreement sanction forthwith, pending the outcome of that procedure.

Termination and the NHS dispute resolution procedure

73.—(1) Where the Health Board is entitled to serve written notice on the provider or a party to the agreement terminating the agreement with the provider or a party to the agreement pursuant to paragraph 65, 66, 67 or 68(4) or (6) the Health Board shall, in the notice served on the provider or the party to the agreement pursuant to those provisions, specify a date on which the agreement with the provider or a party to the agreement terminates that is not less than 28 days after the date on which the Health Board has served that notice on the provider or the party to the agreement unless sub-paragraph (2) applies.

(2) This sub-paragraph applies if the Health Board is satisfied that a period less than 28 days is necessary in order to—

- (a) protect the safety of the provider's patients; or
- (b) protect itself from material financial loss.

(3) In a case falling within sub-paragraph (1), where the exceptions in sub-paragraph (2) do not apply, where the provider invokes the NHS dispute resolution procedure before the end of the period of notice referred to in sub-paragraph (1), and it notifies the Health Board in writing that it has done so, the agreement shall not terminate at the end of the notice period but instead shall only terminate in the circumstances specified in sub-paragraph (4).

(4) The agreement shall only terminate if and when—

- (a) there has been a determination of the dispute pursuant to paragraph 57 and that determination permits the Health Board to terminate the agreement with the provider or the party to the agreement; or
- (b) the provider ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(5) If the Health Board is satisfied that it is necessary to impose the agreement sanction before the NHS dispute resolution procedure is concluded in order to—

- (a) protect the safety of the provider's patients; or
- (b) protect itself from material financial loss,

sub-paragraphs (3) and (4) shall not apply and the Health Board shall be entitled to confirm, by written notice to be served on the provider, that the agreement with the provider or a party to the agreement will nevertheless terminate at the end of the period of the notice it served pursuant to paragraph 65, 66(1), 67, 68(4) or (6), 69 or 70.

Consultation with the area medical committee

74.—(1) Whenever the Health Board is considering—

- (a) terminating the agreement with the provider or with a party to the agreement pursuant to paragraph 66, 67(1), 68, 69(4) or (6), 70 or 71; or
- (b) imposing an agreement sanction,

it shall, whenever it is reasonably practicable to do so, consult the area medical committee for its area before it terminates the agreement with the provider or with a party to the agreement or imposes a agreement sanction.

(2) Whether or not the area medical committee has been consulted pursuant to sub-paragraph (1), whenever the Health Board imposes a agreement sanction on the provider or terminates a agreement with the provider or a party to the agreement pursuant to this Part, it shall, as soon as reasonably practicable, notify the area medical committee in writing of the agreement sanction imposed or of the termination of the agreement (as the case may be).

PART 9

MISCELLANEOUS

Clinical governance

75.—(1) The provider shall have an effective system of clinical governance.

(2) The provider shall nominate a person who will have responsibility for ensuring the effective operation of a system of clinical governance.

(3) The person nominated under sub-paragraph (2) shall be a person who performs or manages services under the agreement.

(4) In this paragraph “system of clinical governance” means a framework through which the provider endeavours continuously to improve the quality of its services and safeguard high standards of care by creating an environment in which clinical excellence can flourish.

Insurance

76.—(1) The provider shall at all times hold adequate insurance against liability arising from negligent performance of clinical services under the agreement.

(2) The provider shall not sub-contract its obligations to provide clinical services under the agreement unless it has satisfied itself that the sub-contractor holds adequate insurance against liability arising from negligent performance of such services.

(3) In this paragraph—

- (a) “insurance” means a contract of insurance or other arrangement made for the purpose of indemnifying the provider; and
- (b) a provider shall be regarded as holding insurance if the insurance is held by an employee of that provider in connection with clinical services which that employee provides under the agreement or, as the case may be, sub-contract.

Insurance

77. The provider shall at all times hold adequate public liability insurance in relation to liabilities to third parties arising under or in connection with the agreement which are not covered by the insurance referred to in paragraph 76(1).

Gifts

78.—(1) The provider shall keep a register of gifts which—

(a) are given to any of the persons specified in sub-paragraph (2) by or on behalf of—

- (i) a patient;
- (ii) a relative of a patient; or
- (iii) any person who provides or wishes to provide services to the provider or its patients in connection with the agreement; and

(b) have, in its reasonable opinion, an individual value of more than £100.00.

(2) The persons referred to in sub-paragraph (1) are—

- (a) the provider;
- (b) where a partnership is a party to the agreement, any partner in the partnership;
- (c) where a company is a party to the agreement—
 - (i) any person legally and beneficially holding a share in the company, or
 - (ii) a director or secretary of the company;
- (d) any person employed by the provider for the purposes of the agreement;

- (e) any general medical practitioner engaged by the provider for the purposes of the agreement;
 - (f) any spouse of an individual (where an individual is a party to the agreement) or of a person specified in paragraphs (b) to (e); or
 - (g) any person (whether or not of the opposite sex) whose relationship with any individual (where an individual is a party to the agreement) or with a person specified in paragraphs (b) to (e) has the characteristics of the relationship between husband and wife.
- (3) Sub-paragraph (1) does not apply where–
- (a) there are reasonable grounds for believing that the gift is unconnected with services provided or to be provided by the provider;
 - (b) the provider is not aware of the gift; or
 - (c) the provider is not aware that the donor wishes to provide services to the provider.
- (4) The provider shall take reasonable steps to ensure that it is informed of gifts which fall within sub-paragraph (1) and which are given to the persons specified in sub-paragraph (2)(b) to (g).
- (5) The register referred to in sub-paragraph (1) shall include the following information–
- (a) the name of the donor;
 - (b) in a case where the donor is a patient, the patient’s National Health Service number or, if the number is not known, his address;
 - (c) in any other case , the address of the donor;
 - (d) the nature of the gift;
 - (e) the estimated value of the gift; and
 - (f) the name of the person or persons who received the gift.
- (6) The provider shall make the register available to the Health Board on request.

Compliance with legislation and guidance

79. The provider shall–
- (a) comply with all relevant legislation; and
 - (b) have regard to all relevant guidance issued by the Health Board and the Scottish Ministers.

Third party rights

80. The agreement shall not create any right enforceable by any person not a party to it.

AGREEMENTS TO PROVIDE ESSENTIAL SERVICES

PART 1

PROVISION OF ESSENTIAL SERVICES

Essential services

1.—(1) Subject to paragraph 2, the provider must provide the services described in sub-paragraphs (3) and (5) throughout the core hours.

(2) The services described in this paragraph are services required for the management of the provider's registered patients and temporary residents who are, or believe themselves to be—

- (a) ill, with conditions from which recovery is generally expected;
- (b) terminally ill; or
- (c) suffering from chronic disease,

delivered in the manner determined by the practice in discussion with the patient.

(3) For the purpose of sub-paragraph (2)—

- (a) “disease” means a disease included in the list of three-character categories contained in the tenth revision of the International Statistical Classification of Diseases and Related Health Problems^(a);
- (b) “management” includes—
 - (i) offering consultation and, where appropriate, physical examination for the purpose of identifying the need, if any, for treatment or further investigation; and
 - (ii) the making available of such treatment or further investigation as is necessary and appropriate, including, where appropriate, the referral of the patient for other services under the Act and liaison with other health care professionals involved in the patient's treatment and care.

(4) The services described in this paragraph are the provision of appropriate ongoing treatment and care to all registered patients and temporary residents taking account of their specific needs including—

- (i) the provision of advice in connection with the patient's health, including relevant health promotion advice; and
- (ii) the referral of the patient for other services under the Act.

(5) A provider must provide primary medical services required in core hours for the immediately necessary treatment of any person to whom the provider has been requested to provide treatment owing to an accident or emergency at any place in its practice area.

(6) In sub-paragraph (5), “emergency” includes any medical emergency whether or not related to services provided under the contract.

(7) A provider must provide primary medical services required in core hours for the necessary treatment of any person falling within sub-paragraph (8) who requests such treatment, for the period specified in sub-paragraph (9).

(8) A person falls within sub-paragraph (7) if the person is one—

^(a) World Health Organisation, 1992 ISBN 92 4 1544 19 8 (v.I) NLM Classification WB 15.

- (a) whose application for inclusion in the provider's list of patients has been refused in accordance with paragraph 11 and who is not registered with another provider (by any arrangement) of essential services (or their equivalent) in the area of the Health Board;
 - (b) whose application for acceptance as a temporary resident has been refused under paragraph 11;
 - (c) who is present in the provider's practice area for less than 24 hours.
- (9) The period referred to in sub-paragraph (7) is—
- (a) in the case of sub-paragraph (8)(a), 14 days beginning with the date on which that person's application was refused or until that person has been subsequently registered elsewhere for the provision of essential services (or their equivalent), whichever occurs first;
 - (b) sub-paragraph (8)(b), 14 days beginning with the date on which that person's application was rejected or until that person has been accepted as a temporary resident elsewhere as a temporary resident, whichever occurs first; and
 - (c) sub-paragraph (8)(c), 24 hours or such shorter period as the person is present in the provider's practice area.

Essential services

2. The provider shall—
- (a) provide essential services, at such times, within core hours, as are appropriate to meet the reasonable needs of the provider's patients; and
 - (b) have in place arrangements for the provider's patients to access such services throughout the core hours in case of emergency.

Attendance at practice premises

- 3.—(1) The provider shall take steps to ensure that any patient who—
- (a) has not previously made an appointment; and
 - (b) attends at the practice premises during the normal hours for essential services,

is provided with such services by an appropriate health care professional during that surgery period except in the circumstances specified in sub-paragraph (2).

- (2) The circumstances referred to in sub-paragraph (1) are that—
- (a) it is more appropriate for the patient to be referred elsewhere for services under the Act; or
 - (b) the patient is offered an appointment to attend again within a time which is appropriate and reasonable having regard to all the circumstances and the patient's health would not thereby be jeopardised.

Newly registered patients

- 4.—(1) Where a patient has been—
- (a) accepted on a provider's list of patients under paragraph 9; or
 - (b) assigned to that list by the Health Board,

the provider shall, in addition to and without prejudice to its other obligations in respect of that patient under the agreement, invite the patient to participate in a consultation either at the provider's practice premises or, if a medical condition of the patient so warrants, at one of the places referred to in paragraph 2(2) of Schedule 1.

(2) An invitation under sub-paragraph (1) to be issued within 6 months of the date of acceptance of the patient on, or their assignment to, the provider's list of patients.

(3) Where a patient (or, in the case of a patient who is a child, the child's parent) agrees to participate in a consultation mentioned in sub-paragraph (1) the provider shall, in the course of that consultation make such inquiries and undertake such examinations as appear to the provider to be appropriate in all the circumstances.

Patients not seen within 3 years

5.—(1) Where a registered patient who—

- (a) has attained the age of 16 years but has not attained the age of 75 years; and
- (b) has attended neither a consultation with, nor a clinic provided by, the provider, within the preceding 3 years prior to the date of the patient's request,

requests a consultation, the provider shall, in addition and without prejudice to the providers other obligations in respect of that patient under the agreement, provide such a consultation in the course of which the provider shall make such inquiries and undertake such examinations as appear to the provider to be appropriate in all the circumstances.

Patients aged 75 years and over

6.—(1) Where a registered patient who—

- (a) has attained the age of 75 years; and
- (b) has not participated in a consultation under this paragraph within the period of 12 months prior to the date of the patient's request,

requests a consultation, the provider shall, in addition and without prejudice to the provider's other obligations in respect of that patient under the agreement, provide such a consultation in the course of which the provider shall make such inquiries and undertake such examinations as appear to it to be appropriate in all the circumstances.

(2) A consultation under sub-paragraph (1) shall take place in the home of the patient where, in the reasonable opinion of the provider, it would be inappropriate, as a result of the patient's medical condition for the patient to attend at the practice premises.

Fees and charges for essential services

7.—(1) Where a person applies to the provider for the provision of essential services and claims to be on that provider's list of patients, but fails to produce that person's medical card on request and the provider has reasonable doubts about that person's claim, the provider shall provide any necessary treatment and shall be entitled to demand and accept a reasonable fee in accordance with sub-paragraph (2) subject to the provision for repayment contained in paragraph (3).

(2) The provider may demand and accept a reasonable fee when the provider treats a patient under sub-paragraph (1) for any treatment given, if the provider gives the patient a receipt.

(3) Where a person from whom a provider received a fee under sub-paragraph (1) applies to the Health Board for a refund within 14 days of payment of the fee (or such longer period not exceeding one month as the Health Board may allow, if it is satisfied that the failure to apply within 14 days was reasonable) and the Health Board is satisfied that the person was on the provider's list of patients when the treatment was given, the Health Board may recover the amount of the fee from the provider, by deduction from the provider's remuneration or otherwise, and shall pay that amount to the person who paid the fee.

PART 2

LIST OF PATIENTS

List of patients

8. The Health Board shall prepare and keep up to date a provider's list of patients—
- (a) who have been accepted by the provider for inclusion in the provider's list of patients under paragraph 9 and who have not subsequently been removed from that list under paragraphs 12 to 20; and
 - (b) who have been assigned to the provider under paragraph 24 or 25 and whose assignment has not subsequently been rescinded.

Application for inclusion in a list of patients

9.—(1) The provider may, if its list of patients is open, accept an application for inclusion in the provider's list of patients made by or on behalf of any person whether or not resident in its practice area or included, at the time of the application, in the list of patients of any other provider (by any arrangement) of primary medical services.

(2) The provider may, if its list of patients is closed, only accept an application for inclusion in its list of patients from a person who is an immediate family member of a registered patient whether or not resident in the provider's practice area or included, at the time of the application, in the list of patients of any other provider (by any arrangement) of primary medical services.

(3) Subject to sub-paragraph (4), an application for inclusion in a provider's list of patients shall be made by delivering to the practice premises a medical card or an application signed (in either case) by the applicant or a person authorised to sign on the applicant's behalf.

- (4) An application may be made—
- (a) on behalf of any child—
 - (i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child;
 - (ii) by a person duly authorised by a local authority, where the child is in the care of the local authority under the Children (Scotland) Act 1995(a); or
 - (iii) by a person authorised by a voluntary organisation, by which the child is being accommodated under the provisions of that Act; or
 - (b) on behalf of any adult person who is incapable of making such an application, or authorising such an application to be made on their behalf, by the primary carer of that person or by the person authorised under the Adults with Incapacity (Scotland) Act 2000(b) to act on the patients behalf.

(5) A provider which accepts an application for inclusion in the provider's list of patients shall notify the Health Board in writing as soon as possible.

- (6) On receipt of a notice under sub-paragraph (5), the Health Board shall—
- (a) include that person in the provider's list of patients from the date on which the notice is received; and
 - (b) notify the applicant (or, in the case of a child or incapable adult, the person making the application on their behalf) of the acceptance.

Temporary residents

10.—(1) The provider may, if the provider's list of patients is open, accept a person as a temporary resident provided it is satisfied that the person is—

(a) 1995 c.36.
(b) 2000 asp 4.

- (a) temporarily resident away from the person's normal place of residence and is not being provided with essential services (or their equivalent) under any other arrangement in the locality where the person is temporarily residing; or
- (b) moving from place to place and not for the time being resident in any place.

(2) For the purposes of sub-paragraph (1), a person shall be regarded as temporarily resident in a place if, when the person arrives in that place, the person intends to stay there for more than 24 hours but not more than 3 months.

(3) A provider which wishes to terminate its responsibility for a person accepted as a temporary resident before the end of—

- (a) 3 months; or
- (b) such shorter period for which the provider agreed to accept the person as a patient,

shall notify the person either orally or in writing and its responsibility for that patient shall cease 7 days after the date on which the notification was given.

(4) At the end of 3 months, or on such earlier date as the provider's responsibility for the temporary resident has come to an end, the provider shall notify the Health Board in writing of any person whom it accepted as a temporary resident.

Refusal of applications for inclusion in the list of patients or for acceptance as a temporary resident

11.—(1) The provider shall only refuse an application made under paragraph 9 or 10 if the provider has reasonable grounds for doing so which do not relate to the applicant's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition.

(2) The reasonable grounds referred to in paragraph (1) shall, in the case of applications made under paragraph 9, include the ground that the applicant does not live in the provider's practice area.

(3) A provider which refuses an application made under paragraph 9 or 10 shall, within 14 days of its decision notify the applicant (or, in the case of a child or incapable adult, the person making the application on their behalf) in writing of the refusal and the reasons for it.

(4) The provider shall keep a written record of refusals of applications made under paragraph 9 and of the reasons for them and shall make this record available to the Health Board on request.

Removal from the list at the request of the patient

12.—(1) The provider shall notify the Health Board of any request for removal from its list of patients received from a registered patient.

(2) Where the Health Board—

- (a) receives notification from the provider under sub-paragraph (1); or
- (b) receives a request from the patient to be removed from the provider's list of patients,

the Health Board shall remove that person from the provider's list of patients.

(3) A removal in accordance with sub-paragraph (2) shall take effect—

- (a) on the date on which the Health Board receives notification of the registration of the person with another provider (by any arrangement) of essential services (or their equivalent); or
- (b) 14 days after the date on which the notification or request made under sub-paragraph (1) or (2) respectively is received by the Health Board,

whichever is the sooner.

(4) The Health Board shall, as soon as is practicable, notify in writing—

- (a) the patient; and
- (b) the provider,

that the patient's name will be or has been removed from the provider's list of patients on the date referred to in sub-paragraph (3).

(5) In this paragraph and in paragraphs 13(1)(b) and (10), 14(6) and (7) 16 and 19, a reference to a request received from or advice, information or notification required to be given to—

- (a) in the case of a patient who is a child, a parent or other person referred to in paragraph 9(4)(a); or
- (b) in the case of an adult patient who is incapable of making the relevant request or receiving the relevant advice, information or notification, a relative or the primary carer of the patient.

Removal from the list at the request of the provider

13.—(1) Subject to paragraph 14, a provider which has reasonable grounds for wishing a patient to be removed from the provider's list of patients which do not relate to the patient's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition shall—

- (a) notify the Health Board in writing that the provider wishes to have the patient removed; and
- (b) subject to sub-paragraph (2), notify the patient of the provider's specific reasons for requesting removal.

(2) Where, in the reasonable opinion of the provider—

- (a) the circumstances of the removal are such that it is not appropriate for a more specific reason to be given; and
- (b) there has been an irrevocable breakdown in the relationship between the patient and the provider,

the reason given under sub-paragraph (1) may consist of a statement that there has been such a breakdown.

(3) Except in the circumstances described in sub-paragraph (4), a provider may only request a removal under sub-paragraph (1) if, within the period of 12 months prior to the date of the provider's request to the Health Board it has warned the patient that the patient is at risk of removal and explained to the patient the reasons for this.

(4) The circumstances referred to in sub-paragraph (3) are that—

- (a) the reason for the removal relates to a change of address;
- (b) the provider has reasonable grounds for believing that the issue of such a warning would—
 - (i) be harmful to the physical or mental health of the patient; or
 - (ii) put at risk the safety of a person specified in sub-paragraph (5); or
- (c) it is, in the opinion of the provider, not otherwise reasonably practicable for a warning to be given.

(5) The persons referred to in sub-paragraph (4) are—

- (a) an individual that is a party to the agreement;
- (b) a partner in a partnership that is a party to the agreement;
- (c) a legal and beneficial owner of shares in a company that is a party to the agreement;
- (d) a member of the provider's staff;
- (e) a person engaged by the provider to perform or assist in the performance of services under the agreement; or
- (f) any other person present—
 - (i) on the practice premises; or
 - (ii) in the place where services are being provided to the patient under the agreement.

(6) The provider shall record in writing—

- (a) the date of any warning given in accordance with sub-paragraph (3) and the reasons for giving such a warning as explained to the patient; or
- (b) the reason why no such warning was given.

(7) The provider shall keep a written record of refusals under this paragraph which shall include—

- (a) the reason for removal given to the patient;
- (b) the circumstances of the removal; and
- (c) in cases where sub-paragraph (2) applies, the grounds for a more specific reason not being appropriate,

and shall make this record available to the Health Board on request.

(8) A removal requested in accordance with sub-paragraph (1) shall, subject to sub-paragraph (9) take effect from—

- (a) the date on which the Health Board receives notification of the registration of the person with another provider (by any arrangement) of essential services (or their equivalent); or
- (b) the eighth day after the Health Board receives the notice referred to in sub-paragraph (1)(a),

whichever is the sooner.

(9) Where, on the date on which the removal would take effect under sub-paragraph (8), the provider is treating the patient at intervals of less than 7 days, the provider shall notify the Health Board in writing of the fact and the removal shall take effect—

- (a) on the eighth day after the Health Board receives notification from the provider that the person no longer needs such treatment; or
- (b) on the date on which the Health Board receives notification of the registration of the person with another provider (by any arrangement) of essential services or their equivalent,

whichever is the sooner.

(10) The Health Board shall notify in writing—

- (a) the patient; and
- (b) the provider,

that the patient's name has been or will be removed from the provider's list of patients on the date referred to in sub-paragraph (8) or (9).

Removal from the list of patients who are violent

14.—(1) A provider which wishes a patient to be removed from its list of patients with immediate effect on the grounds that—

- (a) the patient has committed an act of violence against any of the persons specified in sub-paragraph (2) or behaved in such a way that any such person has feared for that person's own safety; and
- (b) the provider has reported the incident to the police or the Procurator Fiscal,

shall notify the Health Board in accordance with sub-paragraph (3).

(2) The persons referred to in sub-paragraph (1) are—

- (a) an individual that is a party to the agreement;
- (b) a partner in a partnership that is a party to the agreement;
- (c) a legal and beneficial owner or shares in a company that is a party to the agreement;
- (d) a member of the provider's staff;

- (e) a person engaged by the provider to perform or assist in the performance of services under the agreement; or
- (f) any other person present—
 - (i) on the practice premises; or
 - (ii) in the place where services were provided to the patient under the agreement.

(3) Notification under sub-paragraph (1) may be given by any means including telephone or fax but if not given in writing shall subsequently be confirmed in writing within 7 days (and for this purpose a faxed notification or transmission by electronic means is not a written one).

(4) The Health Board shall acknowledge in writing receipt of a request from the provider under sub-paragraph (1).

(5) A removal requested in accordance with sub-paragraph (1) shall take effect at the time that the provider—

- (a) makes the telephone call to the Health Board; or
- (b) sends or delivers the notification to the Health Board.

(6) Where, pursuant to this paragraph, the provider has notified the Health Board that it wishes to have a patient removed from the provider's list of patients, it shall, inform the patient concerned unless—

- (a) it is not reasonably practicable for the provider to do so; or
- (b) the provider has reasonable grounds for believing that to do so would—
 - (i) be harmful to the physical or mental health of the patient; or
 - (ii) put at risk the safety of one or more of the persons specified in sub-paragraph (2).

(7) Where the Health Board has removed a patient from the provider's list of patients in accordance with sub-paragraph (5) it shall give written notice of the removal to that patient.

(8) Where a patient is removed from the provider's list of patients in accordance with this paragraph, the provider shall record in the patient's medical records that the patient has been removed under this paragraph and the circumstances leading to the patient's removal.

Removals from the list of patients registered elsewhere

15.—(1) The Health Board shall remove a patient from the provider's list of patients if—

- (a) the patient has subsequently been registered with another provider (by any arrangement) of essential services (or their equivalent) in the area of the Health Board; or
- (b) it has received notice from another Health Board, Primary Care trust, Local Health Board, or a Health and Social Services Board that the patient has subsequently been registered with a provider (by any arrangement) of essential services (or their equivalent) outside the area of the Health Board.

(2) A removal in accordance with sub-paragraph (1) shall take effect—

- (a) on the date on which the Health Board receives notification of the registration of the person with the new provider (by any arrangement); or
- (b) with the consent of the Health Board, on such other date as has been agreed between the provider and the new provider (by any arrangement).

(3) The Health Board shall notify the provider in writing of persons removed from the provider's list of patients under sub-paragraph (1).

Removals from list of patients who have moved

16.—(1) Subject to sub-paragraph (2), where the Health Board is satisfied that a person on the provider's list of patients has moved and no longer resides in that provider's practice area, the Board shall—

- (a) inform that patient and the provider that the provider is no longer obliged to visit and treat the person;
- (b) advise the patient either to obtain the provider's agreement to the continued inclusion of the person on the provider's list of patients or to apply for registration with another provider (by any arrangement) of essential services (or their equivalent); and
- (c) inform the patient that if, after the expiration of 30 days from the date of the letter of advice mentioned in paragraph (b), the patient has not acted in accordance with the advice and informed the Board accordingly, the Health Board will remove the patient from the provider's list of patients.

(2) If, at the expiration of the period of 30 days referred to in sub-paragraph (1)(c), the Health Board has not been notified of the action taken, it shall remove the patient from the provider's list of patients and inform the patient and the provider accordingly.

Removals from list of patients who have moved

17. Where the address of a patient who is on the provider's list of patients is no longer known to the Health Board, the Health Board shall—

- (a) give to the provider notice in writing that it intends, at the end of the period of 6 months commencing with the date of the notice, to remove the patient from the provider's list of patients; and
- (b) at the end of that period, remove the patient from the provider's list of patients unless, within that period, the provider satisfies the Health Board that the provider is still responsible for providing essential services to that patient.

Removals from the list of patients absent from the United Kingdom

18.—(1) The Health Board shall remove a patient from the provider's list of patients where it receives notification that that patient—

- (a) intends to be away from the United Kingdom for a period of at least three months;
- (b) is in Her Majesty's Forces;
- (c) has been absent from the United Kingdom for a period of more than three months; or
- (d) has died.

(2) A removal in accordance with sub-paragraph (1) shall take effect—

- (a) in the cases referred to in sub-paragraph (1)(a) and (b) from the date of the departure, or enlistment or the date on which the Health Board first receives notification of the departure, or enlistment whichever is the later; or
- (b) in the cases referred to in (1)(c) and (d) from the date on which the Health Board first receives notification of the absence or death.

(3) The Health Board shall notify the provider in writing of patients removed from its list of patients under sub-paragraph (1).

Removals from the list of patients accepted elsewhere as temporary residents

19.—(1) The Health Board shall remove from the provider's list of patients a patient who has been accepted as a temporary resident by another provider (by any arrangement) of essential services (or their equivalent) where it is satisfied, after due inquiry—

- (a) that the person's stay in the place of temporary residence has exceeded 3 months; and
- (b) that the patient has not returned to the patient's normal place of residence or any other place within the provider's practice area.

(2) The Health Board shall notify in writing of a removal under sub-paragraph (1)—

- (a) the provider; and

- (b) where practicable, the patient.
- (3) A notification to the patient under sub-paragraph (2)(b) shall inform the patient of–
 - (a) the patient’s entitlement to make arrangements for the provision to the patient of essential services (or their equivalent), including by the provider (by any arrangement) by which the patient has been treated as a temporary resident; and
 - (b) the name and address of the Health Board in whose area the patient is resident.

Removals from the list of pupils etc. of a school

20.—(1) Where the provider provides essential services under the agreement to persons on the ground that they are pupils at or staff or residents of a school, the Health Board shall remove from the provider’s list of patients any such patients who do not appear on particulars of persons who are pupils at or staff of that school provided by that school.

(2) Where the Health Board has made a request to a school to provide the particulars mentioned in sub-paragraph (1) and has not received them, it shall consult the provider as to whether it should remove from its list of patients any persons appearing on that list as pupils at, or staff of, that school.

(3) The Health Board shall notify the provider in writing of patients removed from its list of patients under sub-paragraph (1).

Closure of lists of patients

21.—(1) A provider which wishes to close its list of patients shall notify the Health Board in writing to that effect.

(2) Within a period of 7 days beginning with the date of receipt of the notification referred to in sub-paragraph (1), or, if that is not reasonably practicable, as soon as is practicable thereafter, the Health Board shall enter into discussions with the provider concerning the support which the Health Board may give the provider, or other changes which the Health Board or the provider may make, which would enable the provider to keep its list of patients open.

(3) In the discussions referred to in sub-paragraph (2) both parties shall use reasonable endeavours to achieve the aim of keeping the provider’s list of patients open.

(4) The discussions mentioned in sub-paragraph (2) shall be completed within a period of 28 days beginning with the date of the Health Board’s receipt of the notification referred to in sub-paragraph (1), or within such longer period as the parties may agree.

(5) If, following the discussions mentioned in sub-paragraph (2), the Health Board and the provider reach agreement that the provider’s list of patients should remain open, the Health Board shall send full details of the agreement in writing to the provider.

(6) The Health Board and the provider shall comply with the terms of an agreement reached as mentioned in sub-paragraph (5).

(7) If, following the discussions mentioned in sub-paragraph (2)–

- (a) the Health Board and the provider reach agreement that the provider’s list of patients should close; or
- (b) the Health Board and the provider fail to reach agreement and the provider still wishes to close the provider’s list of patients,

the provider shall send a closure notice to the Health Board.

(8) A closure notice shall be submitted in the form specified in Schedule 5, and shall include the following details which (in a case falling within sub-paragraph (7)(a)) have been agreed between the parties or (in a case falling within sub-paragraph (7)(b)) are proposed by the provider:–

- (a) the period of time (which may not exceed 12 months) for which the provider’s list of patients will be closed;
- (b) the current number of the provider’s registered patients;

- (c) the number of registered patients (lower than the current number of such patients, and expressed either in absolute terms or as a percentage of the number of such patients specified pursuant to paragraph (b)) which, if that number were reached, would trigger the re-opening of the provider's list of patients;
- (d) the number of registered patients (expressed either in absolute terms or as a percentage of the number of such patients specified pursuant to paragraph (b)) which, if that number were reached, would trigger the re-closure of the provider's list of patients; and
- (e) any withdrawal or reduction in provision of any additional or enhanced services which had previously been provided under the agreement.

(9) The Health Board shall forthwith acknowledge receipt of the closure notice in writing to the provider.

(10) Before the Health Board reaches a decision as to whether to approve or reject the closure notice under sub-paragraph (12), the Health Board and the provider may enter into further discussions concerning the details of the closure notice as specified in sub-paragraph (8), with a view to reaching agreement; and, in particular, if the parties are unable to reach agreement regarding the period of time for which the provider's list of patients will be closed, that period shall be 12 months.

(11) A provider may not withdraw a closure notice for a period of 3 months beginning with the date on which the Health Board has received the notice, unless the Health Board has agreed otherwise in writing.

(12) Within a period of 14 days beginning with the date of receipt of the closure notice, the Health Board shall—

- (a) approve the closure notice; or
- (b) reject the closure notice,

and shall notify the provider of its decision in writing as soon as possible.

(13) Approval of the closure notice under sub-paragraph (12)(a) includes approval of the details specified in accordance with sub-paragraph (8) (or, where those details are revised following discussions under sub-paragraph (10), approval of those details as so revised).

Approval of closure notice by the Health Board

22.—(1) If the Health Board approves the closure notice in accordance with paragraph 21(12)(a), the provider shall close the provider's list of patients—

- (a) with effect from a date agreed between the Health Board and the provider; or
- (b) if no such agreement has been reached, with effect from that date on which the provider receives notification of the Health Board's decision to approve the closure notice.

(2) Subject to sub-paragraph (3), the provider's list of patients shall remain closed for the period specified in the closure notice in accordance with paragraph 21(8)(a) (or, where a period of 12 months has been fixed in accordance with paragraph 21(10), for that period).

(3) The provider's list of patients shall re-open before the expiry of the period mentioned in sub-paragraph (2) if—

- (a) the number of the provider's registered patients falls to the number specified in the closure notice in accordance with paragraph 21(8)(c);
- (b) the Health Board and the provider agree that the list of patients should re-open.

(4) If the provider's list of patients has re-opened pursuant to sub-paragraph (3)(a) it shall nevertheless close again if, during the period specified in the closure notice in accordance with paragraph 21(8)(a) or, where the period of 12 months specified in paragraph 21(10) applies, during that period) the number of the provider's registered patients rises to the number specified in the closure notice in accordance with paragraph 21(8)(d).

(5) Except in cases where the provider's list of patients is already open pursuant to sub-paragraph (3), the Health Board shall notify the provider in writing between 7 and 14 days before the expiry of the period of closure specified in sub-paragraph (2), confirming the date on which the provider's list of patients will re-open.

(6) Where the details specified in the closure notice in accordance with paragraph 21(8) have been revised following discussions under paragraph 21(10), references in this paragraph to details specified in the closure notice are references to those details as so revised.

Rejection of closure notice by the Health Board

23.—(1) This regulation applies where the Health Board rejects the closure notice in accordance with paragraph 21(12)(b).

(2) The provider and the Health Board may not refer the matter for determination in accordance with the NHS dispute resolution procedure (or, where applicable, in the case of a non-NHS contract, commence court proceedings) until the assessment panel has given its determination in accordance with the following sub-paragraphs.

(3) The Health Board must ensure that the assessment panel is appointed by another Health Board as soon as is practicable to consider and determine whether the provider should be permitted to close its list of patients, and if so, the terms on which the provider should be permitted to do so.

(4) The Health Board shall provide the assessment panel with such information as the assessment panel may reasonably require to enable the panel to reach a determination and shall include in such information any written observations received from the provider.

(5) At least one member of the assessment panel shall visit the provider before reaching a determination under sub-paragraph (6).

(6) Within the period of 28 days beginning with the date on which the Health Board rejected the closure notice, the assessment panel shall—

- (a) approve the list closure; or
- (b) reject the list closure,

and shall notify the Health Board and the provider of its determination in writing as soon as possible.

(7) Where the assessment panel determines in accordance with sub-paragraph (6)(a) that the provider's list of patients should close, it shall specify—

- (a) a date from which the closure shall take effect, which must be within a period of 7 days beginning with the date of the assessment panel's determination; and
- (b) those details specified in paragraph 21(8).

(8) Where the assessment panel rejects the list closure in accordance with sub-paragraph (6)(b) that list shall remain open, and the Health Board and the provider shall enter into discussions with a view to ensuring that the provider receives support from the Health Board which will enable the provider to continue to provide services safely and effectively.

(9) Where the assessment panel rejects the list closure in accordance with sub-paragraph (6)(b) the provider may not submit a further closure notice as described in paragraph 21 until—

- (a) the expiry of a period of three months beginning with the date of the assessment panel's determination; or
- (b) (if applicable) the final determination of the NHS dispute resolution procedure (or any court proceedings),

whichever is the later, unless there has been a change in the circumstances of the provider which affects its liability to deliver services under the agreement.

(10) Any decision or determination by the assessment panel for the purposes of this paragraph may be reached by a majority.

Assignment of patients to lists: open lists

24.—(1) A Health Board may, subject to paragraph 26, assign a new patient to a provider whose list of patients is open.

- (2) In this paragraph and in paragraphs 25 and 27 to 29, a “new” patient means a person who—
- (a) is resident (whether or not temporarily) within the area of the Health Board;
 - (b) has been refused inclusion in a list of patients of, or has not been accepted as a temporary resident by, a provider (by any arrangement) of essential services (or their equivalent) whose premises are within such an area; and
 - (c) wishes to be included in the list of patients of a provider (by any arrangement) of essential services (or their equivalent) whose practice premises are within that area.

Assignment of patients to lists: closed lists

25.—(1) A Health Board may not assign a patient to a provider which has closed the provider’s list of patients except in the circumstances specified in sub-paragraph (2).

(2) A Health Board may, subject to paragraph 26 assign a new patient to a provider whose practice premises are within the Health Board’s area and which has closed the provider’s list of patients, if—

- (a) most or all of the providers (by any arrangement) of essential services (or their equivalent) whose practice premises are within the Health Board’s area have closed their lists of patients;
- (b) the assessment panel has determined under paragraph 27(7) that patients may be assigned to the provider in question, and that determination has not been overturned either by a determination of the Scottish Ministers or the adjudicator under the NHS dispute resolution procedure as modified by paragraph 28 or (where applicable) by a court; and
- (c) the Health Board has entered into discussions with the provider in question regarding the assignment of a patient if such discussions are required under paragraph 29.

Factors relevant to assignments

26. In making an assignment to a provider under paragraph 24 or 25, the Health Board shall have regard to—

- (a) the wishes and circumstances of the patient to be assigned;
- (b) the distance between the patient’s place of residence and the provider’s practice premises;
- (c) whether during the 6 months ending on the date on which the application for assignments is received by the Health Board, the patient’s name has been removed from the list of patients of a provider in the area of the Health Board under paragraph 13 or its equivalent provision in relation to a general medical services contractor in the area of the Health Board.
- (d) whether the patient’s name has been removed from the list of patients of a provider in the area of the Health Board under paragraph 14 or its equivalent provision in relation to a general medical services contractor in the area of the Health Board and, if so, whether the provider has appropriate facilities to deal with such a patient; and
- (e) such other matters as the Health Board considers to be relevant.

Assignments to closed lists: determination of the assessment panel

27.—(1) This paragraph applies where most or all of the providers (by any arrangement) of essential services (or their equivalent) whose practice premises are within the area of a Health Board have closed their lists of patients.

(2) If the Health Board wishes to assign new patients to providers which have closed their lists of patients, it must prepare a proposal to be considered by the assessment panel, and the proposal must include details of those providers to which the Health Board wishes to assign patients.

(3) The Health Board must ensure that the assessment panel is appointed to consider and determine its proposal made under sub-paragraph (2).

(4) The Health Board shall notify in writing—

(a) providers or general medical services contractors whose practice premises are within the Health Board's area which—

(i) have closed their list of patients; and

(ii) may, in the opinion of the Health Board, be affected by the determination of the assessment panel; and

(b) the area medical committee, for the area of the Health Board,

that it has referred the matter to the assessment panel.

(5) In reaching its determination, the assessment panel shall have regard to relevant factors including—

(a) whether the Health Board has attempted to secure the provision of essential services (or their equivalent) for new patients other than by means of their assignment to providers with closed lists of patients; and

(b) the workload of those providers likely to be affected by any decision to assign such patients to their list of patients.

(6) The assessment panel shall reach a determination within the period of 28 days beginning with the date on which the panel was appointed.

(7) The assessment panel shall determine whether the Health Board may assign patients to providers which have closed their lists of patients; and if it determines that the Health Board may make such assignments, it shall also determine those providers to which patients may be assigned.

(8) The assessment panel may determine that the Health Board may assign patients to providers other than those providers specified by the Health Board in its proposal under sub-paragraph (2), as long as the providers were notified under sub-paragraph (4)(a).

(9) The assessment panel's determination shall include its comments on the matters specified in sub-paragraph (5), and shall be notified in writing to those providers which were notified under sub-paragraph (4)(a).

(10) Any decision or determination by the assessment panel for the purposes of this paragraph may be reached by a majority .

Assignments to closed lists: NHS dispute resolution procedure relating to determinations of the assessment panel

28.—(1) Where an assessment panel makes a determination under paragraph 27(7) that the Health Board may assign new patients to providers which have closed their lists of patients, any provider specified in that determination may refer the matter in dispute to the Scottish Ministers to review the determination of the assessment panel.

(2) Where more than one provider specified in the determination in accordance with paragraph 27(7) wishes to refer the matter for dispute resolution, those providers may, if they all agreed, refer the matter jointly, and in that case the Scottish Ministers shall review the matter in relation to those providers together.

(3) Where a matter is referred to the Scottish Ministers under sub-paragraph (1) or (2), it shall be determined in accordance with the NHS dispute resolution procedure as modified as follows—

(a) in paragraph 56(3) of Schedule 1, for “a dispute as mentioned in sub-paragraph (1)” substitute “the matter as mentioned in paragraph 28(1)”;

(b) for paragraph 56(4) of Schedule 1, substitute—

“(4) The provider (or providers) wishing to refer the matter as mentioned in paragraph 28(1) of Schedule 2 must send the request to the Scottish Ministers within the period of 7 days beginning with the date of the determination by the assessment panel in accordance with paragraph 21(7) of Schedule 2.”;

(c) for paragraph 56(13) of Schedule 1, substitute–

“(13) In this paragraph, “specified period” means such period as the Scottish Ministers shall specify in the request sent under sub-paragraphs (6) or(8), being not less than 1, nor more than 2, weeks beginning with the date on which the request is given, but the adjudicator may, if the period for determination of the dispute has been extended in accordance with sub-paragraph (19), extend any such period (even after it has expired) and, where the adjudicator does so, a reference in this paragraph to the specified period is to the period as so extended”;

(d) after paragraph 56(15) of Schedule 1, there shall be inserted the following sub-paragraphs–

“(16) Subject to paragraph (19), within the period of 21 days beginning with the date on which the matter was referred to the Scottish Ministers, the adjudicator shall determine whether the Health Board may assign patients to providers which have closed their lists of patients; and if the adjudicator determines that the Health Board may make such assignments, the adjudicator shall also determine those providers to which patients may be assigned.

(17) The adjudicator may not determine that patients may be assigned to a provider which was not specified in the determination of the assessment panel under paragraph 27(7) of Schedule 2.

(18) In the case of a matter referred jointly by providers in accordance with paragraph 28(2) of Schedule 2, the adjudicator may determine that patients may be assigned to one, some or all of the providers which referred the matter.

(19) The period of 21 days referred to in sub-paragraph (15) may be extended (even after it has expired) by a further specified number of days if an agreement to that effect is reached by–

- (a) the adjudicator;
 - (b) the Health Board; and
 - (c) the provider (or providers) which referred the matter to dispute resolution.”;
- and

(e) paragraph 57(2) and (3) of Schedule 1 shall not apply.

Assignments to closed lists: assignments of patients by a Health Board

29.—(1) Before the Health Board may assign a new patient to a provider, it shall, subject to sub-paragraph (3), enter into discussions with that provider regarding additional support that the Health Board can offer the provider, and the Health Board shall use its best endeavours to provide appropriate support.

(2) In the discussions referred to in sub-paragraph (1), both parties shall use reasonable endeavours to reach agreement.

(3) The requirement in sub-paragraph (1) to enter into discussions applies–

- (a) to the first assignment of a patient to a particular provider; and
- (b) to any subsequent assignment to that provider to the extent that it is reasonable and appropriate having regard to the number of patients who have been or may be assigned to it and the period of time since the last discussions under sub-paragraph (1) took place.

PART 3
RECORDS AND NOTICES

Patients records: supplemental

- 30.—(1) The provider shall send the complete records relating to a patient to the Health Board—
- (a) where a person on the provider’s list of patients dies, before the end of the period of 14 days beginning with the date on which it was informed by the Health Board of the death, or (in any other case) before the end of the period of 1 month beginning with the date on which the provider learned of the death; or
 - (b) in any other case where the patient is no longer registered with the provider, as soon as possible, at the request of the Health Board.
- (2) To the extent that a patient’s records are records created by way of entries on a computer, the provider complies with sub-paragraph (1) if it sends to the Health Board a copy of those records—
- (a) in written form; or
 - (b) with the written consent of the Health Board, in any other form.
- (3) The consent of the Health Board to the transmission of information other than in written form for the purposes of sub-paragraph (2)(b) shall not be withheld or withdrawn provided it is satisfied, and continues to be satisfied, with the following matters—
- (a) the provider’s proposals as to how the record will be transmitted;
 - (b) the provider’s proposals as to the format of the transmitted record;
 - (c) how the provider will ensure that the record received by the Health Board is identical to that transmitted; and
 - (d) how a written copy of the record can be produced by the Health Board.

Notifications to the Health Board

31. The provider shall notify the Health Board in writing of any person other than, where the provider has a provider’s list of patients, a registered patient or a person whom it has accepted as a temporary resident to whom it has provided the essential services described in paragraph 1(1)(c) or (d) of Schedule 2 within the period of 28 days beginning on the day that the services were provided.

AGREEMENTS TO PROVIDE ADDITIONAL SERVICES

Additional services generally

1. The provider shall—
 - (a) provide in relation to each additional service, such facilities and equipment as are necessary to enable the provider properly to perform that service;
 - (b) provide each additional service, within core hours, as is appropriate to meet the reasonable needs of its patients; and
 - (c) have in place arrangements for its patients to access each additional service throughout the core hours in case of emergency.

Cervical screening

- 2.—(1) A provider whose agreement includes the provision of cervical screening services shall—
 - (a) provide all the services described in sub-paragraph (2); and
 - (b) make such records as are referred to in sub-paragraph (3).
- (2) The services referred to in sub-paragraph (1)(a) are—
 - (a) the provision of any necessary information and advice to assist women identified by the Health Board as recommended nationally for a cervical screening test in making an informed decision as to participation in the NHS Scotland Cervical Screening Programme;
 - (b) the performance of cervical screening tests on women who have agreed to participate in that Programme;
 - (c) arranging for women to be informed of the results of the test; and
 - (d) ensuring that test results are followed up appropriately.
- (3) The records referred to in sub-paragraph (1)(b) are an accurate record of the carrying out of a cervical screening test, the result of the test and any clinical follow up requirements.

Contraceptive services

- 3.—(1) A provider whose agreement includes the provision of contraceptive services shall make available to all its patients who request such services the services described in sub-paragraph (2).
- (2) The services referred to in sub-paragraph (1) are—
 - (a) the giving of advice about the full range of contraceptive methods;
 - (b) where appropriate, the medical examination of patients seeking such advice;
 - (c) the treatment of such patients for contraceptive purposes and the prescribing of contraceptive substances and appliances (excluding the fitting and implanting of intrauterine devices and implants);
 - (d) the giving of advice about emergency contraception and where appropriate, the supplying or prescribing of emergency hormonal contraception or, where the provider has a conscientious objection to emergency contraception, prompt referral to another provider (by any arrangement) of primary medical services who does not have such conscientious objections;
 - (e) the provision of advice and referral in cases of unplanned or unwanted pregnancy, including advice about the availability of free pregnancy testing in the practice area, and, where appropriate, where the provider has a conscientious objection to the

termination of pregnancy, prompt referral to another provider (by any arrangement) of primary medical services who does not have such conscientious objections;

- (f) the giving of initial advice about sexual health promotion and sexually transmitted infections; and
- (g) the referral as necessary for specialist sexual health services, including tests for sexually transmitted infections.

(3) An agreement which includes the provision of contraceptive services must provide, that for the purposes of paragraphs 10 to 13 of Schedule 1 drugs includes contraceptive substances and appliances includes contraceptive appliances.

Vaccinations and immunisations

4.—(1) A provider whose agreement includes the provision of vaccinations and immunisations shall comply with the requirements in sub-paragraphs (2) and (3).

(2) The provider shall—

- (a) offer to provide to patients all vaccinations and immunisations (excluding childhood vaccinations and immunisations) of a type and in the circumstances for which a fee was provided for under the 2003-04 Statement of Fees and Allowances made under regulation 35 (payments) of the National Health Service (General Medical Services) (Scotland) Regulations 1995(a) other than influenza vaccination;
- (b) provide appropriate information and advice to patients about such vaccinations and immunisations;
- (c) record in the patient's record kept in accordance with paragraph 33 of Schedule 1 any refusal of the offer referred to in paragraph (a);
- (d) where the offer is accepted, administer the vaccinations and immunisations and include in the patient's record kept in accordance with paragraph 33 of Schedule 1—
 - (i) the patient's consent to the vaccination or immunisation or the name of the person who gave consent to the vaccination or immunisation and the person's relationship to the patient;
 - (ii) the batch numbers, expiry date and title of the vaccine;
 - (iii) the date of administration;
 - (iv) in a case where two vaccines are administered in close succession, the route of administration and the injection site of each vaccine;
 - (v) any contraindications to the vaccination or immunisation; and
 - (vi) any adverse reactions to the vaccination or immunisation.

(3) The provider shall ensure that all staff involved in administering vaccines are trained in the recognition and initial treatment of anaphylaxis.

Childhood vaccinations and immunisations

5.—(1) A provider whose agreement includes the provision of childhood vaccinations and immunisations shall comply with the requirements in sub-paragraphs (2) and (3).

(2) The provider shall—

- (a) offer to provide to children all vaccinations and immunisations (excluding childhood vaccinations and immunisations) of a type and in the circumstances for which a fee was provided for under the 2003-04 Statement of Fees and Allowances made under regulation 35 (payments) of the National Health Service (General Medical Services) (Scotland) Regulations 1995;
- (b) provide appropriate information and advice to patients and, where appropriate, their parents about such vaccinations and immunisations;

(a) S.I. 1995/416; regulations 35 was amended by S.I. 1998/1600, 1999/749 and S.S.I. 1995/54 and 2002/111.

- (c) record in the patient's record kept in accordance with paragraph 33 of Schedule 1 any refusal of the offer referred to in paragraph (a);
- (d) where the offer is accepted, administer the vaccinations and immunisations and include in the patient's record kept in accordance with paragraph 33 of Schedule 1–
 - (i) the name of the person who gave consent to the vaccination or immunisation and the person's relationship to the patient;
 - (ii) the batch numbers, expiry date and title of the vaccine;
 - (iii) the date of administration;
 - (iv) in a case where two vaccines are administered in close succession, the route of administration and the injection site of each vaccine;
 - (v) any contraindications to the vaccination or immunisation; and
 - (vi) any adverse reactions to the vaccination or immunisation.

(3) The provider shall ensure that all staff involved in administering vaccines are trained in the recognition and initial treatment of anaphylaxis.

Child health surveillance

6.—(1) A provider whose agreement includes the provision of child health surveillance services shall, in respect of any child under the age of 5 for whom the provider has responsibility under the agreement–

- (a) provide all the services described in sub-paragraph (2), other than any examination so described which the parent refuses to allow the child to undergo, until the date upon which the child attains the age of 5 years; and
- (b) maintain such records as are specified in sub-paragraph (3).

(2) The services referred to in sub-paragraph (1)(a) are–

- (a) the monitoring–
 - (i) by the consideration of any information concerning the child received by or on behalf of the provider; and
 - (ii) on any occasion when the child is examined or observed by or on behalf of the provider (whether pursuant to (b) below, or otherwise),
of the health, well-being and physical, mental and social development (all of which characteristics are referred to in this paragraph as “development”) of the child while under the age of 5 years with a view to detecting any deviations from normal development;
- (b) the examination of the child at a frequency that has been agreed with the Health Board in accordance with the nationally agreed evidence based programme set out in the fourth edition of “Health for all Children”(a).

(3) The records mentioned in sub-paragraph (1)(b) are an accurate record of–

- (a) the development of the child while under the age of 5 years, compiled as soon as is reasonably practicable following the first examination of that child and, where appropriate, amended following each subsequent examination mentioned in that sub-paragraph; and
- (b) the responses (if any) to offers made to the child's parent for the child to undergo any examination referred to in sub-paragraph (2)(b).

Maternity medical services

7.—(1) A provider whose agreement includes the provision of maternity medical services shall provide–

(a) David Hall and David Elliman, January 2003, Oxford University Press, ISBN 0-19-85188-X.

- (a) to female patients who have been diagnosed as pregnant all necessary maternity medical services throughout the antenatal period;
 - (b) to female patients and their babies all necessary maternity medical services throughout the postnatal period other than neonatal checks;
 - (c) all necessary maternity medical services to female patients whose pregnancy has terminated as a result of miscarriage or abortion or, where the provider has a conscientious objection to the termination of pregnancy, prompt referral to another provider (by any arrangement) of primary medical services who does not have such conscientious objections.
- (2) In this paragraph–
- “antenatal period” means the period from the start of the pregnancy to the onset of labour;
- “maternity medical services” means–
- (a) in relation to female patients (other than babies) all primary medical services relating to pregnancy, excluding intra partum care; and
 - (b) in relation to babies, any primary medical services necessary in their first 14 days of life;
- “postnatal period” means the period starting from the conclusion of delivery of the baby or the patient’s discharge from secondary care services, whichever is the later, and ending on the fourteenth day after birth.

Minor surgery

8.—(1) A provider whose agreement includes the provision of minor surgery shall comply with the requirements in sub-paragraphs (2) and (3).

(2) The provider shall make available to patients where appropriate–

- (a) curettage;
- (b) cautery; and
- (c) cryocautery of warts, verrucae and other skin lesions.

(3) The provider shall ensure that its record of any treatment provided under this paragraph includes the consent of the patient to that treatment.

AGREEMENTS TO PROVIDE OUT OF HOURS SERVICES

Criteria for out of hours services

1. A provider shall only be required to provide out of hours services if, in the reasonable opinion of the provider in light of the patient's medical condition, it would not be reasonable in all the circumstances for the patient to wait for the services required until the next time at which the patient could obtain such services during core hours.

Standards for out of hours services

2. From 1st January 2005, a provider which provides out of hours services must, in the provision of such services, meet the quality standards set out from time to time in guidance which has been issued to Health Boards by NHS Quality Improvement Scotland and notified in writing to the provider by the Health Board.

Agreements to provide essential services and out of hours services

3. A provider who is required under the agreement to provide essential services and out of hours services, shall provide throughout the out of hours period the essential services which must be provided in core hours under the agreement and such additional services as are included in the agreement.

Sub-contracting out of hours service

4.—(1) A provider shall not, otherwise than in accordance with the written approval of the Health Board, sub-contract all or part of the provider's duty to provide out of hours services to any person other than those listed in sub-paragraph (2), other than on a short-term occasional basis.

(2) The persons referred to in sub-paragraph (1) are—

- (a) a person who holds a general medical services contract with a Health Board which includes the provision of the equivalent of essential services during all or part of the out of hours period;
- (b) a provider who is required to provide the equivalent of essential services to his patients during all or part of the out of hours period;
- (c) a health care professional, not falling within paragraph (a) or (b), who is to provide the out of hours services personally under a contract for services; or
- (d) a group of medical practitioners, whether in partnership or not, who provide out of hours services for each other under informal rota arrangements.

(3) An application for approval under sub-paragraph (1) shall be made by the provider in writing to the Health Board and shall state—

- (a) the name and address of the proposed sub-contractor;
- (b) the address of any premises used for the provision of services;
- (c) the duration of the proposed sub-contract;
- (d) the services to be covered by the arrangement; and
- (e) how it is proposed that the sub-contractor will meet the provider's obligations under the agreement in respect of the services covered by the arrangement.

(4) Within 7 days of receipt of an application under sub-paragraph (3), a Health Board may request such further information relating to the proposed arrangements as seem to it to be reasonable.

(5) Within 28 days of receipt of an application which meets the requirements specified in sub-paragraph (3), the Health Board shall—

- (a) approve the application;
- (b) approve the application with conditions; or
- (c) refuse the application.

(6) The Health Board shall not refuse the application if it is satisfied that the proposed arrangement will, in respect of the services to be covered, enable the provider to meet satisfactorily its obligations under the contract and will not—

- (a) put at serious risk the safety of the provider's patients;
- (b) put the Board at risk of material financial loss.

(7) The Health Board shall inform the provider by notice in writing of its decision on the application and, where it refuses an application, it shall include in the notice a statement of the reasons for its refusal.

(8) Where a Health Board approves a sub-contract under this paragraph the Health Board and the provider shall be deemed to have agreed a variation of the agreement which has the effect of adding to the list of practice premises for the purposes of the provision of services in accordance with that application, any premises whose address was notified to it under sub-paragraph (3)(b) and paragraph 59 of Schedule 1 shall not apply.

(9) Sub-paragraphs (1) to (8) shall also apply in relation to any renewal or material variation of a sub-contract in relation to out of hours services.

(10) A contract with a sub-contractor must prohibit the sub-contractor from sub-contracting the out of hours services it has agreed with the provider to provide.

Withdrawal and variation of approval under paragraph 4

5.—(1) Without prejudice to any other remedies which it may have under the agreement, where a Health Board has approved an application made under paragraph 4 it shall, subject to paragraph 6, be entitled to serve notice on the provider withdrawing or varying that approval from a date specified in the notice if it is no longer satisfied that the proposed arrangement will enable the provider to meet satisfactorily its obligations under the agreement.

(2) The date specified in the notice shall be such as appears reasonable in all the circumstances to the Health Board.

(3) The notice referred to in sub-paragraph (1) shall take effect on whichever is the later of—

- (a) the date specified in the notice; or
- (b) (if applicable) the date of the final determination of the NHS dispute resolution procedure (or any court proceedings) relating to the notice in favour of the Health Board.

Withdrawal and variation of approval under paragraph 4

6.—(1) Without prejudice to any other remedies which it may have under the agreement, where a Health Board has approved an application made under paragraph 4(3) it shall be entitled to serve notice on the provider withdrawing or varying that approval with immediate effect if—

- (a) it is no longer satisfied that the proposed arrangement will enable the provider to meet satisfactorily its obligations under the agreement; and
- (b) it is satisfied that immediate withdrawal or variation is necessary to protect the safety of the provider's patients.

(2) An immediate withdrawal of approval under sub-paragraph (1) shall take effect on the date on which the notice referred to in that sub-paragraph is received by the provider.

Temporary arrangements for transfer of obligations and liabilities in relation to certain out of hours services

7.—(1) In this paragraph and in paragraphs 8 to 11—

“out of hours arrangement” means an arrangement under sub-paragraph (2); and

“transferee out of hours services provider” means a person referred to in sub-paragraph (5) who has undertaken to carry out the obligations of a provider during all or part of the out of hours period in accordance with an out of hours arrangement referred to in sub-paragraph (2).

(2) Subject to the provisions of this Schedule, where a provider is required to provide out of hours services pursuant to regulation 26, the provider may, with the approval of the Health Board, make an arrangement with a person referred to in sub-paragraph (5) to transfer the provider’s obligations under these Regulations.

(3) Any arrangement made pursuant to sub-paragraph (2) shall cease to have effect—

- (a) on the day when the transferee out of hours service provider ceases to meet any of the conditions required to provide primary medical services under these Regulations; or
- (b) on 1st January 2005,

whichever is the earlier.

(4) An arrangement made in accordance with sub-paragraph (2) shall, for so long as it continues, relieve the provider of—

- (a) its obligations to provide out of hours services pursuant to regulation 26; and
- (b) all liabilities under the agreement in respect of those services.

(5) The person referred to in this sub-paragraph is any person who holds a general medical services contract or an agreement with the Health Board which includes the provision of out of hours services.

(6) A provider may make more than one out of hours arrangement and may do so (for example) with different general medical services contractors or providers and in respect of different patients, different times and, where the provider has a provider’s list of patients, different parts of its practice area.

(7) Nothing in this paragraph prevents a provider from retaining or resuming its obligations in relation to named patients.

Application for approval of an out of hours arrangement

8.—(1) An application to the Health Board for approval of an out of hours arrangement shall be made in writing and shall state—

- (a) the name and address of the proposed transferee out of hours service provider;
- (b) the periods during which the provider’s obligations under the agreement are to be transferred;
- (c) how the proposed transferee out of hours service provider intends to meet the provider’s obligations during the periods specified under paragraph (b);
- (d) the arrangements for the transfer of the provider’s obligations under the agreement to and from the transferee out of hours service provider at the beginning and end of the periods specified under paragraph (b); and
- (e) how long the proposed arrangements are intended to last and the circumstances in which the provider’s obligations under the agreement during the periods specified under paragraph (b) would revert to it.

(2) The Health Board shall determine the application before the end of the period of 28 days beginning with the day on which the Health Board received it.

(3) The Health Board shall grant approval to a proposed out of hours arrangement if it is satisfied—

- (a) having regard to the overall provision of primary medical services provided in the out of hours period in its area, that the arrangement is reasonable and will contribute to the efficient provision of such services in the area;
- (b) having regard, in particular, to the interests of the provider's patients, that the arrangement is reasonable;
- (c) having regard, in particular, to all reasonably foreseeable circumstances, that the arrangement is practicable and will work satisfactorily;
- (d) that it will be clear to the provider's patients how to seek primary medical services during the out of hours period; and
- (e) that if the arrangement comes to an end, the provider has in place proper arrangements for the immediate resumption of the provider's responsibilities,

and shall not refuse to grant approval without first consulting the area medical committee for its area.

(4) The Health Board shall give notice to the provider of its determination and, where it refuses an application, it shall send the provider a statement in writing of the reasons for its determination.

(5) A provider which wishes to refer the matter in accordance with the NHS dispute resolution procedure must do so before the end of the period of 30 days beginning with the day on which the Health Board's notification under sub-paragraph (4) was sent.

Effect of approval of an arrangement with a transferee out of hours service provider

9. Where the Health Board has approved an out of hours arrangement with a transferee out of hours service provider, the Health Board and the transferee out of hours service provider shall be deemed to have agreed a variation of their agreement or general medical services contract which has the effect of including in it, from the date on which the out of hours arrangement commences, and for so long as that arrangement continues, the services covered by that arrangement and paragraph 59(1) of Schedule 1 to these Regulations or paragraph 94(1) of Schedule 5 to the GMS Contracts Regulations (as the case may be) shall not apply.

Review of approval

10.—(1) Where it appears to the Health Board that it may no longer be satisfied of any of the matters referred to in paragraph 8(3), it may give notice to the provider that it proposes to review its approval of the out of hours arrangement.

(2) On any review under sub-paragraph (1), the Health Board shall allow the provider a period of 30 days, beginning with the day on which it sent the notice, within which to make representations in writing to the Health Board.

(3) After considering any representations made in accordance with sub-paragraph (2), the Health Board may determine to—

- (a) continue its approval;
- (b) withdraw its approval following a period of notice; or
- (c) if it appears to it that it is necessary in the interests of the provider's patients, withdraw its approval immediately.

(4) Except in the case of an immediate withdrawal of approval, the Health Board shall not withdraw its approval without first consulting the area medical committee for its area.

(5) Where the Health Board determines to withdraw its approval immediately, it shall notify the area medical committee for its area.

(6) The Health Board shall give notice to the provider of its determination under sub-paragraph (3).

(7) Where the Health Board withdraws its approval, whether immediately or on notice, it shall include with the notice a statement in writing of the reasons for its determination.

(8) A provider which wishes to refer the matter in accordance with the NHS dispute resolution procedure must do so before the end of the period of 30 days beginning with the day on which the Health Board's notification under sub-paragraph (6) was sent.

(9) Where the Health Board determines to withdraw its approval following a period of notice, the withdrawal shall take effect at the end of the period of two months beginning with—

- (a) the date on which the notice referred to in sub-paragraph (6) was sent; or
- (b) where there has been a dispute which has been referred under the NHS dispute resolution procedure and the dispute is determined in favour of withdrawal, the date on which the provider receives notice of the determination.

(10) Where the Health Board determines to withdraw its approval immediately, the withdrawal shall take effect on the day on which the notice referred to in sub-paragraph (6) is received by the provider.

Immediate withdrawal of approval other than following review

11.—(1) The Health Board shall withdraw its approval of an out of hours arrangement immediately—

- (a) in the case of an arrangement with a person referred to in paragraph 7(5), if the person with whom it is made ceases to hold a general medical services contract or an agreement with the Health Board which includes the provision of out of hours services; or
- (b) where, without any review having taken place under paragraph 10, it appears to the Health Board that it is necessary in the interests of the provider's patients to withdraw its approval immediately.

(2) The Health Board shall give notice to the provider of a withdrawal of approval under sub-paragraph (1)(a) or (b) and shall include with the notice a statement in writing of the reasons for its determination.

(3) An immediate withdrawal of approval under sub-paragraph (1) shall take effect on the day on which the notice referred to in sub-paragraph (2) is received by the provider.

(4) The Health Board shall notify the area medical committee for its area of a withdrawal of approval under sub-paragraph (1)(b).

(5) A provider which wishes to refer a withdrawal of approval under sub-paragraph (1)(b) in accordance with the NHS dispute resolution procedure must do so before the end of the period of 30 days beginning with the day on which the Health Board's notification under sub paragraph (2) was sent.

SCHEDULE 5

Schedule 2, paragraph 21(8)

CLOSURE NOTICE

Application for List Closure	
From: <i>Name(s) of Provider</i>	To: <i>Name of Health Board</i>
	Date:

In accordance with paragraph 21 of Schedule 2 to the National Health Service (Section 17C Agreements) (Scotland) Regulations 2004, on behalf of the above named provider I/we wish to make a formal application for our list to be closed to new patients and assignments, as follows:

(1) Length of period of closure (which may not exceed 12 months and, in the absence of any agreement, shall be 12 months)	
(2) Date from which closure will take effect	
(3) Date from which closure will cease to have effect	
(4) Current number of registered patients	
(5) Reduction in terms of either percentage of the number indicated in (4) above or an actual number of patients which would trigger a re-opening (or suspension of list closure) of the list*	
(6) Increase in terms of either a percentage of the number indicated in (4) above or an actual number of patients which would trigger a re-closure (ore lifting of the suspension of list closure) of the list*	
(7) Any withdrawal or reduction of additional or enhanced services	

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Signed.....

For [Name(s) of provider]

INFORMATION TO BE INCLUDED IN PRACTICE LEAFLETS

A practice leaflet shall include–

1. The name(s) of the provider.
2. In the case where a partnership is a party to the agreement–
 - (a) whether or not it is a limited partnership; and
 - (b) the names of all the partners and, in the case of a limited partnership, their status as a general or limited partner.
3. In the case where a company is a party to the agreement–
 - (a) the names of the directors, the company secretary and the shareholders of that company; and
 - (b) the address of the company's registered office.
4. The full name of each person performing services under the agreement.
5. In the case of each health care professional performing services under the agreement the health care professional's professional qualifications.
6. Whether the provider undertakes the teaching or training of health care professionals or persons intending to become health care professionals.
7. The provider's practice area, by reference to a sketch diagram, plan or postcode.
8. The address of each of the practice premises.
9. The provider's telephone and fax number and the address of the provider's website (if any).
10. Whether the practice premises have suitable access for all disabled patients and, if not, the alternative arrangements for providing services to such patients.
11. Where the provider provides essential services, how to register a patient.
12. The right of patients to express a preference of practitioner in accordance with paragraph 8 of Schedule 1 and the means of expressing such a preference.
13. The services available under the agreement.
14. The opening hours of the practice premises and the method of obtaining access to services throughout the core hours.
15. The criteria for home visits and the method of obtaining such a visit.
16. Where the provider provides essential services, the consultations available to patients under paragraphs 5 and 6 of Schedule 2.
17. Where the provider provides essential services, the arrangements for services in the out of hours period (whether or not provided by the provider) and how the patient may contact such services.
18. If the services in paragraph 17 are not provided by the provider, the fact that the Health Board referred to in paragraph 27 is responsible for commissioning the services.
19. The telephone number of NHS 24 and details of the NHS 24 website.
20. The method by which patients are to obtain repeat prescriptions.

21. If the provider is a dispensing provider the arrangements for dispensing prescriptions.
22. How patients may make a complaint or comment on the provision of service.
23. The rights and responsibilities of the patient, including keeping appointments.
24. The action that may be taken where a patient is violent or abusive to the provider or the provider's staff, persons present on the practice premises, or in the place where treatment is provided under the agreement, or other persons specified in paragraph 8(2)(c) of Schedule 1 or paragraph 15(2) of Schedule 2.
25. Details of who has access to patient information (including information from which the identity of the individual can be ascertained) and the patient's rights in relation to disclosure of such information.
26. The name, address and telephone number of the Health Board which is a party to the agreement and from whom details of primary medical services in the area may be obtained.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out, for Scotland, the framework for section 17C agreements for primary medical services under section 17C of the National Health Service (Scotland) Act 1978 (“the Act”).

Part 2 of the Regulations prescribes the conditions which, in accordance with section 17D of the Act, must be satisfied by a medical practitioner, health care professional or any of the other persons listed in 17D(1)(b)(iii) to (ix), (d) or (e) of the Act for a Health Board to be able to make an agreement under section 17C under which primary medical services are provided.

Part 3 of the Regulations prescribes the procedure for pre-agreement dispute resolution, in accordance with section 17E(3D) of the Act.

Part 4 of the Regulations sets out the circumstances and the extent to which the provider under an agreement may be treated as a health service body.

Part 5 of the Regulations (and Schedules 1 to 4) prescribe the categories of primary medical services that may be provided in accordance with section 17C arrangements, and make provision with respect to the provision of those services. The regulations require agreements which include the provision of any primary medical services to contain the terms in Schedule 1, agreements which include the provision of essential services to include the terms in Schedule 2, agreements which include the provision of additional services to include terms set out in Schedule 3 and agreements which include the provision of out of hours services to include the terms set out in Schedule 4

Part 6 makes additional provision with respect to such agreements and their content, including provision as to the effect on an agreement of a change in the membership of a partnership that is party to it (regulation 17), services generally (regulation 18), certificates (regulation 19), finance and payments for the provision of services to be made in accordance with the directions of the Scottish Ministers (regulation 20 and 21), and fees and charges (regulation 22).

Part 7 prescribes additional functions to be exercised by area medical committees in relation to section 17C agreements.

Part 8 of the Regulations makes provision requiring a Health Board in certain circumstances and subject to certain conditions, to enter into a general medical services contract with a person providing services under section 17C arrangements.

Part 9 of the Regulations makes transitional provision.

Schedule 1 sets out terms that must be contained in all section 17C agreements for primary medical services. These include terms relating to–

- (a) the provision of services (Part 1);
- (b) the right of patients to choose the persons from whom they are to receive primary medical services, and the circumstances in which providers may decline responsibility for patients not registered with them (Part 2);
- (c) the prescribing and dispensing of drugs, medicines and appliances (Part 3);
- (d) the conditions (including conditions as to qualifications and experience) to be satisfied by persons performing primary medical services in accordance with section 17C arrangements (Part 4);
- (e) patient records, the provision of information and rights of entry (Part 5);
- (f) complaints (Part 6);
- (g) procedures for the determination of disputes where the provider is to be treated as a health service body, or where the provider elects (Part 7); and

- (h) the variation and termination of section 17C arrangements and provision for participants other than Health Boards to withdraw from section 17C arrangements if they wish to do so (Part 8).

Schedule 2 sets out the terms that must be contained in all section 17C agreements which include the provision of essential services. These include terms relating to–

- (a) the provision of essential services ; and
- (b) lists of patients, and the circumstances in which the provider must or may accept or may decline to accept a person as a patient and may terminate responsibility a patient.

Schedule 3 sets out the terms relating to the provision of additional services that must be included in all agreements for the provision of those services.

Schedule 4 sets out the terms relating to the provision of out of hours services, and the sub-contracting of those services, that must be included in all agreements for the provision of those services.