

SCHEDULE 1

CONTENT OF AGREEMENTS

PART 8

VARIATION AND TERMINATION OF AGREEMENTS

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(1) (offences against children under the age of 17 to which

(1) 1995 c. 46.

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special provisions apply) or Schedule 1 to the Children and Young Persons Act 1933⁽²⁾ (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⁽³⁾, 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⁽⁴⁾;
- (k) that person is a partnership and—
 - (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⁽⁵⁾ (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⁽⁶⁾, the Companies (Northern Ireland) Order 1986⁽⁷⁾ or to an order made under section 429(2)(b) of the Insolvency Act 1986⁽⁸⁾ (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,

⁽²⁾ 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.

⁽³⁾ 1986 c. 45. Schedule 4A was inserted by section 257 of and Schedule 2 to the Enterprise Act 2002 (c. 40).

⁽⁴⁾ Schedule B1 was inserted by section 248 of and Schedule 16 to the Enterprise Act 2002.

⁽⁵⁾ 1990 c. 40.

⁽⁶⁾ 1986 c. 45.

⁽⁷⁾ S.I.1986/1032 (N.I.6).

⁽⁸⁾ 1986 c. 46 as amended by the Insolvency Act (2000 c. 39).

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.

(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.