

## SCHEDULE 1

Regulation 12

### CONTENT OF AGREEMENTS

#### PART 1

#### PROVISION OF SERVICES

##### **Premises**

1. Subject to any plan which is included in the agreement pursuant to regulation 19(3), the provider must 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.

##### **Telephone services**

2.—(1) The provider must not be a party to any contract or other arrangement under which the number for telephone services to be used—

- (a) by patients to contact the practice for any purpose related to the agreement; or
- (b) by any other person to contact the practice in relation to services provided as part of the health service,

starts with the digits 087, or 09 or consists of a personal number, unless the service is provided free to the caller.

(2) In this paragraph, "personal number" means a telephone number which starts with the number 070 followed by a further 8 digits.

##### **Attendance outside practice premises**

3.—(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 must 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 19(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

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- (b) visiting the patient in circumstances where this paragraph does not place the provider under an obligation to do so.

### **Clinical reports**

4.—(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 must, 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 must 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 sub-paragraph (2)(a) is not known to it, to the Health Board in whose area the patient is resident.

### **Storage of vaccines**

5. The provider must ensure that—

- (a) all vaccines are stored in a pharmaceutical refrigerator, designed for the purpose of storing vaccines or medicines, in accordance with the manufacturer's instructions;
- (b) all vaccine refrigerator is continually monitored and readings are taken on a calibrated maximum/minimum digital thermometer on all working days to ensure the temperature remains within the specified range of +2°C to +8°C; and
- (c) it has regard to Health Protection Scotland Guidance on Vaccine Storage and Handling<sup>(1)</sup>.

### **Infection control**

6. The provider must ensure that the provider has effective arrangements for infection control and decontamination.

### **Duty of co-operation in relation to primary medical services**

7.—(1) A provider which does not provide to its patients—

- (a) essential services;
- (b) a particular additional service; or
- (c) a particular enhanced service;

must comply with the requirements specified in sub-paragraph (2).

(2) The requirements referred to in sub-paragraph (1) are that the provider must—

- (a) co-operate, insofar as it is reasonable, with any person responsible for the provision of that service or those services; and
- (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.

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(1) The current version of the guidance is version 3.0, December 2017, and is available at <http://www.hps.scot.nhs.uk/resourcedocument.aspx?id=6330>.

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### **Duty of co-operation in relation to primary medical services**

8. Where a provider will cease to be required to provide to its patients—
- (a) essential services;
  - (b) a particular additional service; or
  - (c) a particular enhanced service; or

the provider must 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**

- 9.—(1) Where the provider has accepted a person as a patient the provider must—
- (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 must 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 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<sup>(2)</sup>; 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 a person authorised under the Adults with Incapacity (Scotland) Act 2000<sup>(3)</sup> to act on the patient's 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**

- 10.—(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 or an enhanced service; or

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(2) 1995 c.36.

(3) 2000 asp 4.

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- (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 7(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).

- (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 member of a limited liability partnership that is a party to the agreement;
    - (iv) a member of a company that is a party to the agreement;
    - (v) a member of the provider's staff;
    - (vi) a person engaged by the provider to perform or assist in the performance of services under the agreement; or
    - (vii) 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) must notify the patient of the termination and the reason for it.
- (4) The provider must keep a written record of terminations under this paragraph and of the reason for them and must make this record available to the Health Board on request.
- (5) A termination under—
  - (a) sub-paragraph (2)(b) will take effect 14 days from the date on which notice is given; and
  - (b) sub-paragraph (2)(c) will take effect from the date on which notice is given.

## PART 3

### PRESCRIBING AND DISPENSING

#### Prescribing

**11.** The provider must ensure that any prescription form for drugs, medicines or appliances issued or created by a prescriber complies as appropriate with the requirements in paragraphs 12 to 14.

#### Prescribing

**12.—(1)** Subject to paragraphs 13 and 14, a prescriber must order any drugs, medicines or appliances which are needed for the treatment of any patient who is receiving treatment under the agreement by—

- (a) issuing to that patient a non-electronic prescription form; or
- (b) creating and transmitting an electronic prescription form,

and such a non-electronic prescription form or electronic prescription form must not be used in any other circumstances.

(2) In issuing any non-electronic prescription form, the prescriber must 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 must so sign only after particulars of the order have been inserted in the prescription form<sup>[<sup>F1</sup>]</sup>.

(3) A prescription form must not refer to any previous prescription form.

(4) A separate prescription form must be used for each patient.

(5) In a case of urgency a prescriber may request a pharmacist to dispense a drug or medicine before a prescription form is issued or created, 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(4) other than a drug which is for the time being specified in schedules 4 or 5 of the Misuse of Drugs Regulations 2001(5); and
- (c) the prescriber undertakes to furnish the pharmacist, within 72 hours, with a prescription form completed in accordance with sub-paragraph (2) or with an electronic prescription form.

(6) In a case of urgency a prescriber may request a pharmacist to dispense an appliance before a prescription form is issued or created 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 of 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) or with an electronic prescription form.

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(4) 1971 c.38. Section 2 (Controlled drugs and their classification for purposes of this Act.) was relevantly amended by paragraph 2(a) of schedule 17 of the Police Reform and Social Responsibility Act 2011 (c.13).

(5) S.I. 2001/3998. Schedule 4 was amended by S.I. 2009/3136 and S.I. 2013/625. Schedule 5 was amended by S.I. 2005/2864.

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(7) A prescriber may only order drugs, medicines or appliances by means of an electronic prescription form if the prescription is not for 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 4 or 5 of the Misuse of Drugs Regulations 2001.

(8) A prescriber who orders drugs, medicines or appliances by means of an electronic prescription form must issue the patient with a written record of the prescription which has been created.

#### Textual Amendments

- F1** Sch. 1 para. 12(2); full stop substituted for word and semi-colon (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **15(a)**

#### Restrictions on prescribing by medical practitioners

**13.—**(1) In the course of treating a patient to whom a medical practitioner is providing treatment under the agreement, the medical practitioner must 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<sup>(6)</sup> 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 24(1)(b), 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 must 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 includes on the prescription form the reference “SLS”,

but may, subject to regulation 24(1)(b), 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 must not order on a prescription form a restricted availability appliance unless—

- (a) the patient is a person, or it is for a purpose, specified in the Drug Tariff; and
- (b) the practitioner includes on the prescription form the reference “SLS”,

but may, subject to regulation 24(1)(b), prescribe such an appliance for that patient in the course of that treatment under a private arrangement.

#### Restrictions on prescribing by supplementary prescribers

**14.—**(1) The provider must have arrangements in place to secure that a supplementary prescriber will—

- (a) issue or create a prescription for a prescription only medicine;

<sup>(6)</sup> Section 17N was inserted by section 4 of the 2004 Act.

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- (b) administer a prescription only medicine for parenteral administration; or
- (c) give directions for the administration of a prescription only medicine for parenteral 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 regulation 215 of the Human Medicines Regulations 2012(7) (prescribing and administration by supplementary prescribers), unless those conditions do not apply by virtue of any of the exemptions set out in the subsequent provisions of those Regulations;
- (b) 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;
- (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 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 issuing or creating the prescription, the supplementary prescriber includes on the prescription form the reference “SLS”.

(3) Where the functions of a supplementary prescriber include prescribing, the provider must have arrangements in place to secure that that person will only issue or create 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;
  - (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—

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- (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 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;
- (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 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 issuing or creating the prescription, the supplementary prescriber includes on the prescription form the reference SLS;
- (e) 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
- (f) if it is a prescription for a restricted availability appliance—
  - (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 issuing or creating the prescription, the supplementary prescriber includes on the prescription form 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.

### **Excessive prescribing**

**15.—(1)** The provider must 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 [F2] is reasonably necessary for the proper treatment of that patient.



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

#### Textual Amendments

- F2** Word in *sch. 1 para. 15(1)* substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **15(b)**

#### Provision of dispensing services

**16.—(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 must 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 will 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 will 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.

(4) A provider must receive the support of an appropriately qualified pharmacist independent prescriber provided by the Health Board, where the Health Board considers that the health outcomes of patients are likely to be improved by the provider and pharmacist independent prescriber working together with the aim of ensuring that the patient gets the best clinical benefit from their prescribed medicines.

(5) Subject to sub paragraph (7), 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) must, subject to sub-paragraph (8), record on a prescription form completed in accordance with paragraph 12, an order for supply of any drugs, medicines or appliances which are needed for the treatment of that patient, but will not be required to issue that form to that patient;
- (b) must supply those drugs, medicines or appliances for that patient under sub paragraph (2) but—
  - (i) must 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

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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) must 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) must 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.

(6) A provider must 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.

(7) Sub-paragraph (5) does not apply to drugs, medicines or appliances ordered on a prescription form by a supplementary prescriber, or an independent prescriber.

(8) Where a patient presents an order on a non-electronic prescription form for listed drugs or medicines, or appliances, signed by a supplementary prescriber, or an independent prescriber, to a provider who is required under sub-paragraph (2) to provide drugs or appliances to that patient, or a provider who is required under sub-paragraph (2) to provide drugs or appliances to a patient receives from the ePharmacy service an electronic prescription form which contains an order for listed drugs or medicines, or appliances in respect of that patient, signed by a supplementary prescriber, or an independent prescriber, 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.

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

(10) Nothing in this paragraph must 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**

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

(a) must 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 may, in either case, provide a restricted availability appliance only if it is for a person or a purpose specified in the Drug Tariff.

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(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<sup>(8)</sup> or any regulations or orders made thereunder.

## PART 4

### PERSONS WHO PERFORM SERVICES

#### Qualifications of performers

**18.**—(1) Subject to sub-paragraph (2), no medical practitioner may 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)<sup>(9)</sup>.

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

- (a) a medical practitioner employed in Scotland by a Health Board, in England and Wales by an NHS trust, or in Northern Ireland by a Health and Social Care 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 EEA nationals with certain overseas qualifications of the Medical Act 1983<sup>(10)</sup> acting in the course of the person's employment in a resident medical capacity in an approved medical practice within the meaning of section 44D of the Medical Act 1983 (approved practice settings)<sup>(11)</sup>; or
- (c) a GP Registrar who has applied to the Health Board to have the GP Registrar's name included in the primary medical services performers list of the Health Board, until the first of the following events arises:—
  - (i) the Health Board notifies the GP Registrar of the Board's decision on that application;
  - (ii) the end of a period of 2 months, starting with the date on which the GP Registrar's vocational training scheme begins.

(3) In this paragraph, “vocational training scheme” has the meaning given in regulation 2 (interpretation) of the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004<sup>(12)</sup>.

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<sup>(8)</sup> 1968 c.67. Part 3 was amended by section 1(1) to (3) of the Medicinal Products: Prescription by Nurses etc Act 1992 (c.28), section 63 of the Health and Care Social Care Act 2001 (c.5), section 220 of the Health and Social Care Act 2012 (c.7), S.I. 1984/187, S.I. 1993/2538, 1994/105, 1994/3142, 1994/3144, 1997/322, 1998/108, S.I. 2002/236, 2002/253, 2003/1590, 2004/1771, 2005/2789, 2006/1916, 2006/2407 and S.I. 2012/1916.

<sup>(9)</sup> 1983 c.54. Section 41A was inserted by S.I. 2000/1803 and amended by S.I. 2002/3135, 2006/1914 and 2015/794.

<sup>(10)</sup> Section 15 was substituted by S.I. 2006/1914; section 15A was inserted by S.I. 2000/3041 and amended by S.I. 2006/1914, 2067/3101 and 2011/1043; section 21 was amended by S.I. 2002/3135, 2006/1914 and 2007/3103.

<sup>(11)</sup> Section 44D was inserted by S.I. 2006/1914.

<sup>(12)</sup> S.S.I. 2004/114 as relevantly amended by S.I. 2010/234.

*Status: Point in time view as at 01/04/2018. This version of this schedule contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018, SCHEDULE 1. (See end of Document for details)*

### **Qualifications of performers**

19. No health care professional other than one to whom paragraph 18 applies may 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**

20. 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 must ensure compliance with those conditions insofar as they are relevant to the agreement.

### **Qualifications of performers**

21. No health care professional may 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**

22.—(1) Subject to sub-paragraphs (2) and (3), a provider must not employ or engage a medical practitioner (other than one falling within paragraph 18(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 18.

(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 18 in accordance with sub-paragraph (1)(b) before employing or engaging that 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) must 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 Scheme Guidance has applied for inclusion; and
- (b) confirmation that the GP Registrar's name appears on those lists will not be required until the end of the first two months of the GP Registrar's training period.

(4) The provider may only offer employment to a general medical practitioner on terms and conditions which are no less favourable than those contained in the "Model terms and conditions of service for a salaried general practitioner employed by a GMS practice" published by the British Medical Association and the NHS Confederation as item 1.2 of the supplementary documents to the GMS contract 2003(13).

### **Conditions for employment and engagement**

23.—(1) A provider must not employ or engage—

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(13) This document is published jointly by the General Practitioners committee of the British Medical Association and the NHS Confederation. This document is available at: <http://bma.org.uk/sessionalgps>. Hard copies may be requested from The British Medical Association, BMA House, Tavistock Square, London WC1H 9JP.

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- (a) a health care professional (other than one to whom paragraph 18 applies) unless the provider has checked that the health care professional meets the requirements in paragraph 19;
- (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 21.

(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 19 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 must 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**

**24.**—(1) A provider must not employ or engage a health care professional to perform medical services under the agreement 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**

**25.**—(1) Before employing or engaging any person to assist the provider in the provision of services under the agreement, the provider must 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 22 to 24.

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

- (a) that person's academic and vocational qualifications;
- (b) the person's education and training; and

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- (c) the person's previous employment or work experience.

### **Training**

**26.** The provider must 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,

there are 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**

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

### **Arrangements for GP registrars**

**28.—(1)** The provider may only employ or engage a GP Registrar subject to the conditions in sub-paragraph (2).

(2) The conditions referred to in sub-paragraph (1) are that the provider must 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 or engages a GP Registrar must—

- (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 NHS Education for Scotland (14) 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 (15).

### **Independent prescribers and supplementary prescribers**

**29.—(1)** Where—

- (a) a provider employs or engages a person who is an independent prescriber or a supplementary prescriber whose functions will include prescribing;
- (b) a party to the agreement is an independent prescriber or a supplementary prescriber whose functions will include prescribing;
- (c) a partner or member as the case may be of a partnership or limited liability partnership that is a party to the agreement, is an independent prescriber or a supplementary prescriber whose functions will include prescribing;
- (d) the member of a company that is a party to the agreement is an independent prescriber or a supplementary prescriber whose functions will include prescribing; or

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(14) NHS Education for Scotland was constituted by S.S.I. 2002/103, as relevantly amended by S.S.I. 2006/79, which applies section 2(5) of the National Health Service (Scotland) Act 1978 to NHS Education for Scotland as it applies to Health Boards.

(15) The current guidance is PCS(GPR) 2009/1 which is available at [http://www.sehd.scot.nhs.uk/pcs/PCS2009\(GPR\)01.pdf](http://www.sehd.scot.nhs.uk/pcs/PCS2009(GPR)01.pdf) as amended by PCS(GPR) 2011/1, which is available at [http://www.sehd.scot.nhs.uk/pcs/PCS2011\(GPR\)01.pdf](http://www.sehd.scot.nhs.uk/pcs/PCS2011(GPR)01.pdf) as amended by PCS (GPR) 2015/1 which is available at [http://www.sehd.scot.nhs.uk/pcs/PCS2015\(GPR\)01.pdf](http://www.sehd.scot.nhs.uk/pcs/PCS2015(GPR)01.pdf).

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(e) the functions of a person who is an independent prescriber or a supplementary prescriber whom it already employs or has already engaged are extended to include prescribing, it must 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, the person became a partner or member as the case may be of the partnership, limited liability partnership or company that is a party to the agreement (unless, immediately before becoming such a party, or partner or member of that partnership, limited liability partnership or company that is such a party, the person fell under sub-paragraph (1)(a)) or the person's functions were extended as the case may be.

(2) Where—

- (a) the provider ceases to employ or engage a person who is an independent prescriber or a supplementary prescriber, whose functions included prescribing in the provider's practice;
- (b) the party to the agreement, who is an independent prescriber or a supplementary prescriber, whose functions include prescribing, ceases to be a party to the agreement;
- (c) the partner or member, as the case may be in a partnership or limited liability partnership who is an independent prescriber or a supplementary prescriber, whose functions include prescribing, ceases to be a partner or member of the partnership or limited liability partnership;
- (d) the member of a company that is a party to the agreement, who is an independent prescriber or a supplementary prescriber whose functions include prescribing, ceases to be a member of the company;
- (e) the functions of a person who is an independent 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
- (f) the provider becomes aware that a person who is an independent prescriber or a supplementary prescriber whom the provider employs or engages has been removed or suspended from the relevant register,

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

(3) The provider must 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 on which—
  - (i) 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 or member, as the case may be in the partnership or limited liability partnership that is a party to the agreement, if applicable;
  - (iv) the person became a member of a company that is a party to the agreement, if applicable; or
  - (v) one of the person's functions became to prescribe in its practice.

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

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- (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—
  - (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 or member, as the case may be, in a partnership or limited liability partnership that is a party to the agreement;
  - (iv) the person ceased to be a member of a company that is a party to the agreement,
  - (v) the person's functions changed so as no longer to include prescribing; or
  - (vi) on which the person was removed or suspended from the relevant register.

### **Signing of documents**

**30.**—(1) In addition to any other requirements relating to such documents whether in these regulations or otherwise, the provider must 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 20, unless regulations relating to particular certificates provide otherwise;
  - (b) prescription forms; and
  - (c) any other clinical documents.

### **Level of skill**

**31.** The provider must carry out its obligations under the agreement with reasonable skill and care.

### **Appraisal and assessment**

**32.**—(1) The provider must 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(16).
- (2) The Health Board must 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)—

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(16) Published by the then Scottish Executive as NHS Circular PCA(M)(2001)(17), copies available at [http://www.sehd.scot.nhs.uk/pca/pca2001\(m\)17.htm](http://www.sehd.scot.nhs.uk/pca/pca2001(m)17.htm).



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“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 10.

### **Sub-contracting of clinical matters**

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

(a) in all cases, 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) 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) must not apply to an agreement 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) must 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;

(d) the address of any premises to be used for the provision of services; and

(e) in the case of an agreement entered into on or after 22nd December 2010, whether the sub-contractor, if that sub-contractor were a provider, would have sufficient involvement in patient care in terms of section 17CA(3) and (4) of the Act<sup>(17)</sup>.

(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 must supply such information promptly.

(5) The provider must not proceed with the sub-contract or, if it has already taken effect, must 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;

(b) the sub-contractor would be unable to meet the provider’s obligations under the agreement; or

(c) in the case of an agreement entered into on or after 22nd December <sup>[<sup>f3</sup>2010]</sup>, if the sub-contractor were a provider, that sub-contractor would not have sufficient involvement in patient care in terms of section 17CA(3) and (4) of the Act.

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

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(17) Section 17CA was inserted by section 38 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3).

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(7) Sub-paragraphs (1) and (3) to (6) must 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 will 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 61 must 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.

(10) The provider, if it has a provider's list of patients, must not sub-contract any of its rights or duties under the agreement in relation to the provision of essential services to a company, partnership or limited liability partnership—

- (a) owned wholly or partly by the provider or a party to the agreement, or by any former or current employee of the provider, or any partner or member of a party to the agreement;
- (b) formed by or on behalf of the provider or a party to the agreement, or from which the provider or a party to the agreement derives or may derive a pecuniary benefit; or
- (c) formed by or on behalf of a former or current employee of the provider, or a partner or member of a party to the agreement, or from which such a person derives or may derive a pecuniary benefit,

where that company, partnership or limited liability partnership is or was formed wholly or partly for the purpose of avoiding the restrictions on the sale of goodwill of a medical practice in section 35 of the Act(18) or any regulations made wholly or partly under that section.

#### Textual Amendments

- F3** Word in sch. 1 para. 33(5)(c) inserted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **15(c)**

## PART 5

### DATA PROTECTION, RECORDS, INFORMATION, NOTIFICATIONS AND RIGHTS OF ENTRY

VALID FROM 25/05/2018

#### Interpretation

**34.—(1)** Subject to sub-paragraph (3), for the purposes of this Part—

- (a) “electronic patient records” means records of the provider’s attendance on its patients created by way of data entries on a computer and electronically held and controlled by the provider;
- (b) “patient records” means records of the provider’s attendance on and treatment of its patients by way of electronic patient records or on forms supplied by the Health Board to the provider;

(18) Section 35 was substituted by section 34(2) of the National Health Service (Primary Care) Act 1997 (c.46) and amended by paragraph 1 of schedule 1 of the 2004 Act.

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- (c) “practice data” means data about a provider’s practice and which may include any information or data about employees, sub-contractors, remuneration, finances, workloads, and contracts other than personal data within patient records; and
  - (d) the meaning of “data controller”, “personal data”, “processing” and “supervisory authority” is to be construed in accordance with the 1998 Act.
- (2) The meaning of “data controller”, “data protection officer”, “personal data”, “processing” and “supervisory authority” is to be construed in accordance with the GDPR.
- (3) Sub-paragraph (1)(d) ceases to have effect on 25th May 2018.
- (4) No provision of this Part is to be construed as creating a duty, obligation or right which is contrary to any duty, obligation or right created by the 1998 Act and any directly applicable EU instrument relating to data protection.
- (5) The Health Board and the provider, when processing any data under this Part, must comply with any relevant direction, or guidance issued by the Scottish Ministers.
- (6) The Health Board and the provider must include within the agreement—
- (a) terms which have the effect of the obligations mentioned in paragraph 35; and
  - (b) a term that requires the Health Board and the provider to act jointly as data controllers in relation to the processing of patient records.

### **Provider and Health Board Obligations**

**35.—**(1) The provider must—

- (a) take all reasonable steps to ensure the accuracy of patient records;
- (b) verify the accuracy of any templates and notices provided to it by the Health Board in accordance with sub-paragraph (2)(b), and once verified, use such templates and notices;
- (c) comply with the Health Board’s current policies concerning data security, personal data or IT security notified by the Health Board to the provider under sub-paragraph (2)(c);
- (d) maintain a record of all of the provider’s processing activities carried out in performance of the agreement and make the records available to the Health Board on request;
- (e) where the Health Board and the provider have not appointed a jointly designated data protection officer; the provider must nominate a person with responsibility for working together with the Health Board’s data protection officer in matters relating to the protection of personal data and the implementation of the Health Board’s guidance, templates and policies on such matters set out under paragraph (2)(b); and
- (f) ensure that any person under its direction who has access to patient records has undergone adequate data protection training.

(2) The Health Board must—

- (a) take all reasonable steps to confirm the accuracy of patient records provided to or accessed by it;
- (b) provide to the provider, guidance, templates, and privacy notices, relating to the provider’s processing of personal data and the provider’s maintenance of a record in accordance with sub-paragraph (1)(d);
- (c) notify the provider timeously of its current policies regarding data security, personal data security and IT security processes;
- (d) maintain a record of its processing activities carried out in relation to a provider’s patient records;

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- (e) where the Health Board and provider agree, appoint a jointly designated data protection officer;
- (f) ensure that any of its employees who have access to the provider's patient records and practice data has undergone adequate data protection training; and
- (g) make available appropriate data protection training to the provider and its employees.

## Records

36.—(1) The provider must keep adequate patient records of its attendance on and treatment of its patients and must do so—

- (a) on forms to be supplied to it for [<sup>F4</sup>that purpose] by the Health Board; or
- (b) with the written consent of the Health Board, by way of electronic patient records; or
- (c) in a combination of those two ways.

(2) The provider must include in patient records referred to in sub-paragraph (1), clinical reports sent in accordance with paragraph 6 of schedule 1 or from any other health care professional who has provided clinical services to a person on its list of patients.

(3) The consent of the Health Board required by sub-paragraph (1)(b) must not be withheld or withdrawn provided the Health Board is satisfied, and continues to be satisfied, that—

- (a) the provider ensures that the computer system upon which the provider proposes to keep the electronic patient records is accredited by the Scottish Ministers or another person on their behalf as suitable for that purpose in accordance with a relevant standard issued by the Scottish Ministers;
- (b) the security measures, audit and system management functions incorporated into the computer system as accredited in accordance with sub-paragraph (a) have been enabled; and
- (c) the agreement signed by the provider contains an obligation requiring the provider to have regard to any guidelines issued by the Scottish Ministers and notified in writing, to the provider by the Health Board concerning good practice in the keeping of electronic patient records.

(4) Where a patient's records are electronic patient records, the provider must, as soon as possible following a request from the Health Board, allow the Health Board to access the information recorded on the provider's computer system by means of the audit function referred to in sub-paragraph (3) (b) to the extent necessary for the Health Board to confirm that the audit function is enabled and functioning correctly.

(5) The provider must send the complete patient record relating to a person mentioned in sub-paragraph 5(a) or (b) to the Health Board—

- (a) where a person on its list 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 one month beginning with the date on which it learned of the death; or
- (b) in any other case where the person is no longer registered with the provider, as soon as possible, at the request of the Health Board.

(6) To the extent that a patient's records are electronic patient records, the provider complies with sub-paragraph (5) 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.

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(7) The consent of the Health Board to the transmission of information other than in written form for the purposes of sub-paragraph (6)(b) must not be withheld or withdrawn provided it is satisfied, and continues to be satisfied, with—

- (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.

(8) A provider with electronic patient records must not disable, or attempt to disable, either the security measures or the audit and system management functions referred to in sub-paragraph (3)(b).

#### Textual Amendments

**F4** Words in sch. 1 para. 36(1)(a) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **15(d)**

#### Processing and access of data

**37.**—(1) Subject to paragraphs (2) and (4), the provider must on the request of the Health Board—

- (a) allow the Health Board to access practice data and patient records;
- (b) produce or disclose practice data and data within patient records to the Health Board or to any person authorised in writing by the Health Board; and
- (c) produce or disclose any other information to the Health Board which is reasonably required in connection with the Health Board's functions.

(2) A request under sub-paragraph (1) must be made—

- (a) after consideration of whether the relevant information could be so provided in compliance with the 1998 Act, and any directly applicable EU instrument relating to data protection;
- (b) in accordance with directions given to the Health Board by the Scottish Ministers under section 2(5) of the Act that have been consulted upon by a body representative of general medical practitioners providing primary medical services in accordance with a general medical services contract or a section 17C arrangement; and
- (c) for a purpose mentioned in sub-paragraph (3).

(3) The purposes mentioned in sub-paragraph (2)(c) are—

- (a) medical diagnosis of or provision of healthcare to patients;
- (b) the planning, including workforce planning, and management of health and social care services; or
- (c) where information is reasonably required in connection with the agreement.

(4) The provider must produce any information relating to a request made in accordance with sub-paragraph (1)(b)—

- (a) by such date as has been agreed as reasonable between the provider and the Health Board; or
- (b) in the absence of such agreement, within 28 days of the request being made.

(5) In this paragraph—

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*Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018, SCHEDULE 1. (See end of Document for details)*

- (a) “access” includes access by way of any computerised system, information management & technology system or software; and
- (b) “disclose” includes the provision of information by electronic means.

### **Confidentiality of personal data**

**38.** The provider must nominate a person with responsibility for practices and procedures relating to the confidentiality of personal data held by it and also data protection generally.

### **GP IT Services**

**39.**—(1) The Health Board will provide, maintain and where necessary, upgrade any integrated information management and technology systems used by the provider for provision of services under the agreement and any telecommunication links between these systems and the systems used by the Health Board, a Special Health Board, the Agency, or Healthcare Improvement Scotland, in accordance with any relevant guidance (including standards) issued from time to time by the Scottish Ministers.

(2) The Health Board and provider must take into account any relevant guidance issued by the Scottish Ministers for the purposes of this paragraph and this Part.

(3) On the expiry or termination of the agreement, the provider must immediately return to the Health Board any integrated information management and technology systems and telecommunication links purchased or provided by the Health Board for the purposes of this paragraph in its possession unless otherwise agreed between the Health Board and provider.

### **Patient online appointment services**

**40.**—(1) A provider must provide its registered patients with—

- (a) an optional online appointment service;<sup>F5</sup>...
- (b) an optional online repeat prescription service; and
- (c) an optional online repeat prescription information service,

in a manner which is capable of being electronically integrated with the computer systems of the provider’s practice and using appropriate systems authorised by the Health Board .

(2) The requirements in sub-paragraph (1) do not apply where the provider does not have access to computer systems and software which would enable it to provide the services listed in that sub-paragraph.

(3) If the provider provides an optional online appointment service, the provider must regularly consider whether it is desirable, in order to meet the reasonable needs of its registered patients, to increase the proportion of appointments which are made available to registered patients through that service and if it is so desirable, to increase the proportion of appointments accordingly<sup>[F6]</sup>.

(4) If a provider provides any of the services referred to in sub-paragraph (1), the provider must promote that service to its registered patients—

- (a) in practice leaflets in accordance with paragraph 11 of schedule 6; and
- (b) if the provider has a website, on that website.

(5) In this paragraph—

- (a) “online appointment service” means a facility which allows patients to <sup>[F7]</sup>book,] view, amend and cancel appointments online;
- (b) “repeat prescription service” means a facility which allows patients to order repeat prescriptions for drugs, medicines or appliances online; and

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- (c) “online repeat prescription information service” means a facility which allows patients to view online, and print, a list of any drugs, medicines or appliances in respect of which the patient has a repeat prescription.

#### Textual Amendments

- F5** Word in sch. 1 para. 40(1)(a) omitted (1.4.2018) by virtue of [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **15(e)(i)**
- F6** Sch. 1 para. 40(3) full stop inserted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **15(e)(ii)**
- F7** Word in sch. 1 para. 40(5)(a) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **15(e)(iii)**

#### Practice leaflet

- 41.** The provider must—
- compile a document (in this paragraph called a practice leaflet) which includes the information specified in schedule 6;
  - review its practice leaflet at least once in every period of twelve months and make any amendments necessary to maintain its accuracy; and
  - make available a copy of the leaflet, and any subsequent updates, to its patients and prospective patients.

#### Inquiries about prescriptions and referrals

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

- any prescription form issued by a prescriber;
- the considerations by reference to which prescribers issue such forms;
- the referral, by or on behalf of the provider, of any patient to any other services provided under the Act; or
- 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 will not be obliged to answer any inquiry referred to in sub-paragraph (1) unless it is made—

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

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### **Provision of information to a medical officer etc<sup>[F8]</sup>.**

**43.**—(1) The provider must, if satisfied that the patient has given explicit consents—

- (a) supply in writing to any person specified in sub-paragraph (3), within such reasonable period as that person may specify, such clinical information as any of the persons mentioned in sub-paragraph (3)(a) to (d) considers relevant about a patient to whom the provider or a person acting on behalf of the provider has issued or has refused to issue a medical certificate; and
- (b) answer any inquiries by any person mentioned in sub-paragraph (3) about—
  - (i) a prescription form or medical certificate issued or created by, or on behalf of, the provider; or
  - (ii) any statement which the provider or a person acting on behalf of that provider has made in a report.

(2) For the purposes of being satisfied that a patient has given explicit consent, a provider may rely on an assurance in writing from any person mentioned in sub-paragraph (3) that the explicit consent of the patient has been obtained, unless the provider has reason to believe that the patient does not consent.

(3) For the purposes of sub-paragraph (1) and (2), the persons are—

- (a) a medical officer;
- (b) a nursing officer;
- (c) an occupational therapist;
- (d) a physiotherapist; or
- (e) an officer of the Department for Work and Pensions who is acting on behalf of, and at the direction of, any person specified in sub-paragraphs (a) to (d).

(4) In this paragraph—

- (a) “medical officer” means a medical practitioner who is—
  - (i) employed or engaged by the Department for Work and Pensions; or
  - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;
- (b) “nursing officer” means a health care professional who is registered on the Nursing and Midwifery Register and—
  - (i) employed or engaged by the Department for Work and Pensions; or
  - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;
- (c) “occupational therapist” means a health care professional who is registered in the part of the register maintained by the <sup>[F9]</sup>Health and Care Professions Council under article 5 of the Health and Social Work Professions Order 2001(19) relating to occupational therapists and—
  - (i) employed or engaged by the Department for Work and Pensions; or
  - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions; and

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(19) S.I. 2002/254 which was relevantly amended by S.I. 2009/1182. The title of this Order is the Health and Social Work Professions Order 2001 in accordance with section 213(4) of the Health and Social Care Act 2012 c.7.



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- (d) “physiotherapist” means a health care professional who is registered in the part of the register maintained by the [<sup>F10</sup>Health and Care Professions Council] under article 5 of the Health and Social Work Professions Order 2001 relating to physiotherapists and—
- (i) employed or engaged by the Department for Work and Pensions; or
  - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions.

#### Textual Amendments

- F8** Sch. 1 para. 43 heading full stop inserted (1.4.2018) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94), regs. 1, 15(f)(i)
- F9** Words in sch. 1 para. 43(4)(c) substituted (1.4.2018) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94), regs. 1, 15(f)(aa)(ii)
- F10** Words in sch. 1 para. 43(4)(d) substituted (1.4.2018) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94), regs. 1, 15(f)(bb)(ii)

#### Annual return and review

- 44.—(1) The provider must submit an annual return relating to the agreement to the Health Board.
- (2) One such return may be requested by the Health Board at any time during each financial year in relation to such period (not including any period covered by a previous annual return) as may be specified in the request.
- (3) The provider must submit the completed return to the Health Board—
- (a) by such date as has been agreed as reasonable between the provider and the Health Board; or
  - (b) in the absence of such agreement, within 28 days of the request being made.
- (4) Without prejudice to the generality of sub-paragraph (1)—
- (a) in the case of agreements entered into on or after 22nd December 2010, the provider must include in the annual return a statement confirming that the provider meets the conditions of section 17CA(3) and (4) of the Act<sup>(20)</sup>; and
  - (b) in all cases the provider must include in the annual return a statement confirming that any sub-contractor satisfies the requirements of paragraph 33(3)(e), and such details as the Health Board considers appropriate.
- (5) Following receipt of the return referred to in sub-paragraph (1), the Health Board must arrange with the provider an annual review of its performance in relation to the agreement.
- (6) 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.
- (7) The Health Board must prepare a draft record of the review referred to in sub-paragraph [<sup>F11</sup>(5)] for comment by the provider and, having regard to such comments, must produce a final written record of the review.
- (8) A copy of the final record referred to in sub-paragraph (7) must be sent to the provider.
- (9) In this paragraph, “financial year” means a period of twelve months ending with 31st March.

<sup>(20)</sup> Section 17CA(3) and (4) were inserted by section 38 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3).

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**Changes to legislation:** There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018, SCHEDULE 1. (See end of Document for details)

### Textual Amendments

**F11** Word in sch. 1 para. 44(7) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **15(g)**

### Notifications to the Health Board

**45.** In addition to any requirements of notification elsewhere in these Regulations, the provider must 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 68, 69 and 70;
- (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

**46.** The provider must, 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)(**21**).

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

**47.—**(1) This paragraph applies to agreements entered into prior to 22nd December 2010.

(2) Where a company limited by shares is a party to the agreement, the provider must 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) a new director or secretary is appointed;
- (c) the company passes a resolution or a court of competent jurisdiction makes an order that one or more of those companies be wound up;
- (d) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the company;
- (e) circumstances arise which would enable the court to make a winding up order in respect of the company; or
- (f) the company is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986(**22**).

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

(21) Section 2C was inserted into the Act by section 1(2) of the 2004 Act.

(22) 1986 c.45.

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- (a) where the company is a qualifying body, within the meaning of section 17D(2)(23) of the Act, is a person falling within section 17D(1)(a) to (d) of the Act as in force at 21st December 2010 (persons with whom agreements may be made); and
  - (b) satisfies the condition imposed on shareholders by virtue of regulation 4 (general conditions relating to providers).
- (4) A notice under sub-paragraph (1)(b) must confirm that the new director or, as the case may be, secretary meets the conditions imposed on directors and secretaries by virtue of regulation 4.

#### **Notice provisions specific to an agreement with one or more companies**

**48.**—(1) This paragraph applies to agreements entered into on or after 22nd December 2010.

(2) Where a company is a party to the agreement, the provider must give notice in writing to the Health Board forthwith when—

- (a) a member, director or secretary of the company ceases to be a member, director or secretary of the company or informs the other members of the company that that person intends to cease to be a member, director or secretary of the company, and the date upon which he or she ceased, or will cease, to be a member, director or secretary of the company;
- (b) a new member, director or secretary becomes a member, director or secretary of the company;
- (c) the company passes a resolution or a court of competent jurisdiction makes an order that the company be wound up;
- (d) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the company;
- (e) circumstances arise which would enable the court to make a winding up order in respect of the company; or
- (f) the company is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

(3) A notice under sub-paragraph (2)(b) must—

- (a) state the date the new member, director or secretary became a member, director or secretary of the company;
- (b) confirm that the new member is an individual who satisfies the conditions imposed on members by virtue of section 17CA(3) and (4) of the Act(24) and the conditions imposed by regulations 4 and 5; and
- (c) confirm that the new director or, as the case may be, secretary satisfies the conditions imposed on directors and secretaries by virtue of regulation 4.

#### **Notice provisions specific to an agreement with one or more partnerships**

**49.**—(1) Where a partnership is party to the agreement, the provider must give notice to the Health Board without delay—

- (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 notice must state the date upon which the partner left or will leave the partnership;
- (b) when a new partner joins a partnership.

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(23) Section 17D was inserted by section 21 of the National Health Service (Primary Care) Act 1997 (c.46), and relevantly amended by section 2(3) of the 2004 Act, paragraph 6 of schedule 2(2) of the Tobacco and Primary Care Act 2010 (asp 3) and S.S.I. 2006/30.

(24) Section 17CA was inserted into the Act by section 38 of the Tobacco and Medical Services (Scotland) Act 2010 (asp 3).

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- (2) A notice under sub-paragraph (1)(b) must—
- (a) state the date that the new partner joined the partnership;
  - (b) in the case of an agreement entered into prior to 22nd December 2010—
    - (i) confirm that the new partner satisfies the conditions imposed by regulation 3 of the 2004 Regulations (general conditions relating to providers) as in force at 21st December 2010; and
    - (ii) state whether the new partner is a general or a limited partner;
  - (c) in the case of an agreement entered into on or after 22nd December 2010—
    - (i) confirm that the new partner is an individual who satisfies the conditions imposed on members by virtue of section 17CA(3) and (4) of the Act; and
    - (ii) satisfies the conditions imposed by regulations 4 and 5; and
  - (d) state whether the new partner is a general or a limited partner.

#### **Notice provisions specific to an agreement with persons practising with one or more limited liability partnership**

**50.**—(1) Where a limited liability partnership is party to the agreement, the provider must give notice to the Health Board without delay—

- (a) when a member ceases to be a member, or informs the other members of the limited liability partnership that the member intends to cease to be a member, of the limited liability partnership, and the notice must state the date upon which the member ceased, or will cease, to be a member of the limited liability partnership;
  - (b) when a new member joins the limited liability partnership.
- (2) A notice under sub-paragraph (1)(b) must—
- (a) state the date that the new member joined the limited liability partnership; and
  - (b) confirm that the new member is an individual who satisfies the conditions imposed on members by virtue of section 17CA(3) and (4) of the Act and the conditions imposed by regulations 4 and 5.

#### **Notification of deaths**

**51.**—(1) The provider must 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 must 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 must 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.

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### **Notifications to patients following variation of the agreement**

**52.** 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 must 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**

**53.—**(1) Subject to the conditions in sub-paragraph (2), the provider must 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**

**54.** The provider must have arrangements in place which operate in accordance with section 15 of the Patient Rights (Scotland) Act 2011<sup>(25)</sup>, and any regulations or directions made under that Act.

#### **Co-operation with investigations**

- 55.—**(1) The provider must 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)—

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(25) 2011 asp 5.

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“NHS body” means in Scotland a Health Board or Special Health Board or the Agency, in England and Wales, clinical commissioning group, a NHS trust, a NHS foundation trust, the National Health Service Commissioning Board<sup>(26)</sup>, a Local Health Board and in Northern Ireland, Health and Social Care trust or Regional Health and Social Care Board; and

“local authority” means—

- (a) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (constitution of councils)<sup>(27)</sup>;
  - (b) any of the bodies listed in section 1 of the Local Authority Social Services Act 1970 (local authorities)<sup>(28)</sup>;
  - (c) the Council of the Isles of Scilly; or
  - (d) a council of county or county borough in Wales.
- (3) The co-operation required by sub-paragraph (1) includes—
- (a) answering questions reasonably put to the provider by the NHS body, local authority or Scottish Public Services Ombudsman;
  - (b) providing any information relating to the complaint reasonably required by the NHS body, local authority or Scottish Public Services Ombudsman; 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 NHS body, local authority or Scottish Public Services Ombudsman.

## PART 7

### DISPUTE RESOLUTION

#### Local resolution of contract disputes – Local Dispute Resolution Process

**56.**—(1) For the purposes of this paragraph—

“local medical committee” means a local representative committee which represents the interests of general medical practitioners providing primary medical services in its locality and which is identified and recognised by the British Medical Association as a local medical committee on the British Medical Association’s website<sup>(29)</sup> as updated or replaced from time to time;

“local resolution approved mediator” means a mediator who is on the list of trained mediators kept in accordance with sub-paragraph (2) by the Health Board (“the first Health Board”)(other than the Health Board who is a party to the agreement (“the Second Health Board”)) which is requested by the Second Health Board to appoint a local resolution panel and which mediator is chosen by the local resolution panel in accordance with sub-paragraph (6);

“local resolution approved mediator functions” means the functions of—

- (a) facilitating, co-ordinating and mediating communication between the parties to a dispute arising out of or in connection with an agreement with a view to helping the parties to reach a voluntary resolution to their dispute;

<sup>(26)</sup> Established under section 1H of the National Health Service Act 2006 (c.41). Section 1H was inserted by section 9(1) of the Health and Social Care Act 2012 (c.7), and was amended by S.I. 2012/1831.

<sup>(27)</sup> 1994 c.39.

<sup>(28)</sup> 1970 c.42. Section 1 was amended by section 195 of the Local Government Act 1972 (c.70), and by paragraph 7 of schedule 10 of the Local Government (Wales) Act 1994 (c.19).

<sup>(29)</sup> <https://www.bma.org.uk/about-us/how-we-work/local-representation/local-medical-committees>.

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- (b) assisting the parties to explore options for negotiating a resolution to the dispute; and
- (c) providing recommendations to facilitate resolution of the dispute arising out of or in connection with an agreement and reporting to the area medical committee, the local resolution panel and the parties to the dispute in accordance with sub-paragraph [<sup>F12</sup>(9)];

“local resolution panel” means a committee or a subcommittee of the first Health Board appointed by the first Health Board at the request of the second Health Board which must consist of—

- (a) a person representative of patients in the area of the second Health Board;
- (b) a person representative of the local medical committee, in the area of the second Health Board;
- (c) a person who is an employee of the first Health Board;

“local resolution report” means the written report provided by a local resolution approved mediator in accordance with sub-paragraph (9).

(2) Every Health Board will keep a list of local resolution approved mediators who are also employees of the Health Board or available to be engaged by the Health Board and who the Health Board is satisfied are capable of performing the local resolution approved mediator functions.

(3) In the case of any dispute arising out of or in connection with the agreement—

- (a) the provider and the first Health Board must make every reasonable effort to communicate and co-operate with each other with a view to resolving the dispute in accordance with the local dispute resolution process, before referring the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings);
- (b) neither the provider nor the first Health Board may refer the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings) until the local dispute resolution process has been completed.

(4) Either party to the agreement may commence the local dispute resolution process by serving written notice on—

- (a) the other party to the agreement; and
- (b) the area medical committee for the second Health Board’s area.

(5) The written notice referred to out in sub-paragraph (4) must set out—

- (a) the issue in dispute which must arise out of or be in connection with the agreement;
- (b) contact details for the parties to the agreement; and
- (c) any background information which may be reasonably required by a local resolution approved mediator to perform their functions.

(6) Upon receipt of the notice referred to in sub-paragraph (4)—

- (a) the Second Health Board must request that the First Health Board convene a local resolution panel; and
- (b) that local resolution panel must choose from the list of local resolution approved mediators a local resolution approved mediator whom the panel considers capable of performing the local resolution approved mediator functions in relation to the dispute.

(7) The parties must provide the local resolution approved mediator and each other with any information which may reasonably be required to facilitate the resolution of the dispute and to enable the local resolution approved mediator to perform their local resolution approved mediator functions.

*Status: Point in time view as at 01/04/2018. This version of this schedule contains provisions that are not valid for this point in time.*

**Changes to legislation:** *There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018, SCHEDULE 1. (See end of Document for details)*

(8) The local resolution approved mediator must complete their local resolution approved mediator functions within three months from service of the notice referred to in sub-paragraph (4).

(9) Within the period specified in sub-paragraph (8), the local resolution approved mediator must provide a written report to the parties, the area medical committee and the local resolution panel referred to in sub-paragraph [F13(6)] which sets out the following—

- (a) any agreement reached between the parties;
- (b) the local resolution approved mediator's recommendation on how to resolve any issues still in dispute; and
- (c) confirmation that the local dispute resolution process has been completed.

(10) The local resolution report may be considered by the Scottish Ministers in the event that either party wishes to refer the dispute to the Scottish Ministers for determination in accordance with paragraphs 57 or 58.

#### Textual Amendments

**F12** Word in sch. 1 para. 56(1) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\), regs. 1, 15\(h\)\(i\)](#)

**F13** Word in sch. 1 para. 56(9) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\), regs. 1, 15\(h\)\(ii\)](#)

#### [F14]Dispute resolution: non-NHS contracts]

57.—(1) In the case of an agreement which is not [F15an 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.

#### Textual Amendments

**F14** [Sch. 1 para. 57 heading](#) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\), regs. 1, 15\(i\)\(i\)](#)

**F15** Words in sch. 1 para. 57(1) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\), regs. 1, 15\(i\)\(ii\)](#)

#### NHS dispute resolution procedure

58.—(1) Subject to sub-paragraph (2), the procedure specified in the following sub-paragraphs and paragraph 59 applies in the case of any dispute arising out of or in connection with the agreement, which is referred to the Scottish Ministers—



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- (a) in accordance with section 17A(4) of the Act<sup>(30)</sup> (where the agreement is an NHS contract); or
  - (b) in accordance with paragraph 57(1) (where the agreement is not an NHS contract).
- (2) In the case where—
- (a) a dispute is referred to the Scottish Ministers in accordance with regulation 9(1) (pre agreement disputes); or
  - (b) a provider (or providers) refers a matter for determination in accordance with paragraph 26(1) or (2) of schedule 2,

the procedure specified in the following sub paragraphs and paragraph 59 is modified as mentioned in regulation 9 or, as the case may be, paragraph 26 of schedule 2.

(3) Any party wishing to refer a dispute as mentioned in sub-paragraph (1), must send to the Scottish Ministers a written request for dispute resolution which must 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 must, 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 under dispute.

(7) The Scottish Ministers must 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 must give a copy of any representations received from a party to the other party and must 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 must, if they decide to appoint a panel to hear the dispute—

- (a) inform the parties in writing of the names of the persons whom they have appointed on the panel; and
- (b) pass to the panel any documents received from the parties under or pursuant to sub-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

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<sup>(30)</sup> Section 17A was inserted by section 30 of the National Health Service and Community Care Act (c.19), and moved under a new heading entitled “NHS Contracts” by section 31(2) of the National Health Service (Primary Care) Act 1997 (c.46).

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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 must 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 must 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 must 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 must 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 59 and to any agreement by the parties, the adjudicator must 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 59 may be by a majority.

### **Determination of dispute**

**59.**—(1) The adjudicator must record the determination, and the reasons for it, in writing and must 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 57(1) may contain such directions (including directions as to payment) as the adjudicator considers appropriate to resolve the matter in the dispute, and it is the duty of the provider and the Health Board to comply with such directions.

(3) Without prejudice to the generality of the adjudicator's powers on a reference to the Scottish Ministers for the purposes of section 17A(4) or referred in accordance with paragraph 57(1), the adjudicator may, by the adjudicator's 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 will 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**

**60.**—(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 will survive even where the agreement has terminated.

## **PART 8**

### **VARIATION AND TERMINATION OF AGREEMENTS**

#### **Variation of an agreement: general**

**61.**—(1) Subject to regulation 25, paragraphs 33(8), 65 and 75 of this schedule and sub-paragraph (2), no amendment or variation will 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 75 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 relevant legislation; 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 will not be less than 14 days after the date on which the notice under sub-paragraph (b) is served on the provider.

(3) In this paragraph “relevant legislation” means—

- (a) the Act;
- (b) the 1998 Act or any directly applicable EU instrument relating to data protection;
- (c) the Patient Rights (Scotland) Act 2011<sup>(31)</sup>;
- (d) the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016<sup>(32)</sup>; and
- (e) any regulations or direction given by the Scottish Ministers pursuant to the Acts referred to at sub-paragraphs (a), (c) and (d).

#### **Variation of an agreement: execution**

**62.**—(1) If the agreement or any amendment or variation to the agreement under paragraph 61(1) is executed in counterpart, each counterpart when executed and delivered is to constitute an original of the agreement or amendment or variation to the agreement; but both of the counterparts will together constitute the same agreed agreement, amendment or variation and no counterpart is to be effective until each party has executed and delivered an executed counterpart to the other party.

(2) A counterpart of an agreement or an amendment or variation to the agreement may be delivered by a party (“the executing party”) to the other party by:

- (a) the executing party printing out and signing the signature pages of the agreement or amendment or variation (both the signature page following the last clause and the signature page following any schedule);

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<sup>(31)</sup> 2011 asp 5.

<sup>(32)</sup> 2016 asp 14.

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- (b) the executing party scanning those signed signature pages to an electronic file; and
- (c) the executing party (or its legal representative) emailing the files of the scanned signature pages together with a copy of the agreement, amendment or variation to the other party.

### **Termination by agreement**

**63.** The Health Board and the provider may agree in writing to terminate the agreement, and if the parties so agree, they must 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**

**64.**—(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 will, 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 will 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) will apply to the provider, save that the reference to “6 months” will instead be to “3 months”.

(4) This paragraph and paragraph 66 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**

**65.**—(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 will, 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 will 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) will apply to that party, save that the reference to “6 months” will 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 74.

### **Late payment notices**

**66.**—(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 22 and the provider must 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

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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 whichever is the earlier of the following dates—

- (a) there has been a determination of the dispute pursuant to paragraph 59 and that determination permits the provider to terminate the agreement; or
- (b) the Health Board ceases to pursue the NHS dispute resolution procedure.

#### **Termination by the Health Board: general**

67.—(1) 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.

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

- (a) in the case of an agreement entered into prior to 22nd December 2010, 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—
  - (i) before the agreement was entered into; or
  - (ii) pursuant to paragraphs 42(2) or (3) or 43(2) of schedule 1 of the 2004 Regulations as in force at 21st December 2010, in relation to the conditions set out in regulation 3 of the 2004 Regulations as in force at 21st December 2010 (and compliance with those conditions),  
was, when given, untrue or inaccurate in a material respect; or
- (b) in the case of an agreement entered into on or after 22nd December 2010, 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—
  - (i) before the agreement was entered into; or
  - (ii) pursuant to paragraphs 48(2) or (3), 49(2) or 50(2),

in relation to the conditions set out in regulations 3 and 3A of the 2004 Regulations or regulations 4 and 5 of these Regulations (and compliance with those conditions), was, when given, untrue or inaccurate in a material respect.

#### **Other grounds for termination by the Health Board**

68.—(1) In the case of agreements entered into prior to 22nd December 2010, the Health Board may serve notice in writing on a party to the agreement terminating the agreement with that party with immediate effect, 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) must send a copy of that notice to any other party to the agreement whose agreement is not being terminated.

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- (3) A person falls within this sub-paragraph if—
- (a) the person has been disqualified;
  - (b) subject to sub-paragraph (4), the person is disqualified or suspended from practising by any licensing body anywhere in the world (other than by—
    - (i) a direction under section 32A(2) (applications for interim suspension) or 32B(1) (suspension pending appeal) of the Act(33);
    - (ii) a Health Board in terms of regulation 8A of the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004(34); or
    - (iii) any provision in force in England, Wales or Northern Ireland corresponding to the provisions referred to in sub-heads (i) and (ii));
  - (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) the person has been convicted elsewhere of an offence which would, if committed in Scotland, constitute—
    - (i) murder; or
    - (ii) subject to sub-paragraph (6), 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 of the Criminal Procedure (Scotland) Act 1995(35) or schedule 1 of the Children and Young Persons Act 1933(36);
  - (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 of the Insolvency Act 1986(37) or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985(38) or sections 155 to 160 of the

(33) Sections 32A(2) and 32B(1) were inserted into the Act by section 8 of the National Health Service (Amendment) Act 1995 (c.31). Section 32A was amended by paragraph 51 of schedule 4 of the Health Act 1999 (c.8) (“the 1999 Act”), and section 26(7) of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) (“the 2005 Act”). Section 32B(1) was amended by paragraph 52 of schedule 4 of the 1999 Act and paragraph 1 of schedule 3 of the 2005 Act.

(34) S.S.I. 2004/114. Regulation 8A was inserted by S.S.I. 2011/392.

(35) 1995 c.46. Schedule 4A was added by section 257 and schedule 20 of the Enterprise Act 2002 (c.40) (“the 2002 Act”).

(36) 1933 c.12 as amended by section 170 and paragraph 8 of schedule 15 and schedule 16 of the Criminal Justice Act 1988 (c.33); schedules 3 and 4 of the Sexual Offences Act 1956 (c.69); paragraph 7 of schedule 6 of the Sexual Offences Act 2003 (c.42); paragraph 2 of schedule 10 of the Domestic Violence, Crime and Victims Act 2004 (c.28); paragraph 53 of schedule 21 of the Coroners and Justice Act 2009 (c.25) and paragraph 1 of schedule 5 of the Modern Slavery Act 2015 (c.30).

(37) 1986 c.45 was inserted by section 257 and schedule 20 of the 2002 Act.

(38) 1985 c.66. Sections 56A to 56K were substituted by section 33 of the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11) and repealed by the Bankruptcy (Scotland) Act 2016 (asp 21).

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- Bankruptcy (Scotland) Act 2016**(39)**, 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 of the Insolvency Act 1986**(40)**;
- (k) that person is a partnership or limited liability partnership and—
- (i) a dissolution of the partnership or limited liability 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 or limited liability partnership to continue, or for members of the partnership to carry on in partnership or limited liability partnership;
- (l) the person has been—
- (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005**(41)** (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of [<sup>F16</sup>any body; or]
  - (ii) removed from the office of charity trustee or a charity by an order made by the Charity Commission for England and Wales 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—
- (i) disqualification order under section 1 of the Company Directors Disqualification Act 1986**(42)**;
  - (ii) a disqualification undertaking under section 1A of that Act;
  - (iii) a disqualification order under article 3 of the Company Directors Disqualification (Northern Ireland) Order 2002**(43)**;
  - (iv) a disqualification undertaking under article 4 of that Order; or
  - (v) a disqualification order under section 429(2)(b) of the Insolvency Act 1986**(44)**; <sup>F17</sup>...
- (n) the 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

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**(39)** 2016 asp 21.

**(40)** 1986 c.45. Schedule B1 was inserted by paragraph 1 of schedule 16 of the 2002 Act.

**(41)** 2005 asp 10.

**(42)** 1986 c.46, as relevantly amended by section 5 and paragraph 2 of schedule 4 of the Insolvency Act 2000 (c.39), section 204 of the 2002 Act and paragraph 2 of schedule 7 of the Small Business, Enterprise and Employment Act 2015 (c.26).

**(43)** S.I. 2002/3150 (N.I. 4), as relevantly amended by paragraph 9 of schedule 8 of the Small Business, Enterprise and Employment Act 2015.

**(44)** Section 429(2) was amended by paragraph 15 of schedule 23 of the Enterprise Act 2002.

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- (o) that person would otherwise fall within paragraph 67(3)(e) of schedule 3 of the National Health Service (General Medical Services Contracts) Regulations 2015(45).
- (4) A Health Board may not terminate the agreement pursuant to sub-paragraph (3)(b) 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 may not terminate the agreement pursuant to sub-paragraph (3)(c)—
- (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 sub-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 sub-paragraph (b) if there is no finding of unfair dismissal at the end of those proceedings.
- (6) A Health Board may not terminate the agreement pursuant to sub-paragraph (3)(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 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.
- (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 10.

#### Textual Amendments

- F16** Words in sch. 1 para. 68(3)(1)(i) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\), regs. 1, 15\(j\)\(i\)](#)
- F17** Word in sch. 1 para. 68(3)(m)(v) omitted (1.4.2018) by virtue of [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\), regs. 1, 15\(j\)\(ii\)](#)



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## **Other grounds for termination by the Health Board for agreements entered into on or after 22nd December 2010**

**69.**—(1) In the case of agreements entered into on or after 22nd December 2010, the Health Board may serve notice in writing on a party to the agreement terminating the agreement with the party with immediate effect, or from such date as may be specified in the notice, if—

- (a) in the case of an agreement with an individual, that individual;
- (b) in the case of an agreement with a partnership, any partner or the partnership;
- (c) in the case of an agreement with a limited liability partnership, any member or the limited liability partnership; and
- (d) in the case of an agreement with a company—
  - (i) the company;
  - (ii) any member of the company; or
  - (iii) any director or secretary of the company,

falls within sub-paragraph (2) during the existence of the agreement.

(2) A person falls within this sub-paragraph if—

- (a) subject to sub-paragraph (3), the person does not satisfy the requirements of section 17CA(1), (2) or (3) of the Act<sup>(46)</sup>;
- (b) the person has been disqualified;
- (c) subject to sub-paragraph (5), the person is disqualified or suspended from practising by any licensing body anywhere in the world (other than by—
  - (i) a direction under section 32A(2) (applications for interim suspension) or 32B(1) (suspension pending appeal) of the Act;
  - (ii) a Health Board in terms of regulation 8A of the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004; or
  - (iii) any provision in force in England, Wales or Northern Ireland corresponding to the provisions referred to in sub-heads (i) and (ii));
- (d) subject to sub-paragraph (6), 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;
- (e) the person is disqualified from a list unless the person's name has subsequently been included in such a list;
- (f) the person has been convicted in the United Kingdom of murder;
- (g) the person has been convicted in the United Kingdom of a criminal offence, other than of murder, and has been sentenced to a term of imprisonment of over six months;
- (h) subject to sub-paragraph (7), the person has been convicted elsewhere of an offence—
  - (i) which would, if committed in Scotland, constitute murder; or
  - (ii) constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (i) the person has been convicted of an offence referred to in schedule 1 of the Criminal Procedure (Scotland) Act 1995 (offences against children under the age of 17 to which special provisions apply) or schedule 1 of the Children and Young Persons Act 1933

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<sup>(46)</sup> Section 17CA was inserted by section 38 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3).

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**Changes to legislation:** There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018, SCHEDULE 1. (See end of Document for details)

- (offences against children and young persons with respect to which special provisions apply);
- (j) 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 of the Insolvency Act 1986 or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985, or sections 155 to 160 of the Bankruptcy (Scotland) Act 2016, 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;
- (k) 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 of the Insolvency Act 1986;
- (l) that person is a partnership or limited liability partnership and—
- (i) a dissolution of the partnership or limited liability 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 or limited liability partnership to continue, or for members of the partnership or limited liability partnership to carry on in partnership or limited liability partnership;
- (m) the person has been—
- (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session), 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 Commission for England and Wales 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;
- (n) the person is subject to a disqualification order under the company Directors Disqualification Act 1986, the Company Directors Disqualification (Northern Ireland) Order 2002 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order);<sup>F18</sup> ...
- (o) the 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 the agreement is with a partnership, limited liability partnership or a company, the Health Board is not satisfied that the partnership, limited liability partnership or company is taking adequate steps to deal with the matter; or
- (p) the person would otherwise fall within paragraph 67(3)(e) of schedule 3 of the National Health Service (General Medical Services Contracts) Regulations 2015.
- (3) Subject to sub-paragraph (4), a Health Board may not terminate the agreement pursuant to sub-paragraph (2)(a) where—

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- (a) a party to the agreement who is an individual;
- (b) in the case of a party to an agreement which is a partnership, a partner;
- (c) in the case of a party to an agreement which is a limited liability partnership, a member; or
- (d) in the case of a party to an agreement which is a company, a member of the company, after having entered into an agreement (“the relevant agreement”), retires and is therefore not performing or is not engaged in the provision of primary medical services, in accordance with regulation 5.

(4) Sub-paragraph (3) only applies for the period of time following the date of retirement, which is the equivalent to the length of time that the relevant person referred to in sub-paragraph (3)(a), (b), (c) or (d) has performed or been engaged in the provision of primary medical services for the purposes of the relevant agreement, up to a maximum period of 2 years following the date of retirement.

(5) A Health Board may 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;
- (c) in the case where the person is a member of a limited liability partnership that is a party to the agreement, a member of that partnership; or
- (d) in the case where the person is a member, director or secretary of a company that is a party to the agreement—
  - (i) a member of the company; or
  - (ii) a director or secretary of the company,as the case may be.

(6) A Health Board may 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 sub-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 sub-paragraph (b) if there is no finding of unfair dismissal at the end of those proceedings.

(7) A Health Board may 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 a member of a limited liability partnership that is a party to the agreement, a member of that limited liability partnership; or
- (d) in the case where the person is a member, director or secretary of a company that is a party to the agreement—
  - (i) a member of the company; or
  - (ii) a director or secretary of the company,as the case may be.

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(8) In this paragraph, “health service body” does not include any person who is to be regarded as a health service body in accordance with regulation 10.

#### Textual Amendments

**F18** Word in *sch. 1 para. 69(2)(n)* omitted (1.4.2018) by virtue of *The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94)*, regs. 1, **15(k)**

#### Other grounds for termination by the Health Board

**70.** The Health Board may serve notice in writing on the provider terminating the agreement with the provider with immediate effect 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 for unlawful sub contracting

**71.** If the provider breaches the condition specified in paragraph 33(10) and it comes to the Health Board’s attention that the provider has done so, the Health Board must serve notice in writing on the provider—

- (a) terminating the agreement with immediate effect; or
- (b) instructing the provider to terminate the sub contracting arrangements that give rise to the breach with immediate effect, and if it fails to comply with the instruction, the Health Board must serve a notice in writing on the provider terminating the agreement with immediate effect.

#### Termination by the Health Board: remedial notices and breach notices

**72.—(1)** Where a provider has breached the agreement other than as specified in paragraphs 67(2) to 71 and the breach is capable of remedy, the Health Board must, 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 (“a remedial notice”).

(2) A remedial notice must 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

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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 67(2) to 71 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 may 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 [F19 bodies corporate]**

**73.**—(1) Where a company, partnership or limited liability partnership is a party to the agreement, if the Health Board becomes aware that the company, partnership or limited liability partnership, 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 will be entitled to give notice to the company, partnership or limited liability partnership requiring that the company, partnership or limited liability partnership 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, partnership or limited liability partnership has not satisfied the Health Board that the company, partnership or limited liability partnership 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, partnership or limited liability partnership with immediate effect 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) must send a copy of that notice to any other party to the agreement.

#### **Textual Amendments**

**F19** Words in sch. 1 para. 73 heading substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\), regs. 1, 15\(1\)](#)

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### **Termination by the Health Board: changes in the provider**

74.—(1) The Health Board may 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;
- (b) where one or more partnerships are parties to the agreement, one or more partners have left that partnership or those partnerships;
- (c) where one or more limited liability partnerships are parties to the agreement, one or more members have left that limited liability partnership or those limited liability partnerships; or
- (d) where one or more companies are parties to the agreement, one or more members have left that company or those companies,

if in its reasonable opinion, the Health Board considers that the change in the parties to the agreement or membership of the partnership, limited liability partnership or company (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) must 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, limited liability partnership or company (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**

75.—(1) In this paragraph and paragraphs 76 and 78, “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 69(2), 70, 71, 72(4) or (6), 73, 74 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 must 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 76 the Health Board must 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

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(b) protect itself from material financial loss.

(6) Where the Health Board imposes an agreement sanction, the Health Board must 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**

**76.**—(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 must 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 local dispute resolution process within 28 days beginning on the date on which the Health Board served notice on the provider in accordance with paragraph 75(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 must not impose the agreement sanctions unless—

(a) there has been a resolution of the dispute between the parties which allows the Health Board to impose the agreement sanction;

(b) there has been no resolution of the dispute between the parties as a result of the local dispute resolution process and the provider does not refer the matter to the Scottish Ministers under paragraph 57 or 58 within 28 days of the end of the period specified in—

(i) paragraph 56(8); or

(ii) the date on which the local dispute resolution process was completed,  
whichever is the earlier;

(c) either party refers the matter to the Scottish Ministers under paragraph 57 or 58 within the period specified in sub-paragraph (b) and either<sup>F20</sup>—

(i) there has been a determination of the dispute pursuant to paragraph 59 and that determination permits the Health Board to impose the agreement sanction; or

(ii) the provider ceases to pursue the NHS dispute resolution procedure.

(3) If the provider does not invoke the local dispute resolution process within the time specified in sub-paragraph (2), the Health Board must be entitled to impose the agreement sanction with immediate effect.

(4) If the Health Board is satisfied that it is necessary to impose the agreement sanction before the local dispute resolution process or 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 is entitled to impose the agreement sanction with immediate effect, pending the outcome of that procedure.

#### **Textual Amendments**

**F20** Sch. 1 para. 76(2)(c) punctuation inserted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **15(m)**

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## **Termination and the NHS dispute resolution procedure**

77.—(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 paragraphs 67 to 74, the Health Board must, 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 with sub-paragraph (1), where the exceptions in sub-paragraph (2) do not apply, where the provider invokes the local dispute resolution process 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 must not terminate at the end of the notice period but instead must only terminate in the circumstances specified in sub-paragraph (4).

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

- (a) there has been a resolution of the dispute between the parties which allows the Health Board to terminate the agreement with the provider or the party to the agreement;
- (b) there has been no resolution of the dispute between the parties as a result of the local dispute resolution process and the provider does not refer the matter to the Scottish Ministers under paragraph 57 or 58 within 28 days of the end of the period specified in—
  - (i) paragraph 56(8); or
  - (ii) the date on which the local dispute resolution process was completed,
 whichever is the earlier;
- (c) either party refers the matter to the Scottish Ministers under paragraph 57 or 58 within the period specified in sub-paragraph (b); and either
  - (i) there has been a determination of the dispute pursuant to paragraph 59 and that determination permits the Health Board to terminate the agreement with the provider or the party to the agreement; or
  - (ii) the provider ceases to pursue the NHS dispute resolution procedure
 whichever is earlier.

(5) If the Health Board is satisfied that it is necessary to terminate the agreement before the local dispute resolution process or 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) must not apply and the Health Board must 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 paragraphs 67 to 74.

## **Consultation with the area medical committee**

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



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(a) terminating the agreement with the provider or with a party to the agreement pursuant to paragraph 67 to 74; or

(b) imposing an agreement sanction,

it must, 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 an agreement sanction.

(2) Whether or not the area medical committee has been consulted pursuant to sub-paragraph (1), whenever the Health Board imposes an agreement sanction on the provider or terminates an agreement with the provider or a party to the agreement pursuant to this Part, it must, 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

**79.**—(1) The provider must have an effective system of clinical governance.

(2) The provider must 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) must 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.

#### Medical Indemnity Insurance

**80.**—(1) The provider must at all times have in force in relation to it an indemnity arrangement which provides appropriate cover under the agreement.

(2) The provider must not sub-contract its obligations to provide clinical services under the agreement unless it has satisfied itself that the sub-provider has in force in relation to it an indemnity arrangement which provides appropriate cover.

(3) In this paragraph—

(a) “indemnity arrangement” means a contract of insurance or other arrangement made for the purpose of indemnifying the provider;

(b) “appropriate cover” means cover against liabilities that may be incurred by the provider in the performance of clinical services under the agreement, which is appropriate, having regard to the nature and extent of the risks in the performance of such services; and

(c) a provider must be regarded as having in force in relation to it an indemnity arrangement if there is an indemnity arrangement in force in relation to a person employed or engaged by that provider in connection with clinical services which that person provides under the agreement or, as the case may be, sub-contract.

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## Public Liability Insurance

**81.** The provider must 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 an indemnity arrangement referred to in paragraph 80.

## Gifts

- 82.**—(1) The provider must 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 limited liability partnership is a party to the agreement, any member of the limited liability partnership;
  - (d) where a company is a party to the agreement—
    - (i) any member of the company; or
    - (ii) a director or secretary of the company;
  - (e) any person employed by the provider for the purposes of the agreement;
  - (f) any general medical practitioner engaged by the provider for the purposes of the agreement;
  - (g) any spouse or civil partner of an individual (where an individual is a party to the agreement) or of a person specified in paragraphs (b) to (f); or
  - (h) any person whose relationship with any individual (where an individual is a party to the agreement) or with a person specified in paragraphs (b) to (f) has the characteristics of the relationship between spouses or civil partners.
- (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 must 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 (h).
- (5) The register referred to in sub-paragraph (1) must 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, the patient's address;
  - (c) in any other case, the address of the donor;
  - (d) the nature of the gift;

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- (e) the estimated value of the gift; and
  - (f) the name of the person or persons who received the gift.
- (6) The provider must make the register available to the Health Board on request.

### **Compliance with legislation and guidance**

83. The provider must—
- (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**

84. The agreement will not create any right enforceable by any person not a party to it.

### **Duty of candour**

85. The provider must have arrangements in place which operate in accordance with Part 2 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016<sup>(47)</sup>, and any regulations or directions made under that part of that Act<sup>(48)</sup>.

## **PART 10**

## **QUALITY**

### **Duty to participate in quality arrangements**

86.—(1) Subject to paragraph 87, the provider must meaningfully participate in quality arrangements.

- (2) The provider must nominate a person who will be a Practice Quality Lead for the purpose of—
- (a) their cluster membership; and
  - (b) attending meetings of the provider’s cluster.

(3) The person nominated under sub-paragraph (2) must be a general medical practitioner who performs services under the agreement.

- (4) In this paragraph and paragraph 87—

“cluster” means a group of practices where each practice is represented by a Practice Quality Lead;

“Cluster Quality Lead” means a person who is a member of a cluster that is appointed by a Health Board to represent that cluster to the Health Board;

“meaningfully participate” means, as a minimum—

- (a) ensuring that all members of the provider’s practice supply the Practice Quality Lead with any requested information;
- (b) considering practice quality data with the support and direction of the Practice Quality Lead; and
- (c) having regard to any quality improvement measures proposed by the provider’s cluster; and

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<sup>(47)</sup> 2016 asp 14.

<sup>(48)</sup> S.S.I. 20185/57 are made under section 22 of the 2016 Act.

**Status:** Point in time view as at 01/04/2018. This version of this schedule contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018, SCHEDULE 1. (See end of Document for details)

“Practice Quality Lead” means a medical practitioner nominated by a provider to represent the provider’s practice to the cluster; and

“quality arrangements” means the proceedings and arrangements specified in directions by the Scottish Ministers made under section 2(5) of the Act.

### **Quality arrangements**

**87.**—(1) The provider and the provider’s practice must comply with the quality arrangements as determined by and with the support of the Practice Quality Lead and with any further conditions relating to quality set out in directions given by Scottish Ministers under section 2(5) of the Act.

(2) The Practice Quality Lead must spend a minimum of two sessions a month in pursuance of their role and regularly attend meetings of the provider’s cluster.

(3) Where a Health Board is considering appointing a Cluster Quality Lead, that Health Board must consult a Practice Quality Lead who is a member of that cluster prior to offering an appointment.

(4) Where a cluster determines that a provider is failing to meaningfully participate in quality arrangements it must arrange for the provider to receive supportive measures that enable the provider to meet their duties under this paragraph and paragraph 88.

**Status:**

Point in time view as at 01/04/2018. This version of this schedule contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018, SCHEDULE 1.