

SCHEDULE 2

Regulation 13

AGREEMENTS TO PROVIDE ESSENTIAL SERVICES

PART 1

PROVISION OF ESSENTIAL SERVICES

Essential services

1.—(1) Subject to paragraph 2, the provider must provide the services described in sub-paragraphs (2), (4), (5) and (7) throughout the core hours.

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

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

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

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

- (a) “disease” means a disease included in the list of three-character categories contained in the tenth revision of the International Statistical Classification of Diseases and Related Health Problems(1);
- (b) “management” includes—
 - (i) offering consultation and, where appropriate, physical examination for the purpose of identifying the need, if any, for treatment or further investigation; and
 - (ii) the making available of such treatment or further investigation as is necessary and appropriate, including, where appropriate, the referral of the patient for other services under the Act and liaison with other health care professionals involved in the patient's treatment and care.

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

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

(5) A provider must provide primary medical services required in core hours, taking into account the provider's safety and the availability of other options for care, for the immediately necessary treatment of any person to whom the provider has been requested to provide treatment owing to an accident or emergency at any place in the provider's practice area.

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

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

(1) World Health Organisation, 2010 ISBN 9789241548342.

Status: This is the original version (as it was originally made).

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

Essential services

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

Attendance at practice premises

- 3.—(1) The provider must take steps to ensure that any patient who—
 - (a) has not previously made an appointment; and
 - (b) attends at the practice premises during the normal hours for essential services,is provided with such services by an appropriate health care professional during that surgery period except in the circumstances specified in sub-paragraph (2).
- (2) The circumstances referred to in sub-paragraph (1) are that—
 - (a) it is more appropriate for the patient to be referred elsewhere for services under the Act; or
 - (b) the patient is offered an appointment to attend again within a time which is appropriate and reasonable having regard to all the circumstances and the patient’s health would not thereby be jeopardised.

Newly registered patients

- 4.—(1) Where a patient has been—
 - (a) accepted on a provider’s list of patients under paragraph 7; or
 - (b) assigned to that list by the Health Board,the provider must, in addition to and without prejudice to its other obligations in respect of that patient under the agreement, invite the patient to participate in a consultation either at the provider’s practice premises or, if a medical condition of the patient so warrants, at one of the places referred to in paragraph 3(2) of schedule 1.

(2) An invitation under sub-paragraph (1) must be issued within 6 months of the date of acceptance of the patient on, or their assignment to, the provider's list and may offer the patient a consultation with—

- (a) the provider;
- (b) a medical practitioner employed or engaged by the provider; or
- (c) a healthcare professional employed or engaged by the provider.

(3) Where a patient (or, where appropriate, in the case of a patient who is a child, the child's parent) agrees to participate in a consultation mentioned in sub-paragraph (1), with a person mentioned in sub-paragraph (2), that person must, in the course of that consultation make such inquiries and undertake such examinations as appear to them to be appropriate in all the circumstances.

Fees and charges for essential services

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

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

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

PART 2

LIST OF PATIENTS

List of patients

6. The Health Board must prepare and keep up to date a provider's list of patients—
- (a) who have been accepted by the provider for inclusion in the provider's list of patients under paragraph 7 and who have not subsequently been removed from that list under paragraphs 10 to 18; and
 - (b) who have been assigned to the provider under paragraph 22 or 23 and whose assignment has not subsequently been rescinded.

Application for inclusion in a list of patients

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

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

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

(4) An application may be made—

(a) on behalf of any child—

(i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child;

(ii) by a person duly authorised by a local authority, where the child is in the care of the local authority under the Children (Scotland) Act 1995⁽²⁾; or

(iii) by a person authorised by a voluntary organisation, by which the child is being accommodated under the provisions of that Act; or

(b) on behalf of any adult person who is incapable of making such an application, or authorising such an application to be made on their behalf, by the primary carer of that person or by a person authorised under the Adults with Incapacity (Scotland) Act 2000⁽³⁾ to act on the patient's behalf.

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

(6) On receipt of a notice under sub-paragraph (5), the Health Board must—

(a) include that person in the provider's list of patients from the date on which the notice is received; and

(b) notify the applicant (or, in the case of a child or incapable adult, the person making the application on their behalf) of the acceptance.

Temporary residents

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

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

(b) moving from place to place and not for the time being resident in any place.

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

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

(a) 3 months; or

(b) such shorter period for which the provider agreed to accept the person as a patient,

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

(2) 1995 c.36.

(3) 2000 asp 4.

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

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

9.—(1) The provider may only refuse an application made under paragraph 7 or 8 if the provider has reasonable grounds for doing so which do not relate to the applicant's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition.

(2) The reasonable grounds referred to in sub-paragraph (1) may, in the case of applications made under paragraph 7, include the ground that the applicant does not live in the provider's practice area.

(3) A provider which refuses an application made under paragraph 7 or 8 must, within 14 days of its decision notify the applicant (or, in the case of a child or incapable adult, the person making the application on their behalf) in writing of the refusal and the reasons for it.

(4) The provider must keep a written record of refusals of applications made under paragraph 7 and of the reasons for them and must make this record available to the Health Board on request.

Removal from the list at the request of the patient

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

(2) Where the Health Board—

(a) receives notification from the provider under sub-paragraph (1); or

(b) receives a request from the patient to be removed from the provider's list of patients,

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

(3) A removal in accordance with sub-paragraph (2) will take effect on whichever is the earlier of the following dates—

(a) on the date on which the Health Board receives notification of the registration of the person with another provider (by any arrangement) of essential services (or their equivalent); or

(b) 14 days after the date on which the notification or request made under sub-paragraph (1) or (2) respectively is received by the Health Board.

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

(a) the patient; and

(b) the provider,

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

(5) In this paragraph and in paragraphs 11(1) and 11(10), 12(6) and 12(7), 14 and 17, a reference to a request received from or advice, information or notification required to be given to a patient includes a request from or advice, information or notification require to be given to—

(a) in the case of a patient who is a child, a parent or other person referred to in paragraph 7(4)(a); or

(b) in the case of an adult patient who is incapable of making the relevant request or receiving the relevant advice, information or notification, a relative or the primary carer of the patient.

Removal from the list at the request of the provider

11.—(1) Subject to paragraph 18, a provider which has reasonable grounds for wishing a patient to be removed from its list of patients which do not relate to the applicant’s race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition must—

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

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

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

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

(3) Except in the circumstances described in sub-paragraph (4), a provider may only request a removal under sub-paragraph (1) if, within the period of 12 months prior to the date of the provider’s request to the Health Board, the provider has—

- (a) warned the patient that the patient is at risk of removal and explained to the patient the reasons for this; and
- (b) confirmed that the Health Board has agreed to the removal grounds mentioned in sub-paragraph (1).

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

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

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

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

(6) The provider must record in writing—

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

- (7) The provider must keep a written record of refusals under this paragraph which is to include—
- (a) the reason for removal given to the patient;
 - (b) the circumstances of the removal; and
 - (c) in cases where sub-paragraph (2) applies, the grounds for a more specific reason not being appropriate,

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

(8) A removal requested in accordance with sub-paragraph (1) will, subject to sub-paragraph (9) take effect from whichever is the earlier of the following dates—

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

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

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

(10) The Health Board must notify in writing—

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

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

Removal from the list of patients who are violent

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

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

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

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

- (a) an individual that is a party to the agreement;
- (b) a partner in a partnership that is a party to the agreement;
- (c) a member of a limited liability partnership that is a party to the agreement;
- (d) a member of a company that is a party to the agreement;
- (e) a member of the provider's staff;
- (f) a person engaged by the provider to perform or assist in the performance of services under the agreement; or
- (g) any other person present—

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- (i) on the practice premises; or
- (ii) in the place where services were provided to the patient under the agreement.

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

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

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

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

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

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

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

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

Removals from the list of patients registered elsewhere

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

- (a) the patient has subsequently been registered with another provider (by any arrangement) of essential services (or their equivalent) in the area of the Health Board; or
- (b) it has received notice from another Health Board, Local Health Board, the National Health Service Commissioning Board⁽⁴⁾ or the Regional Health and Social Care Board that the patient has subsequently been registered with a provider (by any arrangement) of essential services (or their equivalent) outside the area of the Health Board.

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

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

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

(4) 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.

Removals from list of patients who have moved

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

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

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

Removals from list of patients who have moved

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

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

Removals from the list of patients absent from the United Kingdom etc

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

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

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

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

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

Removals from the list of patients accepted elsewhere as temporary residents

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

- (a) that the person's stay in the place of temporary residence has exceeded 3 months; and
 - (b) that the patient has not returned to the patient's normal place of residence or any other place within the provider's practice area.
- (2) The Health Board must notify in writing of a removal under sub-paragraph (1)—
- (a) the provider; and
 - (b) where practicable, the patient.
- (3) A notification to the patient under sub-paragraph (2)(b) must inform the patient of—
- (a) the patient's entitlement to make arrangements for the provision to the patient of essential services (or their equivalent), including by the provider (by any arrangement) by which the patient has been treated as a temporary resident; and
 - (b) the name and address of the Health Board in whose area the patient is resident.

Removals from the list of pupils etc. of a school

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

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

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

Closure of lists of patients

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

(2) Within a period of 28 days beginning with the date of receipt of the notification referred to in sub-paragraph (1), the Health Board must enter into discussions with the provider concerning the support which the Health Board may give the provider, or other changes which the Health Board or the provider may make, which would enable the provider to keep its list of patients open.

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

(4) The discussions mentioned in sub-paragraph (2) must be completed within a period of 3 months beginning with the date of the Health Board's receipt of the notification referred to in sub-paragraph (1), or within such longer period as the parties may agree.

(5) Notwithstanding the requirements mentioned in sub-paragraphs (2) and (4), the provider may issue a closure notice to the Health Board which the Health Board must approve in accordance with sub-paragraph (13)—

- (a) if the period of 28 days mentioned in sub-paragraph (2) has expired and the Health Board has not begun discussions with the provider in accordance with sub-paragraph (2);

(b) if the 3 month period or such longer period as has been agreed in accordance with sub-paragraph (4) has expired and the Health Board has failed to complete the discussions mentioned in sub-paragraph (2).

(6) If, following the discussions mentioned in sub-paragraph (2), the Health Board and the provider reach agreement that the provider's list of patients should remain open, the Health Board must send full details of the agreement in writing to the provider within a period of 2 weeks from the date the agreement was reached.

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

(8) If, following the discussions mentioned in sub-paragraph (2)—

(a) the Health Board and the provider reach agreement that the provider's list of patients should close; or

(b) the Health Board and the provider fail to reach agreement and the provider still wishes to close the provider's list of patients,

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

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

(a) the period of time (which may not exceed 12 months) for which the provider's list of patients will be closed;

(b) the current number of the provider's registered patients;

(c) the number of registered patients (lower than the current number of such patients, and expressed either in absolute terms or as a percentage of the number of such patients specified pursuant to paragraph (b)) which, if that number were reached, would trigger the re-opening of the provider's list of patients;

(d) the number of registered patients (expressed either in absolute terms or as a percentage of the number of such patients specified pursuant to paragraph (b)) which, if that number were reached, would trigger the re-closure of the provider's list of patients; and

(e) any withdrawal or reduction in provision of any additional or enhanced services which had previously been provided under the agreement.

(10) The Health Board must forthwith acknowledge receipt of the closure notice mentioned in sub-paragraph (5) or sub-paragraph (8) in writing to the provider.

(11) Before the Health Board reaches a decision as to whether to approve or reject the closure notice mentioned in sub-paragraph (8) under sub-paragraph (14), the Health Board and the provider may enter into further discussions concerning the details of the closure notice as specified in sub-paragraph (9), with a view to reaching agreement; and, in particular, if the parties are unable to reach agreement regarding the period of time for which the provider's list of patients will be closed, that period must be 12 months.

(12) A provider may not withdraw a closure notice mentioned in sub-paragraph (5) or sub-paragraph (8) for a period of 3 months beginning with the date on which the Health Board has received the notice, unless the Health Board has agreed otherwise in writing.

(13) Within a period of 14 days beginning with the date of the receipt of the closure notice mentioned in sub-paragraph (5), the Health Board must approve the closure notice and notify the provider in writing as soon as possible.

(14) Within a period of 14 days beginning with the date of receipt of the closure notice mentioned in sub-paragraph (8), the Health Board must—

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

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

(15) Approval of a closure notice includes—

- (a) where it is a closure notice mentioned in sub-paragraph (5), approval of the details in sub-paragraph (9); or
- (b) where it is a closure notice mentioned in sub-paragraph (8) and approved under sub-paragraph 14(a), approval of the details specified in sub-paragraph (9) (or, where those details are revised following discussions under sub-paragraph (11) approval of those details as so revised).

Approval of closure notice by the Health Board

20.—(1) If the Health Board approves the closure notice in accordance with paragraph 19(13) or 19(14), the provider must close the provider’s list of patients—

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

(2) Subject to sub-paragraph (3), the provider’s list of patients is to remain closed for the period specified in the closure notice in accordance with paragraph 19(9)(a) (or, where a period of 12 months has been fixed in accordance with paragraph 19(11), for that period).

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

- (a) the number of the provider’s registered patients falls to the number specified in the closure notice in accordance with paragraph 19(9)(c);
- (b) the Health Board and the provider agree that the list of patients should re-open.

(4) If the provider’s list of patients has re-opened pursuant to sub-paragraph (3)(a) it will nevertheless close again if, during the period specified in the closure notice in accordance with paragraph 19(9)(a) or where the period of 12 months specified in paragraph 19(11) applies, during that period, the number of the provider’s registered patients rises to the number specified in the closure notice in accordance with paragraph 19(9)(d).

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

(6) Where the details specified in the closure notice mentioned in paragraph 19(8), in accordance with paragraph 19(9), have been revised following discussions under paragraph 19(11), references in this paragraph to details specified in the closure notice are references to those details as so revised.

Rejection of closure notice by the Health Board

21.—(1) This regulation applies where the Health Board rejects the closure notice in accordance with paragraph 19(14)(b).

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

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

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

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

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

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

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

(7) Where the assessment panel determines, in accordance with sub-paragraph 21(6)(a), that the provider's list of patients should close, it must specify—

- (a) a date from which the closure is to take effect, which must be within a period of 7 days beginning with the date of the assessment panel's determination; and
- (b) those details specified in paragraph 19(9).

(8) Subject to sub-paragraph (9), the provider's list of patients must remain closed for the period specified by the assessment panel in accordance with sub-paragraph (7)(b).

(9) The provider's list of patients must re-open before the expiry of the period mentioned in sub-paragraph (8) if—

- (a) the number of the provider's registered patients falls to the number specified by the assessment panel in accordance with sub-paragraph (7)(b) as the number of registered patients which, if that number were reached, would trigger the re-opening of the provider's list of patients; or
- (b) the Health Board and the provider agree that the list of patients should re-open.

(10) If the provider's list of patients has re-opened pursuant to sub-paragraph (9)(a), it must nevertheless close again if, during the period specified by the assessment panel as the period for which the list should remain closed, the number of the provider's registered patients rise to the number specified by the assessment panel in accordance with sub-paragraph (7)(b) as the number of registered patients which, if that number were reached, would trigger the re-closure of the provider's list of patients.

(11) Except in cases where the provider's list of patients is already open pursuant to sub-paragraph (9), the Health Board must notify the provider in writing between 7 and 14 days before the expiry of the closure period specified in sub-paragraph (8), confirming the date on which the provider's list of patients will re-open.

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

(13) An assessment panel which rejects the list closure in accordance with sub-paragraph (6)(b) must specify the number of registered patients (expressed either in absolute terms or as a percentage of the number of such patients specified as the current number of the provider's registered patients), which if that number were reached, would trigger the closure of the provider's list of patients.

(14) Where a list closure is triggered in accordance with sub-paragraph (13), a provider must notify the Health Board to confirm and the details specified in sub-paragraph (6).

Status: This is the original version (as it was originally made).

(15) Where the assessment panel rejects the list closure in accordance with sub-paragraph (6)(b) the provider may not submit a further closure notice as described in paragraph 19 until—

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

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

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

Assignment of patients to lists: open lists

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

- (2) In this paragraph and in paragraphs 23 and 25 to 27, a “new” patient means a person who—
 - (a) is resident (whether or not temporarily) within the area of the Health Board;
 - (b) has been refused inclusion in a list of patients of, or has not been accepted as a temporary resident by, a provider (by any arrangement) of essential services (or their equivalent) whose premises are within such an area; and
 - (c) wishes to be included in the list of patients of a provider (by any arrangement) of essential services (or their equivalent) whose practice premises are within that area.

Assignment of patients to lists: closed lists

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

(2) A Health Board may, subject to paragraph 24 assign a new patient to a provider whose practice premises are within the Health Board’s area and which has closed the provider’s list of patients, if—

- (a) most or all of the providers (by any arrangement) of essential services (or their equivalent) whose practice premises are within the Health Board’s area have closed their lists of patients;
- (b) the assessment panel has determined under paragraph 25(7) that patients may be assigned to the provider in question, and that determination has not been overturned either by a determination of the Scottish Ministers or the adjudicator under the NHS dispute resolution procedure as modified by paragraph 26(3) or (where applicable) by a court; and
- (c) the Health Board has entered into discussions with the provider in question regarding the assignment of a patient if such discussions are required under paragraph 30.

Factors relevant to assignments

24. In making an assignment to a provider under paragraph 22 or 23, the Health Board is to have regard to—

- (a) the wishes and circumstances of the patient to be assigned;
- (b) the distance between the patient’s place of residence and the provider’s practice premises;
- (c) whether during the 6 months ending on the date on which the application for assignments is received by the Health Board, the patient’s name has been removed from the list of patients

- of a provider in the area of the Health Board under paragraph 11 or its equivalent provision in relation to a general medical services contractor in the area of the Health Board;
- (d) whether the patient's name has been removed from the list of patients of a provider in the area of the Health Board under paragraph 12 or its equivalent provision in relation to a general medical services contractor in the area of the Health Board and, if so, whether the provider has appropriate facilities to deal with such a patient; and
- (e) such other matters as the Health Board considers to be relevant.

Assignments to closed lists: determination of the assessment panel

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

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

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

(4) The Health Board must notify in writing—

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

(i) have closed their list of patients; and

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

(b) the area medical committee, for the area of the Health Board, that it has referred the matter to the assessment panel.

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

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

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

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

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

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

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

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

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

26.—(1) Where an assessment panel makes a determination under paragraph 25(7) that the Health Board may assign new patients to providers which have closed their lists of patients, any provider specified in that determination may refer the matter in dispute to the Scottish Ministers to review the determination of the assessment panel.

(2) Where more than one provider specified in the determination in accordance with paragraph 25(7) wishes to refer the matter for dispute resolution, those providers may, if they all agreed, refer the matter jointly, and in that case the Scottish Ministers must review the matter in relation to those providers together.

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

(a) in paragraph 58(3) of schedule 1, for “a dispute as mentioned in sub-paragraph (1)” substitute “the matter as mentioned in paragraph 28(1) of schedule 2”;

(b) for paragraph 58(4) of schedule 1, substitute—

“(4) The provider (or providers) wishing to refer the matter as mentioned in paragraph 26(1) or (2) of schedule 2 must send the request to the Scottish Ministers within the period of 7 days beginning with the date of the determination by the assessment panel in accordance with paragraph 25(7) of schedule 2”;

(c) for paragraph 58(13) of schedule 1, substitute—

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

(d) after paragraph 58(15) of schedule 1, there must be inserted the following sub-paragraphs—

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

(17) The adjudicator may not determine that patients may be assigned to a provider which was not specified in the determination of the assessment panel under paragraph 25(7) of schedule 2.

(18) In the case of a matter referred jointly by providers in accordance with paragraph 26(2) of schedule 2, the adjudicator may determine that patients may be assigned to one, some or all of the providers which referred the matter.

(19) The period of 21 days referred to in sub-paragraph (16) may be extended (even after it has expired) by a further specified number of days if an agreement to that effect is reached by—

(a) the adjudicator;

(b) the Health Board;

(c) the provider (or providers) which referred the matter to dispute resolution; and”

(d) paragraph 59(2) and (3) of schedule 1 do not apply.”.

Assignments of patients to lists at request of provider

27.—(1) A Health Board may, subject to sub-paragraph (3), at the request of a provider, assign a patient on the provider’s list of patients to a receiving provider’s list of patients.

(2) A request under sub-paragraph (1) must be notified in writing to the Health Board and confirm that—

- (a) the patient has given written consent to the assignment; and
- (b) the requesting and receiving provider have agreed to the assignment.

(3) An assignment under this paragraph may only be made where either the requesting provider or receiving provider have varied their practice area in accordance with paragraph 28.

(4) In this paragraph, “a receiving provider” may include a provider who has closed its list of patients.

Application for variation of a practice area

28.—(1) A provider may request a variation of their practice area by notifying the Health Board in writing of its variation request.

(2) The Health Board must—

- (a) enter into discussions with the provider regarding the variation request mentioned in sub-paragraph (1), within a period of 1 month beginning with the date of receipt of the notification referred to in that sub-paragraph; and
- (b) have concluded such discussions within a period of 3 months beginning with the date of the receipt of the notification mentioned in sub-paragraph (1).

(3) Following the discussions mentioned in sub-paragraph (2), the Health Board must—

- (a) consult with the Area Medical Committee regarding the provider’s variation request;
- (b) consider the effect of the variation request mentioned in sub-paragraph (1) on the practice areas of other providers within its Health Board area; and
- (c) taking account of the discussions mentioned in sub-paragraph (2) and the factors at sub-head (a) and (b), approve or reject the provider’s variation request.

(4) The Health Board must notify the provider in writing as soon as possible of its decision to approve or reject the variation request in accordance with sub-paragraph (3).

(5) A notification of approval mentioned in sub-paragraph (4) must confirm the date the variation is to take effect.

Rejection of a practice area variation request

29.—(1) This paragraph applies where the Health Board rejects the variation request in accordance with paragraph 28(3).

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

(3) The Health Board must ensure that an assessment panel is appointed by another Health Board as soon as is practicable to consider and determine whether the provider should be permitted to vary its practice area.

Status: This is the original version (as it was originally made).

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

(5) Within the period of three months beginning with the date on which the Health Board rejected the variation request, the assessment panel must—

- (a) approve the variation request; or
- (b) reject the variation request,

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

(6) Where the assessment panel approves a variation request in accordance with sub-paragraph (5) (a), it must specify the date from which the variation of the practice area takes effect.

(7) Where the assessment panel rejects the variation request in accordance with sub-paragraph (5) (b), the provider may not request a further practice area variation under paragraph 28 until whichever is the later of the following dates—

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

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

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

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

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

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

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

PART 3

NOTICES

Notifications to the Health Board

31. The provider must notify the Health Board in writing of any person, other than a registered patient or a person whom it has accepted as a temporary resident, to whom it has provided the essential services described in paragraph 1(5) or 1(7) within the period of 28 days beginning on the day that the services were provided.