

SCHEDULE 3

OTHER CONTRACTUAL TERMS

PART 9

VARIATION AND TERMINATION OF CONTRACTS

Variation of a contract: general

60.—(1) Subject to paragraph 31(3), no amendment or variation will have effect unless it is in writing and signed by or on behalf of the Local Health Board and the contractor.

(2) In addition to the specific provision made in paragraphs 62(6), 63(6) and 75, the Local Health Board may vary the contract without the contractor's consent where it—

- (a) is reasonably satisfied that it is necessary to vary the contract so as to comply with the Act, any regulations made pursuant to that Act, or any direction given by the Assembly pursuant to that Act; and
- (b) notifies the contractor 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 be not less than 14 days after the date on which the notice under sub-paragraph (b) is served on the contractor.

Variation of a contract: activity under the contract

61.—(1) Where the contractor or the Local Health Board is of the opinion that there needs to be a variation to the number of—

- (a) units of dental activity; or
- (b) units of orthodontic activity,

to be provided under the contract, sub-paragraphs (2) and (3) will apply.

(2) The contractor or the Local Health Board (as the case may be) will notify the other party to the contract in writing of its opinion of the need for a variation, specifying in that notice the variation that it considers necessary, together with its reasons.

(3) Following service of the notice referred to in sub-paragraph (2), both parties will use their best endeavours to communicate and co-operate with each other with a view to determining what (if any) variation should be made to the—

- (a) units of dental activity; or
- (b) units of orthodontic activity,

and any related variations to the contract, including to the monies to be paid to the contractor under the contract, and will, where appropriate, effect the variation in accordance with paragraph 60.

Variation provisions specific to a contract with an individual dental practitioner

62.—(1) If a contractor which is an individual dental practitioner proposes to practise in partnership with one or more persons during the existence of the contract, the contractor will notify the Local Health Board in writing of—

- (a) the name of the person or persons with whom it proposes to practise in partnership; and

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- (b) the date on which the contractor wishes to change its status as a contractor from that of an individual dental practitioner to that of a partnership, which will be not less than 28 days after the date upon which it has served the notice on the Local Health Board pursuant to this sub-paragraph.

(2) A notice under sub-paragraph (1) will in respect of the person or each of the persons with whom the contractor is proposing to practise in partnership, and also in respect of itself as regards the matters specified in sub-paragraph (c)—

- (a) confirm that he or she is either—
 - (i) a dental practitioner, or
 - (ii) a person who satisfies the conditions specified in section 28M(2)(b) of the Act⁽¹⁾;
- (b) confirm that he or she is a person who satisfies the conditions imposed by regulation 4; and
- (c) state whether or not it is to be a limited partnership, and if so, who is to be a limited and who is to be a general partner,

and the notice will be signed by the individual dental practitioner and by the person, or each of the persons (as the case may be), with whom he or she is proposing to practise in partnership.

(3) The contractor will ensure that any person who will practise in partnership with it is bound by the contract, whether by virtue of a partnership deed or otherwise.

(4) If the Local Health Board is satisfied as to the accuracy of the matters specified in sub-paragraph (2) that are included in the notice, the Local Health Board will give notice in writing to the contractor confirming that the contract will continue with the partnership entered into by the contractor and its partners, from a date that the Local Health Board specifies in that notice.

(5) Where it is reasonably practicable, the date specified by the Local Health Board pursuant to sub-paragraph (4) will be the date requested in the notice served by the contractor pursuant to sub-paragraph (1), or, where that date is not reasonably practicable, the date specified will be a date after the requested date that is as close to the requested date as is reasonably practicable.

(6) Where a contractor has given notice to the Local Health Board pursuant to sub-paragraph (1), the Local Health Board—

- (a) may vary the contract but only to the extent that it is satisfied is necessary to reflect the change in status of the contractor from an individual dental practitioner to a partnership; and
- (b) if it does propose to so vary the contract, it will include in the notice served on the contractor pursuant to sub-paragraph (4) the wording of the proposed variation and the date upon which that variation is to take effect.

Variation provisions specific to a contract with two or more individuals practising in partnership

63.—(1) Subject to sub-paragraph (4), where a contractor consists of two or more individuals practising in partnership in the event that the partnership is terminated or dissolved, the contract will only continue with one of the former partners if that partner is—

- (a) nominated in accordance with sub-paragraph (3); and
- (b) a dental practitioner,

and provided that the requirements in sub-paragraphs (2) and (3) are met.

(1) Section 28M was inserted into the Act by section 172(1) of the 2003 Act.

(2) A contractor will notify the Local Health Board in writing at least 28 days in advance of the date on which the contractor proposes to change its status from that of a partnership to that of an individual dental practitioner pursuant to sub-paragraph (1).

(3) A notice under sub-paragraph (2) will—

(a) specify the date on which the contractor proposes to change its status from that of a partnership to that of an individual dental practitioner;

(b) specify the name of the dental practitioner with whom the contract will continue, which must be one of the partners; and

(c) be signed by all of the persons who are practising in partnership.

(4) If a partnership is terminated or dissolved because, in a partnership consisting of two individuals practising in partnership, one of the partners has died, sub-paragraphs (1) to (3) do not apply and—

(a) the contract will continue with the individual who has not died only if that individual is a dental practitioner; and

(b) that individual will in any event notify the Local Health Board in writing as soon as is reasonably practicable of the death of his or her partner.

(5) When the Local Health Board receives a notice pursuant to sub-paragraph (2) or (4)(b), it will acknowledge in writing receipt of the notice, and in relation to a notice served pursuant to sub-paragraph (2), the Board will do so before the date specified pursuant to sub-paragraph (3)(a).

(6) Where a contractor gives notice to the Local Health Board pursuant to sub-paragraph (2) or (4)(b), the Local Health Board may vary the contract but only to the extent that it is satisfied is necessary to reflect the change in status of the contractor from a partnership to an individual dental practitioner.

(7) If the Local Health Board varies the contract pursuant to sub-paragraph (6), it will notify the contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect.

Termination by agreement

64. The Local Health Board and the contractor may agree in writing to terminate the contract, and if the parties so agree, they will agree the date upon which that termination should take effect and any further terms upon which the contract should be terminated.

Termination on the death of an individual dental practitioner

65.—(1) Where the contract is with an individual dental practitioner and that practitioner dies, the contract will terminate at the end of the period of seven days after the date of his or her death unless, before the end of that period—

(a) subject to sub-paragraph (2), the Local Health Board has agreed in writing with the contractor's personal representatives that the contract should continue for a further period, not exceeding three months after the end of the period of seven days; and

(b) the contractor's personal representatives have confirmed in writing to the Local Health Board that they are employing or engaging one or more dental practitioners to assist in the provision of dental services under the contract throughout the period for which it continues.

(2) Where the Local Health Board is of the opinion, that another contractor may wish to enter into a contract in respect of the mandatory services which were provided by the deceased dental practitioner, the three month period referred to in sub-paragraph (1)(a) may be extended by a period not exceeding six months as may be agreed.

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(3) Sub-paragraph (1) does not affect any other rights to terminate the agreement which the Local Health Board may have under paragraphs 69 to 74.

Termination by the contractor

66.—(1) A contractor may terminate the contract by serving notice in writing on the Local Health Board at any time.

(2) Where a contractor serves notice pursuant to sub-paragraph (1), the contract will terminate on a date three 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 contract will instead terminate on the last calendar day of the month in which the termination date falls.

(3) This paragraph and paragraph 67 are without prejudice to any other rights to terminate the contract that the contractor may have.

Late payment notices

67.—(1) The contractor may give notice in writing (a “late payment notice”) to the Local Health Board if the Board has failed to make any payments due to the contractor in accordance with a term of the contract that has the effect specified in regulation 21 (finance), and the contractor will 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 contractor may, at least 28 days after having served a late payment notice, terminate the contract by a further written notice if the Local Health Board has still failed to make the payments that were due to the contractor and that were specified in the late payment notice served on the Local Health Board pursuant to sub-paragraph (1).

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

- (a) there has been a determination of the dispute pursuant to paragraph 56 and that determination permits the contractor to terminate the contract; or
- (b) the Local Health Board ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

Termination by the Local Health Board: general

68. The Local Health Board may only terminate the contract in accordance with the provisions in this Part.

Termination by the Local Health Board: no longer eligible to enter into and breach of conditions of the contract

69.—(1) Subject to sub-paragraph (2), the Local Health Board will serve notice in writing on the contractor terminating the contract forthwith if—

- (a) the contract was entered into pursuant to section 28M(1)(a) of the Act (persons eligible to enter into GDS contracts); and
- (b) the contractor is no longer a dental practitioner.

(2) Where a contractor ceases to be a dental practitioner by virtue of a suspension specified in sub-paragraph (6), sub-paragraph (1) will not apply unless—

- (a) the contractor is unable to satisfy the Local Health Board that it has in place adequate arrangements for the provision of dental services under the contract for so long as the suspension continues; or
 - (b) the Local Health Board is satisfied that the circumstances of the suspension are such that if the contract is not terminated forthwith—
 - (i) the safety of the contractor’s patients is at serious risk, or
 - (ii) the Local Health Board is at risk of material financial loss.
- (3) Except in a case to which paragraph 63(4) applies, where the contractor is two or more persons practising in partnership and the condition prescribed in section 28M(2)(a) of the Act is no longer satisfied, the Local Health Board will—
- (a) serve notice in writing on the contractor terminating the contract forthwith; or
 - (b) serve notice in writing on the contractor confirming that the Local Health Board will allow the contract to continue for a period specified by the Local Health Board in accordance with sub-paragraph (4) (the “interim period”) if the Local Health Board is satisfied that the contractor has in place adequate arrangements for the provision of dental services for the interim period.
- (4) The period specified by the Local Health Board under sub-paragraph (3)(b) will not exceed—
- (a) six months; or
 - (b) in a case where the failure of the contractor to continue to satisfy the condition in section 28M(2)(a) of the Act is the result of a suspension referred to in sub-paragraph (6), the period for which that suspension continues.
- (5) Where the contract was entered into pursuant to section 28M(1)(b) of the Act, but the contractor ceases to be a dental corporation, the Local Health Board will serve notice in writing on the contractor terminating the contract forthwith.
- (6) The suspensions referred to in sub-paragraphs (2) and (4)(b) are—
- (a) until the coming into force article 18 of the Dentists Act Order (substitution of sections 27 and 28)—
 - (i) suspension by the Health Committee under section 28 of the Dentists Act (powers of the Health Committee),
 - (ii) suspension by the Professional Conduct Committee or the Health Committee under section 30(3) of that Act (orders for immediate suspension), or
 - (iii) suspension by the Preliminary Proceedings Committee under section 32 of that Act (orders for interim suspension);
 - (b) from the coming into force of article 18 of the Dentists Act Order for all purposes—
 - (i) suspension by the Health Committee, the Professional Performance Committee or the Professional Conduct Committee under section 27B or 27C of the Dentists Act, except under section 27C(1)(d) (indefinite suspension), following a relevant determination;
 - (ii) suspension by the Health Committee, the Professional Performance Committee or the Professional Conduct Committee under section 30(1) of that Act (orders for immediate suspension), or
 - (iii) suspension by the Health Committee, the Professional Performance Committee, the Professional Conduct Committee or the Interim Orders Committee under section 32 of that Act (interim orders).
- (7) For the purposes of sub-paragraph (6)(b)(i), a “relevant determination” is a determination that a person’s fitness to practise is impaired based solely on the ground mentioned in—

- (a) section 27(2)(b) of the Dentist Act (deficient professional performance) or
- (b) section 27(2)(c) of that Act (adverse physical or mental health).

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

70. The Local Health Board may serve notice in writing on the contractor terminating the contract forthwith, or from such date as may be specified in the notice if, after the contract has been entered into, it comes to the attention of the Local Health Board that written information provided to the Local Health Board by the contractor—

- (a) before the contract was entered into; or
- (b) pursuant to paragraph 42(2),

in relation to the conditions set out in regulation 4 or 5 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.

Termination by the Local Health Board on grounds of suitability etc.

71.—(1) The Local Health Board may serve notice in writing on the contractor terminating the contract forthwith, or from such date as may be specified in the notice if —

- (a) in the case of a contract with a dental practitioner, that dental practitioner;
- (b) in the case of a contract with two or more individuals practising in partnership, any individual or the partnership; and
- (c) in the case of a contract with a dental corporation—
 - (i) the corporation, or
 - (ii) any director, chief executive or secretary of the corporation,

falls within sub-paragraph (2) during the existence of the contract or, if later, on or after the date on which a notice in respect of his or her compliance with the conditions in regulation 4 or 5 was given under paragraph 42(2).

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

- (a) he, she or it is the subject of a national disqualification;
- (b) subject to sub-paragraph (3), he, she or it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation or a suspension on the grounds of ill-health) from practising by any licensing body anywhere in the world;
- (c) subject to sub-paragraph (4), he or she has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless before the Local Health Board has served a notice terminating the contract pursuant to this paragraph, he or she is employed by the health service body that dismissed him or her or by another health service body;
- (d) he, she or it is removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 49F(2), (3) and (4) of the Act⁽²⁾ respectively) unless his or her name has subsequently been included in such a list;
- (e) he or she has been convicted in the United Kingdom of—
 - (i) murder, or
 - (ii) a criminal offence other than murder, committed on or after 26 August 2002, and has been sentenced to a term of imprisonment of over six months;

(2) Section 49F was inserted into the Act by section 25 of the 2001 Act.

- (f) subject to sub-paragraph (5), he or she has been convicted outside the United Kingdom of an offence—
 - (i) which would, if committed in England and Wales, constitute murder, or
 - (ii) committed on or after 26 August 2002, which would if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (g) he or she has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933⁽³⁾ (offences against children and young persons with respect to which special provisions of this Act apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995⁽⁴⁾ (offences against children under the age of 17 years to which special provisions apply);
- (h) he, she or it has—
 - (i) been adjudged bankrupt or had sequestration of his or her estate awarded unless (in either case) he or she has been discharged or the bankruptcy order has been annulled;
 - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986⁽⁵⁾, 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, his, her or its creditors unless he, she or it has been discharged in respect of it; or
 - (iv) been wound up under Part IV of the Insolvency Act 1986;
- (i) there is—
 - (i) an administrator, administrative receiver or receiver appointed in respect of it; or
 - (ii) an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986⁽⁶⁾;
- (j) that person is a partnership and—
 - (i) a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator; or
 - (ii) an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership;
- (k) he or she has been—
 - (i) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he or she was responsible or to which he or she was privy, or which he or she by his or her conduct contributed to or facilitated; or
 - (ii) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽⁷⁾ (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body;

(3) 1933 c. 12 as amended by the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 58(1), Schedule 10, paragraph 2 of the Sexual Offences Act 2003 (c. 42) section 139 and Schedule 6 paragraph 7, the Criminal Justice Act 1988 (c. 33), section 170 and Schedule 15, paragraph 8 and Schedule 16, paragraph 16 and the Sexual Offences Act 1956 (c. 69), sections 48 and 51 and Schedules 3 and 4; and as modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9.

(4) 1995 c. 46.

(5) 1986 c. 45. Schedule 4A was inserted by section 257 of, and Schedule 3 to, the Enterprise Act 2002 (c. 40).

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

(7) 1990 c. 40.

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- (l) he or she is subject to a disqualification order under the Company Directors Disqualification Act 1986⁽⁸⁾, the Companies (Northern Ireland) Order 1986⁽⁹⁾ or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order); or
- (m) he or she has refused to comply with a request by the Local Health Board for him or her to be medically examined on the grounds that it is concerned that he or she is incapable of adequately providing services under the contract and, in a case where the contract is with two or more individuals practising in partnership or with a dental corporation, the Local Health Board is not satisfied that the contractor is taking adequate steps to deal with the matter.

(3) A Local Health Board will not terminate the contract pursuant to sub-paragraph (2)(b) where the Local 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 contractor;
- (b) a partner, in the case of a contract with two or more individuals practising in partnership; or
- (c) in the case of a contract with a dental corporation, a director, chief executive or secretary of the corporation.

(4) A Local Health Board will not terminate the contract pursuant to sub-paragraph (2)—

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

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

(5) A Local Health Board will not terminate the contract pursuant to sub-paragraph (2)(f) where the Local Health Board is satisfied that the conviction does not make the person unsuitable to be—

- (a) a contractor;
- (b) a partner, in the case of a contract with two or more individuals practising in partnership; or
- (c) in the case of a contract with a dental corporation, a director, chief executive or secretary of the corporation,

as the case may be.

Termination by the Local Health Board: patient safety and material financial loss

72. The Local Health Board may serve notice in writing on the contractor terminating the contract forthwith or with effect from such date as may be specified in the notice if—

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

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

⁽⁹⁾ S.I. 1986/1032 (N.I. 6).

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

73.—(1) Where a contractor has breached the contract other than as specified in paragraphs 70 to 72 and the breach is capable of remedy, the Local Health Board will, before taking any action it is otherwise entitled to take by virtue of the contract, serve a notice on the contractor requiring it to remedy the breach (“remedial notice”).

(2) A remedial notice will specify—

- (a) details of the breach;
- (b) the steps the contractor must take to the satisfaction of the Local 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 will, unless the Local Health Board is satisfied that a shorter period is necessary to—

- (a) protect the safety of the contractor’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 Local Health Board is satisfied that the contractor has not taken the required steps to remedy the breach by the end of the notice period, the Local Health Board may terminate the contract with effect from such date as the Local Health Board may specify in a further notice to the contractor.

(5) Where a contractor has breached the contract other than as specified in paragraphs 70 to 72 and the breach is not capable of remedy, the Local Health Board may serve notice on the contractor requiring the contractor not to repeat the breach (“breach notice”).

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

- (a) repeats the breach that was the subject of the breach notice or the remedial notice; or
- (b) otherwise breaches the contract resulting in either a remedial notice or a further breach notice,

the Local Health Board may serve notice on the contractor terminating the contract with effect from such date as may be specified in that notice.

(7) The Local Health Board will not exercise its right to terminate the contract under subparagraph (6) unless it is satisfied that the cumulative effect of the breaches is such that the Local Health Board considers that to allow the contract to continue would be prejudicial to the efficiency of the services to be provided under the contract.

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

Termination by the Local Health Board: additional provisions specific to contracts with two or more individuals practising in partnership and dental corporations

74.—(1) Where the contractor is a dental corporation, if the Local Health Board becomes aware that the contractor is carrying on any business which the Local Health Board considers to be detrimental to the contractor’s performance of its obligations under the contract—

- (a) the Local Health Board will be entitled to give notice to the contractor requiring that it 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

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- (b) if the contractor has not satisfied the Local Health Board that it has ceased carrying on that business by the end of the notice period, the Local Health Board may, by a further written notice, terminate the contract forthwith or from such date as may be specified in the notice.
- (2) Where the contractor is a dental corporation and on or after the coming into force for all purposes of article 39 of the Dentists Act Order during the existence of the contract—
 - (a) the majority of the directors of the dental corporation cease to be either dental practitioners or dental care professionals;
 - (b) the dental corporation has been convicted of an offence under section 43(1) of the Dentists Act⁽¹⁰⁾ (directors of bodies corporate); or
 - (c) the dental corporation, or a director or former director of that corporation, has had a financial penalty imposed on it or him or her by the General Dental Council pursuant to section 43B (financial penalties in relation to bodies corporate) or 44 (further financial penalties on bodies corporate) of the Dentists Act⁽¹¹⁾,

the Local Health Board may, by written notice, terminate the contract if it considers that as a consequence the dental corporation is no longer suitable to be a contractor.

(3) Where the contractor is two or more persons practising in partnership, the Local Health Board will be entitled to terminate the contract by notice in writing on such date as may be specified in that notice where one or more partners have left the practice during the existence of the contract if, in its reasonable opinion, the Local Health Board considers that the change in membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Local Health Board to perform its obligations under the contract.

- (4) A notice given to the contractor pursuant to sub-paragraph (3) will specify—
 - (a) the date upon which the contract is to be terminated; and
 - (b) the Local Health Board’s reasons for considering that the change in the membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Local Health Board to perform its obligations under the contract.

Contract sanctions

- 75.—(1) In this paragraph and paragraph 76, “contract sanction” means—
- (a) termination of specified reciprocal obligations under the contract;
 - (b) suspension of specified reciprocal obligations under the contract for a period of up to six months; or
 - (c) withholding or deducting monies otherwise payable under the contract.

(2) Where the Local Health Board is entitled to terminate the contract pursuant to paragraph 70, 71, 72, 73(4), 73(6) or 74, it may instead impose any of the contract sanctions if the Local Health Board is reasonably satisfied that the contract sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the Local Health Board’s entitlement to terminate the contract.

(3) The Local Health Board will not, under sub-paragraph (2), be entitled to impose any contract sanction that has the effect of terminating or suspending any obligation to provide, or any obligation that relates to, mandatory services.

(4) If the Local Health Board decides to impose a contract sanction, it must notify the contractor of the contract 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.

⁽¹⁰⁾ Section 43 of the Dentists Act is substituted by the Dentists Act Order, article 39.

⁽¹¹⁾ Section 43B is inserted into, and section 44 is substituted by, the Dentists Act Order, article 39.

(5) Subject to paragraph 76, the Local Health Board will not impose the contract sanction until at least 28 days after it has served notice on the contractor pursuant to sub-paragraph (4) unless the Local Health Board is satisfied that it is necessary to do so in order to—

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

(6) Where the Local Health Board imposes a contract sanction, the Local Health Board will be entitled to charge the contractor the reasonable costs of additional administration that the Local Health Board has incurred in order to impose, or as a result of imposing, the contract sanction.

Contract sanctions and the NHS dispute resolution procedure

76.—(1) If there is a dispute between the Local Health Board and the contractor in relation to a contract sanction that the Local Health Board is proposing to impose, the Local Health Board will not, subject to sub-paragraph (4), impose the proposed contract sanction except in the circumstances specified in sub-paragraph (2)(a).

(2) If the contractor refers the dispute relating to the contract sanction to the NHS dispute resolution procedure within 28 days beginning on the date on which the Local Health Board served notice on the contractor in accordance with paragraph 75(4) (or such longer period as may be agreed in writing with the Local Health Board), and notifies the Local Health Board in writing that it has done so, the Local Health Board will not impose the contract sanction unless—

- (a) there has been a determination of the dispute pursuant to paragraph 56 and that determination permits the Local Health Board to impose the contract sanction; or
- (b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

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

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

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

the Local Health Board will be entitled to impose the contract sanction forthwith, pending the outcome of that procedure.

Termination and the NHS dispute resolution procedure

77.—(1) Where the Local Health Board is entitled to serve written notice on the contractor terminating the contract pursuant to paragraph 70, 71, 72, 73(4), 73(6) or 74, the Local Health Board will, in the notice served on the contractor pursuant to those provisions, specify a date on which the contract terminates that is not less than 28 days after the date on which the Local Health Board has served that notice on the contractor unless sub-paragraph (2) applies.

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

- (a) protect the safety of the contractor’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 contractor invokes the NHS dispute resolution procedure before the end of the period of notice referred to in sub-paragraph (1), and it notifies the Local Health Board in writing

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that it has done so, the contract will not terminate at the end of the notice period but instead will only terminate in the circumstances specified in sub-paragraph (4).

(4) The contract will only terminate if and when—

- (a) there has been a determination of the dispute pursuant to paragraph 56 and that determination permits the Local Health Board to terminate the contract; or
- (b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(5) If the Local Health Board is satisfied that it is necessary to terminate the contract before the NHS dispute resolution procedure is concluded in order to—

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

sub-paragraphs (3) and (4) will not apply and the Local Health Board will be entitled to confirm, by written notice to be served on the contractor, that the contract will nevertheless terminate at the end of the period of the notice it served pursuant to paragraph 70, 71, 72, 73(4), 73(6) or 74.