

SCHEDULE 2

Regulation 17

OPT OUTS OF ADDITIONAL AND OUT OF HOURS SERVICES

Opt outs of additional services: general

1.—(1) In this Schedule—

“opt out notice” means a notice given under sub-paragraph (5) to opt out permanently or temporarily of the provision of the additional service;

“permanent opt out” in relation to the provision of an additional service that is funded through the global sum, means the termination of the obligation under the contract for the contractor to provide that service; and “opt out permanently” shall be construed accordingly;

“permanent opt out notice” means an opt out notice to opt out permanently;

“preliminary opt out notice” means a notice given under sub-paragraph (2) that a contractor wishes to opt out permanently or temporarily of the provision of an additional service;

“temporary opt out” in relation to the provision of an additional service that is funded through the global sum, means the suspension of the obligation under the contract for the contractor to provide that service for a period of more than six months and less than twelve months and includes an extension of a temporary opt out and “opt out temporarily” and “opted out temporarily” shall be construed accordingly; and

“temporary opt out notice” means an opt out notice to opt out temporarily.

(2) A contractor who wishes to opt out permanently or temporarily shall give to the Health Board in writing a preliminary opt out notice which shall state the reasons for wishing to opt out.

(3) As soon as is reasonably practicable and in any event within the period of 7 days beginning with the receipt of the preliminary opt out notice by the Health Board, the Health Board shall enter into discussions with the contractor concerning the support which the Health Board may give the contractor, or concerning other changes which the Health Board or the contractor may make, which would enable the contractor to continue to provide the additional service and the Health Board and the contractor shall use reasonable endeavours to achieve this aim.

(4) The discussions mentioned in sub-paragraph (3) shall be completed within the period of 10 days beginning with the date of the receipt of the preliminary opt out notice by the Health Board or as soon as reasonably practicable thereafter.

(5) Subject to sub-paragraph (9), if following the discussions mentioned in sub-paragraph (3), the contractor still wishes to opt out of the provision of the additional service, it shall send an opt out notice to the Health Board.

(6) An opt out notice shall specify—

(a) the additional service concerned;

(b) whether the contractor wishes to—

(i) opt out permanently; or

(ii) opt out temporarily;

(c) the reasons for wishing to opt out;

(d) the date from which the contractor would like the opt out to commence, which must—

(i) in the case of a temporary opt out be at least 14 days after the date of service of the opt out notice, and

(ii) in the case of a permanent opt out must be the day either three or six months after the date of service of the opt out notice; and

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(e) in the case of a temporary opt out, the desired duration of the opt out.

(7) Where a contractor has given two previous temporary opt out notices within the period of 3 years ending with the date of the service of the latest opt out notice (whether or not the same additional service is concerned), the latest opt out notice shall be treated as a permanent opt out notice (even if the opt out notice says that the contractor wishes to opt out temporarily).

(8) Paragraph 2 applies following the giving of a temporary opt out notice and paragraph 3 applies following the giving of a permanent opt out notice or a temporary opt out notice which pursuant to sub-paragraph (7) is treated as a permanent opt out notice.

(9) No temporary opt out notice may be served by a contractor prior to 1st April 2004.

Temporary opt outs and permanent opt outs following temporary opt outs

2.—(1) As soon as is reasonably practicable and in any event within the period of 7 days beginning with the date of receipt of a temporary opt out notice under paragraph 1(5), the Health Board shall—

(a) approve the opt out notice and specify in accordance with sub-paragraphs (3) and (4) the date on which the temporary opt out is to commence and the date that it is to come to an end (“the end date”); or

(b) reject the opt out notice in accordance with sub-paragraph (2),

and shall notify the contractor of its decision as soon as possible, including reasons for its decision.

(2) A Health Board may reject the opt out notice on the ground that the contractor—

(a) is providing additional services to patients other than its own registered patients or enhanced services; or

(b) has no reasonable need temporarily to opt out having regard to its ability to deliver the additional service.

(3) The date specified by the Health Board for the commencement of the temporary opt out shall wherever reasonably practicable be the date requested by the contractor in its opt out notice.

(4) Before determining the end date, the Health Board shall make reasonable efforts to reach agreement with the contractor.

(5) Where the Health Board approves an opt out notice, the contractor’s obligation to provide the additional service specified in the notice shall be suspended from the date specified by the Health Board in its decision under sub-paragraph (1), and shall remain suspended until the end date unless—

(a) the contractor and the Health Board agree in writing an earlier date, in which case the suspension shall come to an end on the earlier date agreed;

(b) the Health Board specifies a later date under sub-paragraph (6), in which case the suspension shall end on the later date specified;

(c) sub-paragraph (7) applies and the contractor refers the matter to the NHS dispute resolution procedure (or, where applicable in the case of a non-NHS contract, commences court proceedings), in which case the suspension shall end—

(i) where the outcome of the dispute is to uphold the decision of the Health Board, on the day after the date of the decision of the adjudicator or, as the case may be, the court;

(ii) where the outcome of the dispute is to overturn the decision of the Health Board 28 days after the decision of the adjudicator or, as the case may be, the court; or

(iii) where the contractor ceases to pursue the NHS dispute resolution procedure or, as the case may be, court proceedings, on the day after the date that the contractor withdraws its claim or the procedure is or proceedings are otherwise terminated by the adjudicator or the court;

(d) sub-paragraph (9) applies and—

- (i) the Health Board refuses the contractor's request for a permanent opt out within the period of 28 days ending with the end date, in which case the suspension shall come to an end 28 days after the end date;
- (ii) the Health Board refuses the contractor's request for a permanent opt out after the end date, in which case the suspension shall come to an end 28 days after the date of service of the notice; or
- (iii) the Health Board notifies the contractor after the end date that the assessment panel has not approved its proposed decision to refuse the contractor's request to opt out permanently under sub-paragraph (16), in which case the suspension shall come to an end 28 days after the date of service of the notice under that paragraph.

(6) Before the end date, a Health Board may, in exceptional circumstances and with the agreement of the contractor, notify the contractor in writing of a later date on which the temporary opt out is to come to an end, being a date no more than six months later than the end date.

(7) Where the Health Board considers that—

- (a) the contractor will be unable to satisfactorily provide the additional service at the end of the temporary opt out; and
- (b) it would not be appropriate to exercise its discretion under sub-paragraph (6) to specify a later date on which the temporary opt out is to come to an end or the contractor does not agree to a later date;

the Health Board may notify the contractor in writing at least 28 days before the end date that a permanent opt out shall follow a temporary opt out.

(8) Where a Health Board notifies the contractor under sub-paragraph (7) that a permanent opt out shall follow a temporary opt out, the permanent opt out shall take effect immediately after the end of the temporary opt out.

(9) A contractor who has temporarily opted out may, at least three months prior to the end date, notify the Health Board in writing that it wishes to opt out permanently of the additional service in question.

(10) Where the contractor has notified the Health Board under sub-paragraph (9) that it wishes to opt out permanently, the temporary opt out shall be followed by a permanent opt out beginning on the day after the end date unless the Health Board refuses the contractor's request to opt out permanently by giving notice in writing to the contractor to this effect.

(11) A Health Board may only give a notice under sub-paragraph (10) with the approval of the assessment panel.

(12) 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 or not to approve the Health Board's proposed decision to refuse a permanent opt out.

(13) The Health Board shall provide the assessment panel with such information as the assessment panel may reasonably require to enable it to reach a determination.

(14) Where a Health Board seeks the approval of the assessment panel to a proposed decision to refuse a permanent opt out, it shall notify the contractor of having done so.

(15) If the assessment panel has not reached a decision as to whether or not to approve the Health Board's proposed decision to refuse a permanent opt out before the end date, the contractor's obligation to provide the additional service shall remain suspended until the date specified in sub-paragraph (5)(d)(ii) or (iii) (whichever is applicable).

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(16) Where after the end date the assessment panel notifies the Health Board that it does not approve the Health Board's proposed decision to refuse a permanent opt out, the Health Board shall notify the contractor in writing of this fact as soon as is reasonably practicable.

(17) A temporary opt out or permanent opt out commences, and a temporary opt out ends, at 08.00 on the relevant day unless—

- (a) the day is not a working day, in which case the opt out shall take effect on the next working day at 08.00; or
- (b) the Health Board and the contractor agree a different day or time.

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

Permanent opt outs

3.—(1) In this paragraph—

“A day” is the day specified by the contractor in its permanent opt out notice to a Health Board for the commencement of the permanent opt;

“B day” is the day six months after the date of service of the permanent opt out notice; and

“C day” is the day nine months after the date of service of the permanent opt out notice.

(2) As soon as is reasonably practicable and in any event within the period 28 days beginning with the date of receipt of a permanent opt out notice under paragraph 1(5) (or temporary opt out notice which is treated as a permanent opt out notice under paragraph 1(7)), the Health Board shall—

- (a) approve the opt out notice; or
- (b) reject the opt out notice in accordance with sub-paragraph (3),

and shall notify the contractor of its decision as soon as possible, including reasons for its decision, where its decision is to reject the opt out notice.

(3) A Health Board may reject the opt out notice on the ground that the contractor is providing an additional service to patients other than its registered patients or enhanced services.

(4) A contractor may not withdraw an opt out notice once it has been approved by the Health Board in accordance with sub-paragraph (2)(a) without the Health Board's agreement.

(5) If the Health Board approves the opt out notice under sub-paragraph (2)(a), it shall use its reasonable endeavours to make arrangements for the contractor's registered patients to receive the additional service from an alternative provider from A day.

(6) The contractor's duty to provide the additional service shall terminate on A day unless the Health Board serves a notice under sub-paragraph (7) (extending A day to B day or C day).

(7) If the Health Board is not successful in finding an alternative provider to take on the provision of the additional service from A day, then it shall notify the contractor in writing of this fact not later than one month before A day, and—

- (a) in a case where A day is three months after service of the opt out notice, the contractor shall continue to provide the additional service until B day unless at least one month before B day the contractor receives a notice in writing from the Health Board under sub-paragraph (8) that despite using its reasonable endeavours, it has failed to find an alternative provider to take on the provision of the additional service from B day;
- (b) in a case where A day is six months after the service of the opt out notice, the contractor shall continue to provide the additional service until C day unless at least one month before C day it receives a notice from the Health Board under sub-paragraph (11) that it has made an application to assessment panel under sub-paragraph (10) seeking approval of the

assessment panel to a decision to refuse a permanent opt out or to delay the commencement of a permanent opt out until after C day.

(8) Where in accordance with sub-paragraph (7)(a) the permanent opt out is to commence on B day and the Health Board, despite using its reasonable endeavours, has failed to find an alternative provider to take on the provision of the additional service from that day, it shall notify the contractor in writing of this fact at least one month before B day, in which case the contractor shall continue to provide the additional service until C day unless at least one month before C day it receives a notice from the Health Board under sub-paragraph (11) that it has applied to the assessment panel under sub-paragraph (10) seeking the approval of the assessment panel to a decision to refuse a permanent opt out or to postpone the commencement of a permanent opt out until after C day.

(9) As soon as is reasonably practicable and in any event within 7 days of the Health Board serving a notice under sub-paragraph (8), the Health Board shall enter into discussions with the contractor concerning the support that the Health Board may give to the contractor or other changes which the Health Board or the contractor may make in relation to the provision of the additional service until C day.

(10) A Health Board may, if it considers that there are exceptional circumstances, make an application to the assessment panel for approval of a decision to—

- (a) refuse a permanent opt out; or
- (b) postpone the commencement of a permanent opt out until after C day.

(11) As soon as practicable after making an application under sub-paragraph (10) to the assessment panel, the Health Board shall notify the contractor in writing that it has made such an application.

(12) 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 or not to approve the Health Board's proposed decision to refuse a permanent opt out or to postpone the commencement of a permanent opt out until after C day.

(13) The Health Board shall provide the assessment panel with such information as the assessment panel may reasonably require to enable it to reach a determination.

(14) On receiving an application under sub-paragraph (10) for approval of a decision to refuse a permanent opt out, the assessment panel shall—

- (a) approve the Health Board's application;
- (b) reject the Health Board's application, but nonetheless recommend a different date for the commencement of the permanent opt out which may be later than C day; or
- (c) reject the Health Board's application.

(15) On receiving an application under sub-paragraph (10) for approval of a decision to postpone the commencement of a permanent opt out until after C day, the assessment panel shall—

- (a) approve the Health Board's application;
- (b) reject the Health Board's application, but nonetheless recommend—
 - (i) that the permanent opt out commence on an earlier date to that proposed by the Health Board in its application, or
 - (ii) that the permanent opt out be refused; or
- (c) reject the Health Board's application.

(16) The assessment panel shall notify the Health Board and the contractor in writing of its decision under sub-paragraph (14) or (15) as soon as is practicable, including reasons for its decision.

(17) Where the assessment panel—

- (a) approves a decision to refuse an opt out under sub-paragraph (14)(a); or

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(b) recommends that a permanent opt out be refused under sub-paragraph (15)(b)(ii), the Health Board shall notify the contractor in writing that the contractor may not opt out of the additional service.

(18) Where a Health Board notifies a contractor under sub-paragraph (17), the contractor may not serve a preliminary opt out notice in respect of that additional service for a period of twelve months beginning with the date of service of the Health Board's notice under sub-paragraph (17) unless there has been a change in the circumstances of the contractor in relation to its ability to deliver services under the contract.

(19) Where the assessment panel—

- (a) recommends a different date for the commencement of the permanent opt out under sub-paragraph (14)(b);
- (b) approves a Health Board's application to postpone a permanent opt out under sub-paragraph (15)(a); or
- (c) recommends an earlier date to that proposed by the Health Board in its application under sub-paragraph (15)(b)(i),

the Health Board shall in accordance with the decision of the assessment panel notify the contractor in writing of its decision and the notice shall specify the date of the commencement of the permanent opt out.

(20) Where the assessment panel rejects the Health Board's application under sub-paragraph (14)(c) or (15)(c), the Health Board shall notify the contractor in writing that there shall be a permanent opt out, and the permanent opt out shall commence on C day or 28 days after the date of service of the Health Board's notice, whichever is the later.

(21) If the assessment panel has not reached a decision on the Health Board's application under sub-paragraph (10) before C day, the contractor's obligation to provide the additional service shall continue until a notice is served on the contractor by the Health Board under sub-paragraph (19) or (20).

(22) Nothing in sub-paragraphs (1) to (21) above shall prevent the contractor and the Health Board from agreeing a different date for the termination of the contractor's duty under the contract to provide the additional service and, accordingly, varying the contract in accordance with paragraph 94(1) of Schedule 5.

(23) The permanent opt out takes effect at 08.00 on the relevant day unless—

- (a) the day is not a working day, in which case the opt out shall take effect on the next working day at 08.00; or
- (b) the Health Board and the contractor agree a different day or time.

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

Out of hour opt outs where the opt out notice is served after 30th September 2004

4.—(1) This paragraph applies where a contractor wishes to serve or serves an out of hours opt out notice after 30th September 2004.

(2) A contractor which wishes to terminate its obligation to provide out of hours services which was included in the contract pursuant to regulation 30 shall notify the relevant Health Board in writing to that effect ("an out of hours opt out notice").

(3) An out of hours opt out notice shall specify the date from which the contractor would like the opt out to take effect, which must be at least three or six months after the date of service of the out of hours opt out notice.

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(4) As soon as is reasonably practicable and in any event within 28 days of receiving the out of hours opt out notice, the Health Board shall approve the notice and specify in accordance with sub-paragraph (6) the date on which the out of hours opt out is to commence (“OOH day”).

(5) The Health Board shall notify the contractor of its decision as soon as possible.

(6) The date specified in sub-paragraph (4) shall be the date specified in the out of hours opt out notice.

(7) A contractor may not withdraw an out of hours opt out notice once it has been approved by the Health Board under sub-paragraph (4), without the Health Board’s agreement.

(8) Following receipt of the out of hours opt out notice, the Health Board must use its reasonable endeavours to make arrangements for the contractor’s registered patients to receive the out of hours services from an alternative provider from OOH day.

(9) Sub-paragraphs (6) to (24) of paragraph 3 shall apply to an out of hours opt out as they apply to a permanent opt out and as if the reference to “A day” was a reference to “OOH day” and the reference in paragraph 3(18) to a “permanent opt out notice” was a reference to “an out of hours opt out notice”.

Out of hours opt out where opt out notice is served before 1st October 2004

5.—(1) This paragraph shall apply where a contractor wishes to serve or serves an out of hours opt out notice before 1st October 2004.

(2) In this paragraph—

“OOH day” is the day specified by the Health Board for the commencement of the out of hours opt out in its decision under sub-paragraph (5);

“OOHB day” is the day six months after the date of service of the out of hours opt out notice; and

“OOHC day” is the day specified by the Health Board in its decision under sub-paragraph (11) or (13) (which must be nine months after the date of service of the out of hours opt out notice or before 2nd January 2005).

(3) A contractor which wishes to terminate its obligation to provide out of hours services which was included in the contract pursuant to regulation 30 shall notify the Health Board in writing to that effect (“an out of hours opt out notice”).

(4) An out of hours opt out notice shall state the date on which the contractor would like the opt out to take effect, which must be either three or six months after the date of service of the out of hours opt out notice.

(5) As soon as is reasonably practicable and in any event within 28 days of receiving the out of hours opt out notice, the Health Board shall approve the notice and specify in accordance with sub-paragraphs (6) and (7) the date on which the out of hours opt out is to commence (“OOH day”) and the Health Board shall notify the contractor in writing of its decision as soon as possible, including reasons for its decision.

(6) Subject to sub-paragraph (7), OOH day shall be—

(a) the date specified in the out of hours opt out notice; or

(b) any other date before 2nd January 2005.

(7) A Health Board may not specify under sub-paragraph (5) a date earlier than the date specified in the out of hours opt out notice.

(8) A contractor may not withdraw an out of hours opt out notice once it has been approved by a Health Board under sub-paragraph (5) without the Health Board’s agreement.

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(9) Following receipt of the out of hours opt out notice, the Health Board must use its reasonable endeavours to make arrangements for the contractor's registered patients to receive the out of hours services from an alternative provider from OOH day.

(10) The contractor's duty to provide the out of hours services shall terminate on OOH day unless the Health Board—

- (a) serves notice under sub-paragraph (11) (extending OOH day to OOHB day or OOHC day); or
- (b) makes an application under sub-paragraph (14) (seeking the approval of the assessment panel to a decision to refuse an opt out or to delay the taking of effect of an opt out until after OOH day).

(11) If the Health Board is not successful in finding an alternative provider to take on the provision of the out of hours services from OOH day, then it shall notify the contractor in writing of this fact no later than one month before OOH day, and—

- (a) in a case where OOH day is three months after service of the out of hours opt out notice, the contractor shall continue to provide the out of hours services until OOHB day unless at least one month before OOHB day the contractor receives a notice in writing from the Health Board under sub-paragraph (13) that despite using its reasonable endeavours, the Board has failed to find an alternative provider to take on the provision of the out of hours services from OOHB day;
- (b) in a case where OOH day is after the day three months after the service of the out of hours opt out notice, the contractor shall continue to provide the out of hours services until OOHC day (which shall be specified by the Health Board in accordance with sub-paragraph (12) and included in its notice to the contractor under this sub-paragraph) unless at least one month before OOHC day the contractor receives a notice from the Health Board under sub-paragraph (16) that it has made an application to the assessment panel under sub-paragraph (14) seeking the panel's approval to a decision to refuse an opt out or to delay the commencement of the opt out until after OOHC day.

(12) OOHC day shall be any day before 2nd January 2005 or the day nine months after the service of the out of hours opt out notice.

(13) Where in accordance with sub-paragraph (11)(a) the out of hours opt out is to commence on OOHB day and the Health Board, despite using its reasonable endeavours has failed to find an alternative provider to take on the provision of the out of hours services from that day, it shall notify the contractor in writing of this fact at least one month before OOHB day, in which case the contractor shall continue to provide the out of hours service until OOHC day (which shall be specified by the Health Board in accordance with sub-paragraph (12) and included in its notice to the contractor under this sub-paragraph) unless at least one month before OOHC day the contractor receives a notice from the Health Board under sub-paragraph (16) that it has applied to the assessment panel under sub-paragraph (14) seeking the approval of the assessment panel to a decision to refuse an opt out or to postpone the commencement of an opt out until after OOHC day.

(14) The Health Board may, if it considers there are exceptional circumstances, make an application to the assessment panel for approval of a decision to—

- (a) refuse an opt out; or
- (b) postpone the commencement of an opt out until after—
 - (i) OOHC day, or
 - (ii) OOH day where OOH day is 1st January 2005 and 1st January 2005 is nine months or more after the date of the out of hours opt out notice.

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(15) Where OOH day is 1st January 2005, and 1st January 2005 is nine months or more after the date of the out of hours opt out notice, an application under sub-paragraph (14) shall be made at least one month before OOH day.

(16) As soon as practicable after making an application under sub-paragraph (14) to the assessment panel, the Health Board shall notify the contractor in writing that it has made such an application.

(17) Sub-paragraphs (12) to (24) of paragraph 3 shall apply to an out of hours opt out as they apply to a permanent opt out and as if the reference to “C day” was a reference to OOHC day or OOH day where OOH day is 1st January 2005 and 1st January 2005 is nine months or more after the date of the out of hours opt out notice.

Informing patients of opt-outs

6.—(1) Prior to any opt out taking effect, the Health Board and the contractor shall discuss how to inform patients of the proposed opt out.

(2) The contractor shall, if requested by the Health Board inform the contractor’s registered patients of an opt out and the arrangements made for them to receive the additional service or out of hours services by—

- (a) placing a notice in the practice’s waiting room; or
- (b) including the information in the practice leaflet.

(3) In this paragraph “opt out” means an out of hours opt out, a permanent opt out or a temporary opt out.