

SCHEDULE 2

AGREEMENTS TO PROVIDE ESSENTIAL SERVICES

PART 2

LIST OF PATIENTS

List of patients

- 8.** The Health Board shall 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 9 and who have not subsequently been removed from that list under paragraphs 12 to 20; and
 - (b) who have been assigned to the provider under paragraph 24 or 25 and whose assignment has not subsequently been rescinded.

Application for inclusion in a list of patients

9.—(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.

(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 shall be made by delivering to the practice premises a medical card or an application signed (in either case) 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(1); 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 the person authorised under the Adults with Incapacity (Scotland) Act 2000(2) to act on the patients behalf.

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

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

(1) 1995 c. 36.
(2) 2000 asp 4.

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- (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

10.—(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 shall 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,

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

(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 shall 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

11.—(1) The provider shall only refuse an application made under paragraph 9 or 10 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 paragraph (1) shall, in the case of applications made under paragraph 9, 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 9 or 10 shall, 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 shall keep a written record of refusals of applications made under paragraph 9 and of the reasons for them and shall make this record available to the Health Board on request.

Removal from the list at the request of the patient

12.—(1) The provider shall 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 shall remove that person from the provider's list of patients.

- (3) A removal in accordance with sub-paragraph (2) shall take effect—
- (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,

whichever is the sooner.

- (4) The Health Board shall, 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 13(1)(b) and (10), 14(6) and (7), 16 and 19, a reference to a request received from or advice, information or notification required to be given to—
- (a) in the case of a patient who is a child, a parent or other person referred to in paragraph 9(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

13.—(1) Subject to paragraph 14, a provider which has reasonable grounds for wishing a patient to be removed from the provider's list of patients which do not relate to the patient's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition shall—

- (a) notify the Health Board in writing that the provider wishes to have the patient removed; and
 - (b) subject to sub-paragraph (2), notify the patient of the provider's 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 it has warned the patient that the patient that the patient is at risk of removal and explained to the patient the reasons for this.

- (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

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- (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 legal and beneficial owner of shares in a company that is a party to the agreement;
 - (d) a member of the provider’s staff;
 - (e) a person engaged by the provider to perform or assist in the performance of services under the agreement; or
 - (f) 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 shall 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 shall keep a written record of refusals under this paragraph which shall 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 shall make this record available to the Health Board on request.
- (8) A removal requested in accordance with sub-paragraph (1) shall, subject to sub paragraph (9) take effect from–
 - (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),whichever is the sooner.
- (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 shall notify the Health Board in writing of the fact and the removal shall take effect–
 - (a) on the eighth day after the Health Board receives notification from the provider that the person no longer needs such treatment; or
 - (b) 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,whichever is the sooner.
- (10) The Health Board shall 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

14.—(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,

shall 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 legal and beneficial owner or shares in a company that is a party to the agreement;
- (d) a member of the provider's staff;
- (e) a person engaged by the provider to perform or assist in the performance of services under the agreement; or
- (f) any other person present—
 - (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 or fax but if not given in writing shall subsequently be confirmed in writing within 7 days (and for this purpose a faxed notification or transmission by electronic means is not a written one).

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

(5) A removal requested in accordance with sub-paragraph (1) shall 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 shall, 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 shall 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 shall 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

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

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- (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, Primary Care trust, Local Health Board, or a Health and Social Services 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) shall 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 shall notify the provider in writing of persons removed from the provider's list of patients under sub-paragraph (1).

Removals from list of patients who have moved

16.—(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 shall—

- (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 expiration 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 expiration 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 shall 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

17. 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 shall—

- (a) give to 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

18.—(1) The Health Board shall 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) shall take effect—
- (a) in the cases referred to in sub-paragraph (1)(a) and (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 (1)(c) and (d) from the date on which the Health Board first receives notification of the absence or death.
- (3) The Health Board shall 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

- 19.**—(1) The Health Board shall 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 shall 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) shall 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

- 20.**—(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 shall 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 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 shall 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 of, that school.
- (3) The Health Board shall notify the provider in writing of patients removed from its list of patients under sub-paragraph (1).

Closure of lists of patients

- 21.**—(1) A provider which wishes to close its list of patients shall notify the Health Board in writing to that effect.
- (2) Within a period of 7 days beginning with the date of receipt of the notification referred to in sub-paragraph (1), or, if that is not reasonably practicable, as soon as is practicable thereafter, the Health Board shall enter into discussions with the provider concerning the support which the Health

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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 shall use reasonable endeavours to achieve the aim of keeping the provider's list of patients open.

(4) The discussions mentioned in sub-paragraph (2) shall be completed within a period of 28 days 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) 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 shall send full details of the agreement in writing to the provider.

(6) The Health Board and the provider shall comply with the terms of an agreement reached as mentioned in sub-paragraph (5).

(7) 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 shall send a closure notice to the Health Board.

(8) A closure notice shall be submitted in the form specified in Schedule 5, and shall include the following details which (in a case falling within sub-paragraph (7)(a)) have been agreed between the parties or (in a case falling within sub-paragraph (7)(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.

(9) The Health Board shall forthwith acknowledge receipt of the closure notice in writing to the provider.

(10) Before the Health Board reaches a decision as to whether to approve or reject the closure notice under sub-paragraph (12), the Health Board and the provider may enter into further discussions concerning the details of the closure notice as specified in sub-paragraph (8), 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 shall be 12 months.

(11) A provider may not withdraw a closure notice 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.

(12) Within a period of 14 days beginning with the date of receipt of the closure notice, the Health Board shall–

- (a) approve the closure notice; or

(b) reject the closure notice,
and shall notify the provider of its decision in writing as soon as possible.

(13) Approval of the closure notice under sub-paragraph (12)(a) includes approval of the details specified in accordance with sub-paragraph (8) (or, where those details are revised following discussions under sub-paragraph (10), approval of those details as so revised).

Approval of closure notice by the Health Board

22.—(1) If the Health Board approves the closure notice in accordance with paragraph 21(12)(a), the provider shall 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 shall remain closed for the period specified in the closure notice in accordance with paragraph 21(8)(a) (or, where a period of 12 months has been fixed in accordance with paragraph 21(10), for that period).

(3) The provider’s list of patients shall 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 21(8)(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 shall nevertheless close again if, during the period specified in the closure notice in accordance with paragraph 21(8)(a) or, where the period of 12 months specified in paragraph 21(10) 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 21(8)(d).

(5) Except in cases where the provider’s list of patients is already open pursuant to sub paragraph (3), the Health Board shall 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 in accordance with paragraph 21(8) have been revised following discussions under paragraph 21(10), 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

23.—(1) This regulation applies where the Health Board rejects the closure notice in accordance with paragraph 21(12)(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 shall provide the assessment panel with such information as the assessment panel may reasonably require to enable the panel to reach a determination and shall include in such information any written observations received from the provider.

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(5) At least one member of the assessment panel shall 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 shall—

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

and shall 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 (6)(a) that the provider's list of patients should close, it shall specify—

- (a) a date from which the closure shall 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 21(8).

(8) Where the assessment panel rejects the list closure in accordance with sub-paragraph (6)(b) that list shall remain open, and the Health Board and the provider shall 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.

(9) 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 21 until—

- (a) the expiry of a period of three 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 liability to deliver services under the agreement.

(10) 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

24.—(1) A Health Board may, subject to paragraph 26, assign a new patient to a provider whose list of patients is open.

- (2) In this paragraph and in paragraphs 25 and 27 to 29, 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

25.—(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 26 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 27(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 28 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 29.

Factors relevant to assignments

26. In making an assignment to a provider under paragraph 24 or 25, the Health Board shall 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 13 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 14 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

27.—(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 shall 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 shall have regard to relevant factors including—

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- (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 shall reach a determination within the period of 28 days beginning with the date on which the panel was appointed.
- (7) The assessment panel shall 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 shall 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 shall include its comments on the matters specified in sub paragraph (5), and shall 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

28.—(1) Where an assessment panel makes a determination under paragraph 27(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 27(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 shall 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 shall be determined in accordance with the NHS dispute resolution procedure as modified as follows—

(a) in paragraph 56(3) of Schedule 1, for “a dispute as mentioned in sub-paragraph (1)” substitute “the matter as mentioned in paragraph 28(1)”;

(b) for paragraph 56(4) of Schedule 1, substitute—

“(4) The provider (or providers) wishing to refer the matter as mentioned in paragraph 28(1) 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 21(7) of Schedule 2.”;

(c) for paragraph 56(13) of Schedule 1, substitute—

“(13) In this paragraph, “specified period” means such period as the Scottish Ministers shall specify in the request sent under sub-paragraphs (6) or(8), being not less than 1, nor more than 2, 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 56(15) of Schedule 1, there shall be inserted the following sub paragraphs—

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“(16) Subject to paragraph (19), within the period of 21 days beginning with the date on which the matter was referred to the Scottish Ministers, the adjudicator shall 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 shall 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 27(7) of Schedule 2.

(18) In the case of a matter referred jointly by providers in accordance with paragraph 28(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 (15) 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; and
 - (c) the provider (or providers) which referred the matter to dispute resolution.”; and
- (e) paragraph 57(2) and (3) of Schedule 1 shall not apply.

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

29.—(1) Before the Health Board may assign a new patient to a provider, it shall, 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 shall use its best endeavours to provide appropriate support.

(2) In the discussions referred to in sub-paragraph (1), both parties shall 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.