SCHEDULE 2

Regulation 20

OPT OUTS OF ADDITIONAL 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 under the global sum, means the termination of the obligation under the contract for the contractor to provide that service; and "opt out permanently" is to 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" is to 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 must give to the Health Board in writing a preliminary opt out notice which must 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 on the date on which the preliminary opt out notice was received by the Health Board, the Health Board must 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 must use reasonable endeavours to achieve this aim.

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

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

(6) An opt out notice must 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

(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 will 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 is treated as a permanent opt out notice pursuant to sub-paragraph (7).

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 on the date on which a temporary opt out notice mentioned in paragraph 1(5) is received, the Health Board must—

(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 must notify the contractor of its decision as soon as possible, including reasons for its decision.

(2) A Health Board may reject the temporary 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 is to be, wherever reasonably practicable, the date requested by the contractor in its opt out notice.

(4) Before determining the end date, the Health Board must 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 will be suspended from the date specified by the Health Board in its decision under sub-paragraph (1), and is to 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 is to come to an end on that date;

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

(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 will 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 will 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 will 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 will 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 will follow the temporary opt out.

(8) Where a Health Board notifies the contractor under sub-paragraph (7) that a permanent opt out will follow a temporary opt out, the permanent opt out must 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 must 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 must 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 must 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 is to remain suspended until the date specified in sub-paragraph (5)(d)(ii) or (iii) (whichever is applicable).

(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 must notify the contractor in writing of this fact as soon as is reasonably practicable.

(17) A temporary opt out or a permanent opt out commences, and a temporary opt out ends, at 0800 hours on the relevant day unless—

(a) the day is not a working day, in which case the opt out will take effect on the next working day at 0800 hours; 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 out;

"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 of 28 days beginning with the date on which 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)) is received, the Health Board must—

(a) approve the opt out notice; or

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

and must 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 must 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 will 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 must 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 is to 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; or

(b) in a case where A day is six months after the service of the opt out notice, the contractor is to 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 an 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 must notify the contractor in writing of this fact at least one month before B day, in which case the contractor is to 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 date on which the Health Board served a notice under sub-paragraph (8), the Health Board must 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 must 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 must 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 must—

(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 must—

(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 must 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

(b) recommends that a permanent opt out be refused under sub-paragraph (15)(b)(ii),

the Health Board must 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 must in accordance with the decision of the assessment panel notify the contractor in writing of its decision and the notice must 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 must notify the contractor in writing that there will be a permanent opt out, and the permanent opt out must 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 will 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 prevents 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 6.

(23) The permanent opt out takes effect at 0800 hours on the relevant day unless—

(a) the day is not a working day, in which case the opt out will take effect on the next working day at 0800 hours; 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.

Informing patients of opt-outs

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

(2) The contractor must, 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 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, a permanent opt out or a temporary opt out.

Changes to legislation:
There are currently no known outstanding effects for the The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018, SCHEDULE 2.