

SCHEDULE 6

OTHER CONTRACTUAL TERMS

PART 8

VARIATION AND TERMINATION OF CONTRACTS

Variation of a contract: general

94.—(1) Subject to [^{F1}regulations 31 and 33A], schedule 2 [^{F2}, paragraph 1 of schedule 2A] and paragraphs 62(8) and 108 of this schedule and sub-paragraph (2), no amendment or variation has effect unless it is in writing and signed by or on behalf of the Health Board and the contractor.

(2) In addition to the specific provision made in paragraph 108 the 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 relevant legislation; 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.

(3) Where it is reasonably practicable to do so, the date that the proposed variation is to take effect is to be not less than 14 days after the date on which the notice under sub-paragraph (2)(b) is served on the contractor.

(4) In this paragraph “relevant legislation” means—

- (a) the Act;
- ^{F3}(b);
- (c) the Patient Rights (Scotland) Act [^{F4}2011](1);
- (d) Part 2 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016(2);
- ^{F5}(da) the data protection legislation;
- (db) any directly applicable EU legislation which is not part of the data protection legislation but which relates to data protection;] and
- (e) any regulations or any direction given by the Scottish Ministers made pursuant to the Acts mentioned in sub-paragraphs (a), (c) and (d).

F1 Words in sch. 6 para. 94(1) substituted (18.10.2021) by [The National Health Service \(General Medical Services and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/302\)](#), regs. 1, **9(d)(i)**

F2 Words in sch. 6 para. 94(1) inserted (18.10.2021) by [The National Health Service \(General Medical Services and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/302\)](#), regs. 1, **9(d)(ii)**

F3 Sch. 6 para. 94(4)(b) omitted (25.5.2018) by virtue of [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), **Sch. 19 para. 425(6)(a)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

F4 Word in sch. 6 para. 94(4)(c) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **7(n)**

(1) 2016 asp 14.

(2) 2016 asp 14.

F5 Sch. 6 para. 94(4)(da)(db) inserted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 425\(6\)\(b\)](#) (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

Variation of a contract: execution

95.—(1) If the contract or any amendment or variation to the contract under paragraph 94(1) is executed in counterpart, each counterpart when executed and delivered is to constitute an original of the contract or amendment or variation to the contract; but both of the counterparts will together constitute the same agreed contract, amendment or variation and no counterpart will be effective until each party has executed and delivered an executed counterpart to the other party.

(2) A counterpart of a contract or an amendment or variation to a contract may be delivered by a party (“the executing party”) to the other party by either—

- (a) the executing party printing out and signing the signature pages of the contract or amendment or variation (both the signature page following the last clause and the signature page following any schedule); and
- (b) the executing party scanning those signed signature pages to an electronic file; or
- (c) the executing party (or its legal representative) emailing the files of the scanned signature pages together with a copy of the contract, amendment or variation to the other party.

Termination by agreement

96. The Health Board and the contractor may agree in writing to terminate the contract, and if the parties so agree, they must 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 medical practitioner

97.—(1) Where the contract is with an individual medical practitioner and that practitioner dies, the contract will terminate at the end of a period of seven days after the date of the practitioner’s death unless, before the end of that period—

- (a) the Health Board has agreed in writing with the contractor’s personal representative that the contract should continue for a further period, not exceeding 28 days after the end of the period of seven days; and
- (b) the contractor’s personal representative has consented in writing to the Health Board employing or supplying one or more general medical practitioners to assist in the provision of clinical services under the contract throughout the period for which it continues.

(2) In sub-paragraph (1), “general medical practitioner” has the same meaning as in regulation 5(1).

(3) Sub-paragraph (1) does not affect any other rights to terminate the contract which the Health Board may have under paragraphs 102 to 106.

Termination by the contractor

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

(2) Where the contractor serves notice pursuant to sub-paragraph (1), the contract will, subject to sub-paragraph (3), terminate six 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) Where the contractor is an individual medical practitioner, sub-paragraph (2) applies to the contractor, save that the reference to “six months” is instead to be to “three months”.

(4) This paragraph and paragraph 99 are without prejudice to any other rights to terminate the contract that the contractor may have.

Late payment notices

99.—(1) The contractor may give notice in writing (a “late payment notice”) to the 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 26 and the contractor must 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 Health Board has still failed to make the payments due to the contractor, and that were specified in the late payment notice served on the Health Board pursuant to sub-paragraph (1).

(3) If, following receipt of a late payment notice, the 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 92 and that determination permits the contractor to terminate the contract; or

(b) the Health Board ceases to pursue the NHS dispute resolution procedure, whichever is the sooner.

Termination by the Health Board: general

100. The Health Board may only terminate the contract in accordance with the provision in this Part.

Termination by the Health Board for breach of conditions in regulation 10

101.—(1) The Health Board must serve notice in writing on the contractor terminating the contract with immediate effect where the contractor is an individual medical practitioner but is no longer a general medical practitioner.

(2) Sub-paragraph (3) applies when any of the conditions in regulation 10(1)(b) to (f) are no longer satisfied.

(3) Where this sub-paragraph applies, the Health Board must—

(a) serve notice in writing on the contractor terminating the contract with immediate effect; or

(b) serve notice in writing on the contractor confirming that the Health Board will allow the contract to continue, for a period specified by the Health Board of up to six months (“the interim period”).

(4) Before deciding which of the options in sub-paragraph (3) to pursue, the Health Board must consult the area medical committee for its area where it is reasonably practicable to do so.

(5) During the interim period under sub-paragraph (3)(b) the Health Board must, with the consent of the contractor, employ or supply to the contractor one or more general medical practitioners to assist in the provision of clinical services under the contract.

(6) If the contractor—

(a) does not consent to the Health Board employing or supplying a general medical practitioner during the interim period; or

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(b) still falls within sub-paragraph (2) at the end of the interim period,
the Health Board must serve notice in writing on the contractor terminating the contract with immediate effect.

Termination by the Health Board for breach of conditions in relation to provision of information about compliance with regulations 5, 6, 7, 10 and 11

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

(a) in the case of a contract entered into prior to 22nd December 2010, after the contract has been entered into, it comes to the attention of the Health Board that written information provided to the Health Board by the contractor—

- (i) before the contract was entered into; or
- (ii) pursuant to paragraphs 81(2) or (3) or 82(2),

in relation to the conditions set out in regulations 4 and 5 of the 2004 Regulations as in force at 21st December 2010 (in relation to a compliance with those conditions) and regulations 10 and 11 and confirmation that a person did not fall within paragraph 103(2) was, when given, untrue or inaccurate in a material respect; or

(b) in the case of a contract entered into on or after 22nd December 2010, after the contract has been entered into, it comes to the attention of the Health Board that written information provided to the Health Board by the contractor—

- (i) before the contract was entered into; or
- (ii) pursuant to paragraphs 81(2) or (3) or 82(2),

in relation to the conditions set out in regulations 4 and 5 of the 2004 Regulations or regulations 5, 6 and 7 of these Regulations (and in relation to compliance with those conditions) and regulations 10 and 11 and confirmation that a person did not fall within paragraph 103(2) was, when given, untrue or inaccurate in a material respect.

Other grounds for termination by the Health Board

103.—(1) The Health Board may serve notice in writing on the contractor terminating the contract with immediate effect, or from such date as may be specified in the [F6notice,] if the contractor is in breach of regulation 11 or if—

(a) in the case of a contract entered into on or after 22nd December 2010—

- (i) with a medical practitioner, that medical practitioner;
- (ii) with a partnership, any partner or the partnership;
- (iii) with a limited liability partnership, any member or the limited liability partnership;
and
- (iv) with a company—
 - (aa) the company;
 - (bb) any member of the company; or
 - (cc) any director or secretary of the company;

or,

(b) in the case of a contract entered into prior to 22nd December 2010—

- (i) with a medical practitioner, that medical practitioner;
- (ii) with a partnership, any partner or the partnership;

(iii) with a company limited by shares—

- (aa) the company;
- (bb) any person legally and beneficially owning a share of the company; or
- (cc) any director or secretary of the company,

falls within sub-paragraph (2) during the existence of the contract.

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

- (a) the person has been disqualified;
- (b) subject to sub-paragraph (3), the person is disqualified or suspended from practising by any licensing body anywhere in the world other than by—
 - (i) a direction under section 32A(2) (applications for interim suspension) or 32B(1) (suspension pending appeal) of the Act⁽³⁾;
 - (ii) a Health Board in terms of Regulation 8A of the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004⁽⁴⁾; or
 - (iii) any provision in force in England, Wales or Northern Ireland corresponding to the provisions referred to in sub-heads (i) and (ii);
- (c) subject to sub-paragraph (4), the person has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless before the Health Board has served a notice terminating the contract pursuant to this paragraph, the person is employed by the health service body that dismissed the person or by another health service body;
- (d) the person is disqualified from a list unless the person's name has subsequently been included in such a list;
- (e) the person has been convicted in the United Kingdom of murder;
- (f) the person has been convicted in the United Kingdom of a criminal offence, other than of murder, and has been sentenced to a term of imprisonment of over six months;
- (g) subject to sub-paragraph (5), the person has been convicted elsewhere of an offence—
 - (i) which would, if committed in Scotland, constitute murder; or
 - (ii) constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (h) the person has been convicted of an offence referred to in schedule 1 of the Criminal Procedure (Scotland) Act 1995⁽⁵⁾ or schedule 1 of the Children and Young Persons Act 1933⁽⁶⁾;
- (i) the person has—
 - (i) had sequestration of the person's estate awarded or been adjudged bankrupt unless (in either case) the person has been discharged or the bankruptcy order has been annulled;

(3) Sections 32A(2) and 32B(1) were inserted by section 8 of the National Health Service (Amendment) Act 1995 (c.31). Section 32A(2) was amended by paragraph 51 of schedule 4 of the Health Act 1999 (c.8) ("the 1999 Act") and section 26(7) of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) ("the 2005 Act"). Section 32B(1) was amended by paragraph 52 of schedule 4 of the 1999 Act, and paragraph 1 of schedule 3 of the 2005 Act.

(4) S.S.I. 2004/114. Regulation 8A was inserted by S.S.I. 2011/392.

(5) 1995 c.46. Schedule 1 was amended by section 7(1) of the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (asp 8), paragraph 2 of schedule 1 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), paragraph 2 of schedule 5 of the Sexual Offences (Scotland) Act 2009 (asp 9) and section 41 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

(6) 1933 c.12. Schedule 1 was amended by the paragraph 52 of schedule 4 of the Sexual Offences Act 1956 (c.69), paragraph 170(2) of schedule 16 of the Criminal Justice Act 1988 (c.33), paragraph 7 of schedule 6 of the Sexual offences Act 2003 (c.42) and paragraph 1 of schedule 5 of the Modern Slavery Act 2015 (c.3).

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- (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under schedule 4A of the Insolvency Act 1986⁽⁷⁾ or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985⁽⁸⁾, or sections 155 to 160 of the Bankruptcy (Scotland) Act 2016⁽⁹⁾ 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, the person's creditors unless the person has been discharged in respect of it; or
- (iv) been wound up under Part IV of the Insolvency Act 1986;
- (j) 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 of the Insolvency Act 1986⁽¹⁰⁾;
- (k) that person is a partnership or limited liability partnership and—
 - (i) a dissolution of the partnership or limited liability 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 or limited liability partnership to continue, or for members of the partnership or limited liability partnership to carry on in partnership or limited liability partnership;
- (l) the person has been—
 - (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session)⁽¹¹⁾, from being concerned in the management or control of any body; or
 - (ii) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission for England and Wales or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which the person by the person's conduct contributed to or facilitated;
- (m) the person is subject to a disqualification order under section 1 of the Company Directors Disqualification Act 1986⁽¹²⁾, a disqualification undertaking under section 1A of that Act, a disqualification order under article 3 of the Company Directors Disqualification (Northern Ireland) Order 2002⁽¹³⁾, a disqualification undertaking under article 4 of that Order, or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order)⁽¹⁴⁾;
- (n) the person has refused to comply with a request by the Health Board for that person to be medically examined on the grounds that the Health Board is concerned that the person is incapable of adequately providing services under the contract and, in a case where the

(7) 1986 c.45. Schedule 4A was inserted by section 257 and paragraph 1 of schedule 20 of the Enterprise Act 2002 (c.40) ("the 2002 Act") and was amended by paragraph 63 of the Enterprise and Regulatory Reform Act 2013 (c.24).

(8) 1985 c.66. Sections 56A to 56K were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), amended by the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11) and repealed by Part 1 of schedule 9 of the Bankruptcy (Scotland) Act 2016 (asp 21).

(9) 2016 asp 21.

(10) Schedule B1 was inserted by paragraph 1 of schedule 16 of the 2002 Act.

(11) 2005 asp 10. Section 34 was amended by section 122 of the Public Services Reform (Scotland) Act 2010 (asp 8).

(12) 1986 c.46, as relevantly amended by section 5 and paragraph 2 of schedule 4 of the Insolvency Act 2000 (c.39), section 204 of the Enterprise Act 2002 ("the 2002 Act") and paragraph 2 of schedule 7 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act").

(13) S.I. 2002/3150 (N.I. 4), as relevantly amended by paragraph 9 of schedule 8 of the 2015 Act.

(14) Section 429 was amended by paragraph 15 of schedule 23 of the 2002 Act.

contract is with a partnership, limited liability partnership, or a company, the Health Board is not satisfied that the contractor is taking adequate steps to deal with the matter; or

- (o) the person would otherwise fall within paragraph 67(3)(e) of schedule 3 of the National Health Service (General Medical Services Contracts) Regulations 2015⁽¹⁵⁾.

(3) A Health Board is not to terminate the contract pursuant to sub-paragraph (2)(b) where the 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) in the case of a contract with a partnership, a partner;
- (c) in the case of a contract with a limited liability partnership, a member;
- (d) in the case of a contract entered into on or after 22nd December 2010 with a company, as the case may be—
 - (i) a member of the company; or
 - (ii) a director or secretary of the company;
- (e) in the case of a contract entered into prior to 22nd December 2010 with a company limited by shares, as the case may be—
 - (i) a person who legally and beneficially owns a share in that company; or
 - (ii) a director or secretary of the company.

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

- (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 the person's dismissal, until proceedings before that tribunal or court are concluded,

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

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

- (a) a contractor;
- (b) in the case of a contract with a partnership, a partner in that partnership;
- (c) in the case of a contract with a limited liability partnership, a member of that limited liability partnership; or
- (d) in the case of a contract entered into prior to 22nd December 2010 with a company, as the case may be—
 - (i) a person who legally and beneficially owns a share in that company; or
 - (ii) a director or secretary of the company;
- (e) in the case of a contract entered into on or after 22nd December 2010 with a company, as the case may be—
 - (i) a member of the company; or
 - (ii) a director or secretary of the company.

(6) In this paragraph, “health service body” does not include any person who is to be regarded as a health service body in accordance with regulation 13.

(15) S.I. 2015/1862.

F6 Word in sch. 6 para. 103(1) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **7(o)**

Other grounds for termination by the Health Board

104. The Health Board may serve notice in writing on the contractor terminating the contract with immediate effect 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 Health Board considers that the Health Board is at risk of material financial loss.

Termination by the Health Board for unlawful sub-contracting

105. If the contractor breaches the condition specified in paragraph 62(10) and it comes to the Health Board's attention that the contractor has done so, the Health Board must serve a notice in writing on the contractor—

- (a) terminating the contract with immediate effect; or
- (b) instructing it to terminate the sub-contracting arrangements that give rise to the breach with immediate effect, and if it fails to comply with the instruction, the Health Board must serve a notice in writing on the contractor terminating the contract with immediate effect.

Termination by the Health Board: remedial notices and breach notices

106.—(1) Where a contractor has breached the contract other than as specified in paragraphs 101 to 105 and the breach is capable of remedy, the Health Board must, 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 ("a remedial notice").

(2) A remedial notice must specify—

- (a) the details of the breach;
- (b) the steps the contractor must take to the satisfaction of the 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 must, unless the 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 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 Health Board may terminate the contract with effect from such date as the 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 101 to 105 and the breach is not capable of remedy, the 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 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 Health Board is not to exercise its right to terminate the contract under sub-paragraph (6) unless it is satisfied that the cumulative effect of the breaches is such that the 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 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 default.

Termination by the Health Board: additional provision specific to contracts with a partnership and companies limited by shares

107.—(1) Where the contractor is a company, partnership or limited liability partnership, if the Health Board becomes aware that the contractor is carrying on any business which the Health Board considers to be detrimental to the contractor's performance of its obligations under the contract—

- (a) the Health Board is 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
- (b) if the contractor has not satisfied the Health Board that it has ceased carrying on that business by the end of the notice period, the Health Board may, by a further written notice, terminate the contract with immediate effect or from such date as may be specified in the notice.

(2) Where the contractor is a partnership, the Health Board is entitled to terminate the contract by notice in writing on such dates 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 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 Health Board to perform its obligations under the contract.

(3) A notice given to the contractor pursuant to sub-paragraph (2) must specify—

- (a) the date upon which the contract is to be terminated; and
- (b) the 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 Health Board to perform its obligations under the contract.

Contract sanctions

108.—(1) In this paragraph and paragraph 109, "contract sanction" means—

- (a) the termination of specified reciprocal obligations under the contract;
- (b) the suspension of specified reciprocal obligations under the contract for a period of up to six months; or
- (c) the withholding or deducting of monies otherwise payable under the contract.

(2) Where the Health Board is entitled to terminate the contract pursuant to paragraph 102, 103, 104, 106(4) or (6) or 107, it may instead impose any of the contract sanctions if the Health Board is reasonably satisfied that the contract sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the Health Board's entitlement to terminate the contract.

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

(4) If the 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.

(5) Subject to paragraph 109, the Health Board must 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 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 Health Board imposes a contract sanction, the Health Board is entitled to charge the contractor the reasonable costs of additional administration that the Health Board has incurred in order to impose, or as a result of imposing, the contract sanction.

Contract sanctions and the dispute resolution procedure

109.—(1) If there is a dispute between the Health Board and the contractor in relation to a contract sanction that the Health Board is proposing to impose, the Health Board must not, subject to sub-paragraph (4), impose the proposed contract sanction except in the circumstances specified in sub-paragraph (2)^{F7}....

(2) If the contractor refers the dispute relating to the contract sanction to the local dispute resolution process within 28 days beginning on the date on which the Health Board served notice on the contractor in accordance with paragraph 108(4) (or such longer period as may be agreed in writing with the Health Board), and notifies the Health Board in writing that it has done so, the Health Board must not impose the contract sanction unless—

- (a) there has been a resolution of the dispute between the parties which allows the Scottish Ministers to impose the contract sanction;
- (b) there has been no resolution of the dispute between the parties as a result of the local dispute resolution process and the contractor does not refer the matter to the Scottish Ministers under paragraph [F890 or 91] within 28 days of the end of the period specified in—
 - (i) paragraph 89(8); or
 - (ii) the date on which the local dispute resolution process was completed,
 whichever is the earlier; or
- (c) either party refers the matter to the Scottish Ministers under paragraph 90 or 91 within the period specified in sub-paragraph (b) and either—
 - (i) there has been a determination of the dispute pursuant to paragraph 92 and that determination permits the Health Board to impose the contract sanction; or
 - (ii) the contractor ceases to pursue the NHS dispute resolution procedure.

(3) If the contractor does not invoke the NHS dispute resolution procedure within the time specified in sub-paragraph (2), the Health Board is entitled to impose the contract sanction with immediate effect.

(4) If the Health Board is satisfied that it is necessary to impose the contract sanction before the local dispute resolution process or 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 Health Board is entitled to impose the contract sanction with immediate effect, pending the outcome of that procedure.

- F7** Words in sch. 6 para. 109(1) omitted (1.4.2018) by virtue of [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **7(p)(i)**
- F8** Words in sch. 6 para. 109(2)(b) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **7(p)(ii)**

Termination and the NHS dispute resolution procedure

110.—(1) Where the Health Board is entitled to serve written notice on the contractor terminating the contract pursuant to paragraphs 101 to ^{F9}107] the Health Board must, 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 Health Board has served that notice on the contractor unless sub-paragraph (2) applies.

(2) This sub-paragraph applies if the Health Board is satisfied that a period of 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 within sub-paragraph (1), where the exceptions in sub-paragraph (2) do not apply, where the contractor invokes the local dispute resolution process before the end of the period of notice referred to in sub-paragraph (1), and it notifies the Health Board in writing that it has done so, the contract will not terminate at the end of the notice period but instead may only terminate in the circumstances specified in sub-paragraph (4).

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

- (a) there has been a resolution of the dispute between the parties which allows the Health Board to terminate the contract;
- (b) there has been no resolution of the dispute between the parties as a result of the local dispute resolution process and the contractor does not refer the matter to the Scottish Ministers under paragraph ^{F10}90 or 91] within 28 days of the end of the period specified in—
 - (i) paragraph 89(8); or
 - (ii) the date on which the local dispute resolution process was completed,whichever is the earlier; or
- (c) either party refers the matter to the Scottish Ministers under paragraph 90 or 91 within the period specified in sub-paragraph (b) and either—
 - (i) there has been a determination of the dispute pursuant to paragraph 92 and that determination permits the Health Board to terminate the contract; or
 - (ii) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(5) If the Health Board is satisfied that it is necessary to terminate the contract before the local dispute resolution procedure or 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 Health Board is 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 paragraphs 101 to [F11107] .

- F9** Word in sch. 6 para. 110(1) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **7(q)(i)**
- F10** Words in sch. 6 para. 110(4)(b) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **7(q)(ii)**
- F11** Word in sch. 6 para. 110(5) inserted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **7(q)(iii)**

Consultation with the area medical committee

111.—(1) Whenever the Health Board is considering—

- (a) terminating the contract pursuant to paragraphs 101 to [F12107]; or
- (b) imposing a contract sanction,

it must, whenever it is reasonably practicable to do so, consult the area medical committee for its area before it terminates the contract or imposes a contract sanction.

(2) Whether or not the area medical committee has been consulted pursuant to sub-paragraph (1), whenever the Health Board imposes a contract sanction on a contractor or terminates a contract pursuant to this Part, it must, as soon as reasonably practicable, notify the area medical committee in writing of the contract sanction imposed or of the termination of the contract (as the case may be).

- F12** Word in sch. 6 para. 111(1)(a) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **7(r)**

Where the contractor changes from being an individual to a partnership

112.—(1) If—

- (a) a contractor is an individual medical practitioner who proposes to practise in partnership (but not in a limited liability partnership) (“the proposed partnership”) with one or more persons (“the proposed partners”);
- (b) the proposed partners propose that the proposed partnership should enter into a new contract (“the new contract”) with the Health Board on as similar terms as possible to the contractor’s contract (“the old contract”) and, as a consequence;
- (c) the contractor proposes to terminate the old contract,

the contractor and the proposed partners may give written notice of those matters to the Health Board which states—

- (i) the name and address of the proposed partnership and of the proposed partners;
- (ii) the date on which it is proposed that the partnership should be formed and become the contractor, which must not be less than 28 days after the date of service of the notice;

(iii) that when the proposed partnership is formed, the requirements of regulations 5(2) and 6(1)(b) will be satisfied; and

(iv) whether or not the proposed partnership is to be a limited partnership and, if so, who will be a limited and who a general partner,

and the notice must be signed by the contractor and by the proposed partners as proposed partners of the proposed partnership.

(2) If the Health Board is satisfied as to the accuracy of the matters specified in the notice under sub-paragraph (1), it must give written notice to the contractor and the proposed partners that it is prepared—

(a) to terminate the old contract with effect from a specified date; and

(b) to enter into a new contract with the proposed partnership with effect from that date which is to be on the same terms as the old contract, with only such changes as are necessary to reflect the fact that the contractor will be a partnership and not an individual medical practitioner, and that the contract will have been entered into after 22nd December 2010,

and the notice must specify the changes which the Health Board considers are necessary in terms of sub-paragraph 2(b).

(3) Where it is reasonably practicable, the date specified by the Health Board in the notice under sub-paragraph (2) is to be the date proposed in the notice served under sub-paragraph (1) or, where that date is not reasonably practicable, the date specified is to be a date after that proposed date that is as close to it as is reasonably practicable.

(4) If the contractor and the proposed partners agree with what is contained in the notice by the Health Board under sub-paragraph (2)—

(a) the Health Board and the contractor are to agree in writing to terminate the old contract with effect from the date specified in that notice; and

(b) the Health Board and the partnership are to enter into a new contract with each other with effect from that date on the terms mentioned in sub-paragraph (2)(b) but subject to the changes specified in that notice.

(5) This paragraph is without prejudice to any other way in which the old contract may be terminated and a new contract entered into with the partnership.

Where the contractor changes from being a partnership to an individual

113.—(1) If a contractor is a partnership which it is proposed will be terminated or dissolved and as a consequence the contractor's contract ("the old contract") will be terminated and one of the partners wishes to enter into a new contract ("the new contract") with the Health Board as an individual medical practitioner ("the proposed contractor") on as similar terms as possible as the old contract, the partnership and the proposed contractor may give written notice thereof to the Health Board which must state—

(a) the name and address of the partnership, of the partners in that partnership and of the proposed contractor;

(b) the date on which it is proposed that the proposed contractor should become the contractor, which must not be less than 28 days after the date of service of the notice; and

(c) that the proposed contractor meets the requirements of regulations 5(1) and 6(1)(a),

and the notice must be signed by the partnership, the partners in that partnership and the proposed contractor.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018, PART 8. (See end of Document for details)

(2) If the Health Board is satisfied as to the accuracy of the matters specified in the notice under sub-paragraph (1), it must give written notice to the partnership and the proposed contractor that it is prepared—

- (a) to terminate the old contract with effect from a specified date; and
- (b) to enter into a new contract with the proposed contractor with effect from that date which is to be on the same terms as the old contract, with only such changes as are necessary to reflect the fact that the contractor will be an individual medical practitioner and not a partnership, and that the contract will have been entered into after 22nd December 2010,

and the notice must specify the changes which the Health Board consider are necessary in terms of sub-paragraph (2)(b).

(3) Where it is reasonably practicable, the date specified by the Health Board in the notice under sub-paragraph (2) is to be the date proposed in the notice served under sub-paragraph (1) or, where that date is not reasonably practicable, the date specified is to be a date after that proposed date that is as close to it as is reasonably practicable.

(4) If the partnership and the proposed contractor agree with what is contained in the notice by the Health Board under sub-paragraph (2)—

- (a) the Health Board and the partnership are to agree in writing to terminate the old contract with effect from the date specified in that notice; and
- (b) the Health Board and the proposed contractor are to enter into a new contract with each other with effect from that date on the terms mentioned in sub-paragraph (2)(b) but subject to the changes specified in that notice.

(5) This paragraph is without prejudice to any other way in which the old contract may be terminated and a new contract entered into with the proposed contractor.

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018, PART 8.