

## SCHEDULE 2

Regulation 27

### Other required terms

## PART 1

### Provision of services

#### Services to registered patients

1. Where the agreement provides for a contractor to provide essential services, the contractor must—

- (a) provide those services, and such other services that the contractor is required to provide to its patients, at such times, within core hours, as are appropriate to meet the reasonable needs of those patients; and
- (b) have in place arrangements for the contractor's patients to access such services throughout the core hours in case of emergency.

#### Premises

2.—(1) The contractor must ensure that the premises used for the provision of services under the agreement are—

- (a) suitable for the delivery of those services; and
- (b) sufficient to meet the reasonable needs of the contractor's patients.

(2) The requirement in sub-paragraph (1) is subject to any plan included in the agreement which sets out steps to be taken by the contractor to bring the premises up to the required standard.

#### Telephone services

3.—(1) The contractor must not be a party to a contract or other arrangement under which the number for telephone services to be used by—

- (a) patients to contact the contractor's practice for a purpose related to the agreement; or
- (b) any other person to contact the contractor's practice in relation to services provided at the contractor's practice as part of the health service,

starts with the digits 087, 090 or 091 or consists of a personal number, unless the service is provided free of charge to the caller.

(2) In this paragraph, "personal number" means a telephone number which starts with 070 followed by a further eight digits.

#### Cost of relevant calls

4.—(1) The contractor must not enter into, renew or extend a contract or other arrangement for telephone services unless it is satisfied that, having regard to the arrangement as a whole, persons will not have to pay more to make relevant calls to the contractor's practice than they would to make equivalent calls to a geographical number.

(2) Where it has not been possible for the contractor to take reasonable steps to ensure that persons will not pay more to make relevant calls to the contractor's practice than they would to make equivalent calls to a geographical number, the contractor must consider introducing a system under which, if a caller asks to be called back, the contractor will do so at the contractor's own expense.

(3) In this paragraph—

“geographical number” means a number which has a geographical area code as its prefix; and

“relevant calls” means—

- (a) calls made by patients to the contractor’s practice for any reason related to services provided at the contractor’s practice under the agreement; and
- (b) calls made by persons, other than patients, to the contractor’s practice in relation to services provided at the contractor’s practice as part of the health service.

#### **Attendance at practice premises**

5.—(1) The contractor must take steps to ensure that a patient who—

- (a) has not previously made an appointment; and
- (b) attends the contractor’s practice premises during the normal hours for essential services,

is provided with such services by an appropriate health care professional during that surgery period.

(2) Sub-paragraph (1) does not apply where—

- (a) it is more appropriate for the patient to be referred elsewhere for the provision of services under the Act; or
- (b) the patient is offered an appointment to attend the contractor’s practice premises again at a time which is appropriate and reasonable having regard to all the circumstances and the patient’s health would not thereby be jeopardised.

#### **Attendance outside practice premises**

6.—(1) Where the medical condition of a patient is such that, in the reasonable opinion of the contractor—

- (a) attendance on the patient is required; and
- (b) it would be inappropriate for the patient to attend the contractor’s practice premises,

the contractor must provide services to the patient at whichever of the places described in sub-paragraph (2) is, in the contractor’s judgement, the most appropriate.

(2) The places described in this sub-paragraph are—

- (a) the place recorded in the patient’s medical records as being the patient’s last home address;
- (b) such other place as the contractor has informed the patient and the Board is the place where the contractor has agreed to visit and treat the patient; or
- (c) another place in the contractor’s practice area.

(3) Nothing in this paragraph prevents the contractor from—

- (a) arranging for the referral of a patient without first seeing the patient, in any case where the patient’s medical condition makes that course of action appropriate; or
- (b) visiting the patient in circumstances where this paragraph does not place the contractor under an obligation to do so.

#### **Clinical reports**

7.—(1) Where the contractor provides clinical services, other than under a private arrangement, to a patient who is not on its list of patients, the contractor must, as soon as reasonably practicable, provide to the Board a clinical report relating to that consultation and any treatment provided to the patient.

- (2) The Board must send a report received in accordance with sub-paragraph (1) to—
- (a) to the person with whom the patient is registered for the provision of essential services (or their equivalent); or
  - (b) if the person referred to in paragraph (a) is not known to the Board, or to the Local Health Board, Health Board or Health and Social Services Board, in whose area the patient is resident.

(3) This paragraph does not apply in relation to the provision of out of hours services by a contractor which is, by virtue of regulation 22, required to comply with the quality standards or requirements referred to in that regulation.

### **Storage of vaccines**

8. The contractor must ensure that all—
- (a) vaccines are stored in accordance with the manufacturer's instructions; and
  - (b) refrigerators in which vaccines are stored have a maximum/minimum thermometer and that temperature readings are taken on all working days.

### **Infection control**

9. The contractor must ensure that it has appropriate arrangements in place for infection control and decontamination.

### **Duty of co-operation**

10.—(1) Where a contractor does not provide to its registered patients or to persons whom it has accepted as temporary residents—

- (a) a particular service; or
- (b) out of hours services, either at all or in respect of some periods or some services,

the contractor must comply with the requirements specified in sub-paragraph (2).

- (2) The requirements specified in this sub-paragraph are that the contractor must—
- (a) co-operate in so far as is reasonable with any person responsible for the provision of that service or those services;
  - (b) comply in core hours with any reasonable request for information from such a person or from the Board relating to the provision of that service or those services; and
  - (c) in the case of out of hours services—
    - (i) take reasonable steps to ensure that any patient who contacts the contractor's practice premises during the out of hours period is provided with information about how to obtain services during that period;
    - (ii) ensure that the clinical details of all out of hours consultations received from the out of hours provider are reviewed by a clinician within the contractor's practice on the same working day as those details are received by the practice or, exceptionally, on the next working day;
    - (iii) ensure that any information requests received from the out of hours provider in respect of any out of hours consultations are responded to by a clinician within the contractor's practice on the same day as those requests are received by the practice, or on the next working day;

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- (iv) take all reasonable steps to comply with any systems which the out of hours provider has in place to ensure the rapid, secure and effective transmission of patient data in respect of out of hours consultations; and
- (v) agree with the out of hours provider a system for the rapid, secure and effective transmission of information about registered patients who, due to chronic disease or terminal illness, are predicted as more likely to present themselves for treatment during the out of hours period.

(3) Nothing in this paragraph requires a contractor whose agreement does not include the provision of out of hours services to make itself available during the out of hours period.

#### **Cessation of service provision: information requests**

11. Where a contractor is to cease to be required to provide to its patients—

- (a) a particular service; or
- (b) out of hours services, either at all or in respect of some periods or some services,

the contractor must comply with any reasonable request for information relating to the provision of that service or those services made by the Board or by any person with whom the Board intends to enter into an agreement for the provision of such services.

## **PART 2**

### **Patients: general**

#### **General provision**

12. This Part only applies to a contractor which provides essential services.

#### **List of patients**

13. The Board must prepare and keep up to date a list of the patients—

- (a) who have been accepted by the contractor for inclusion in its list of patients under paragraph 17 and who have not subsequently been removed from that list under paragraphs 22 to 30; and
- (b) who have been assigned by the Board to the contractor's list of patients—
  - (i) under paragraph 38(1)(a), or
  - (ii) under paragraph 38(1)(b) (by virtue of a determination of the assessment panel under paragraph 40(8) which has not subsequently been overturned by a determination of the Secretary of State under paragraph 41 or by a court).

#### **Newly registered patients – alcohol dependency screening**

14.—(1) Where a patient has been—

- (a) accepted onto the contractor's list of patients; or
- (b) assigned to that list by the Board,

the contractor must take action to identify any such patient over the age of 16 who is drinking alcohol at increasing or higher risk levels with a view to seeking to reduce the alcohol related health risks to that patient.

(2) The contractor must comply with the requirement in sub-paragraph (1) by screening the patient using either one of the two shortened versions of the World Health Organisation Alcohol Use Disorders Identification (“AUDIT”) questionnaires<sup>(1)</sup> which are known as—

- (a) FAST (which has four questions); or
- (b) AUDIT-C (which has three questions).

(3) Where, under sub-paragraph (2), the contractor identifies a patient as positive using either of the shortened versions of the AUDIT questionnaire specified in sub-paragraph (2), the remaining questions of the full ten question AUDIT questionnaire must be used by the contractor to determine increasing risk, higher risk or likely dependent drinking.

(4) Where a patient is identified as drinking at increasing or higher risk levels, the contractor must—

- (a) offer the patient appropriate advice and lifestyle counselling;
- (b) respond to any other need identified in the patient which relates to the patient’s levels of drinking, including by providing any additional support or treatment required for people with mental health issues; and
- (c) in any case where the patient is identified as a dependent drinker, offer the patient a referral to such specialist services as are considered clinically appropriate to meet the needs of the patient.

(5) Where a patient is identified as drinking at increasing or higher risk levels or as a dependent drinker, the contractor must ensure that the patient is—

- (a) assessed for anxiety and depression;
- (b) offered screening for anxiety or depression; and
- (c) where anxiety or depression is diagnosed, provided with any treatment and support which may be required under the agreement, including a referral for specialist mental health treatment.

(6) The contractor must make relevant entries, including the results of the completed questionnaire referred to in sub-paragraph (2), in the patient’s record that the contractor is required to keep under regulation 60.

### **Accountable GP**

**15.—**(1) A contractor must ensure that for each of its registered patients (including those patients under the age of 16) there is assigned an accountable general medical practitioner (“accountable GP”).

(2) The accountable GP must take lead responsibility for ensuring that any services which the contractor is required to provide under the agreement are, to the extent that their provision is considered necessary to meet the needs of the patient, coordinated and delivered to the patient.

(3) The contractor must—

- (a) inform the patient, as soon as is reasonably practicable and in such manner as is considered appropriate by the contractor’s practice, of the assignment to the patient of an accountable GP and must state the name and contact details of the accountable GP and the role and responsibilities of the accountable GP in respect of the patient;

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(1) The World Health Organisation Alcohol Use Disorders Identification Test (AUDIT) questionnaire can be accessed at [http://www.who.int/substance\\_abuse/activities/sbi/en/](http://www.who.int/substance_abuse/activities/sbi/en/). Further information about the Test, and the questionnaires themselves, is available in hard copy form from NHS England, PO Box 16738, Redditch, BP97 7PT.

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- (b) inform the patient as soon as any circumstances arise in which the accountable GP is not able, for any significant period, to carry out the duties of an accountable GP in respect of the patient; and
  - (c) where the contractor's practice considers it to be necessary, assign a replacement accountable GP to the patient and inform the patient accordingly.
- (4) The contractor must comply with the requirement in sub-paragraph (3)(a) in the case of any person who is accepted by the contractor as a registered patient on or after the date on which these Regulations come into force, within 21 days from the date on which that person was so accepted.
- (5) The requirement in this paragraph does not apply to—
- (a) any patient of the contractor who is aged 75 or over, or who attains the age of 75, on or after the date on which these Regulations come into force; or
  - (b) any other patient of the contractor if the contractor has been informed that the patient does not wish to have an accountable GP.
- (6) Where, under sub-paragraph (3)(a), the contractor informs a patient of the assignment to them of an accountable GP, the patient may express a preference as to which general medical practitioner within the contractor's practice the patient would like to have as the patient's accountable GP and, where such a preference has been expressed, the contractor must make reasonable efforts to accommodate the request.
- (7) Where, under sub-paragraph (5)(b), the contractor has been informed by or in relation to a patient that the patient does not wish to have an accountable GP, the contractor must record that fact in the patient's record that the contractor is required to keep under regulation 60.
- (8) The contractor must, by no later than 31st March 2016, include information about the requirement to assign an accountable GP to each of its new and existing registered patients—
- (a) on the contractor's practice website (if it has one); and
  - (b) in the contractor's practice leaflet.
- (9) Where the contractor does not have a practice website, the contractor must include the information referred to in sub-paragraph (8) on its profile page on NHS Choices<sup>(2)</sup>.

#### **Patients aged 75 years and over: accountable GP**

**16.—**(1) A contractor must ensure that for each of its registered patients aged 75 and over there is assigned an accountable general medical practitioner ("accountable GP").

- (2) The accountable GP must—
  - (a) take lead responsibility for ensuring that any services which the contractor is required to provide under the agreement are, to the extent that their provision is considered necessary to meet the needs of the patient, delivered to the patient;
  - (b) take all reasonable steps to recognise and appropriately respond to the physical and psychological needs of the patient in a timely manner;
  - (c) ensure that the patient receives a health check if, and within a reasonable period after, one has been requested; and
  - (d) work co-operatively with other health and social care professionals who may become involved in the care and treatment of the patient to ensure the delivery of a multi-disciplinary care package designed to meet the needs of the patient.
- (3) The contractor must—

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(2) NHS Choices is the website available at <http://www.nhs.uk> which provides information from the National Health Service on conditions, treatments and local services including GP services.

- (a) inform the patient, in such manner as is considered appropriate by the contractor's practice, of the assignment to the patient of an accountable GP;
  - (b) provide the patient with the name and contact details of the accountable GP and information regarding the role and responsibilities of the accountable GP in respect of the patient;
  - (c) inform the patient as soon as any circumstances arise in which the accountable GP is not able, for any significant period, to carry out the duties of an accountable GP in respect of the patient; and
  - (d) where the contractor's practice considers it to be necessary, assign a replacement accountable GP to the patient and inform the patient accordingly.
- (4) The contractor must comply with the requirement in sub-paragraph (3)(a)—
- (a) in the case of any person aged 75 or over who is accepted by the contractor as a registered patient on or after the date on which these Regulations come into force, before the end of the period of 21 days beginning with the date on which that person is so accepted; or
  - (b) in the case of a person who is included in the contractor's list of patients immediately before the date on which these Regulations come into force and who attains the age of 75 or over on or after that date, before the end of the period of 21 days after the date on which that person attained that age.
- (5) In this paragraph, "health check" means a consultation undertaken by the contractor in the course of which the contractor must make such inquiries and undertake such examinations of the patient as appear to it to be appropriate in all the circumstances.

### **Application for inclusion in a list of patients**

**17.—**(1) The contractor may, if the contractor's list of patients is open, accept an application for inclusion in that list made by or on behalf of any person ("the applicant") whether or not that person is resident in the contractor's practice area or is included, at the time of the application, in the list of patients of another contractor or provider of primary medical services.

(2) If the contractor's list of patients is closed, the contractor may only accept an application for inclusion in that list from a person who is an immediate family member of a registered patient whether or not that person is resident in the contractor's practice area or is included, at the time of the application, in the list of patients of another contractor or provider of primary medical services.

(3) Subject to sub-paragraph (4), an application for inclusion in a contractor's list of patients must be made by delivering to the contractor's practice premises a medical card or an application signed (in either case) by the applicant or a person authorised by the applicant to sign on the applicant's behalf.

(4) An application may be made—

- (a) where the patient is a child, on behalf of the patient by—
  - (i) either parent, or in the absence of both parents, the guardian or other adult who has care of the child,
  - (ii) a person duly authorised by a local authority to whose care the child has been committed under the Children Act 1989(3), or
  - (iii) a person duly authorised by a voluntary organisation by which the child is being accommodated under the provisions of the Children Act 1989; or
- (b) where the patient is an adult who lacks the capacity to make such an application, or to authorise such an application to be made on their behalf, by—

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(3) 1989 c.41.

- (i) a relative of that person,
- (ii) the primary carer of that person,
- (iii) a donee of a lasting power of attorney granted by that person, or
- (iv) a deputy appointed for that person by the court under the Mental Capacity Act 2005<sup>(4)</sup>.

(5) Where a contractor accepts an application for inclusion in the contractor's list of patients, the contractor must give notice in writing to the Board of that acceptance as soon as possible.

(6) The Board must, on receipt of a notice given under sub-paragraph (5)—

- (a) include the applicant in the contractor's list of patients from the date on which the notice is received; and
- (b) give notice in writing to the applicant (or, in the case of a child or an adult who lacks capacity, to the person making the application on the applicant's behalf) of that acceptance.

### **Inclusion in list of patients: armed forces personnel**

**18.**—(1) The contractor may, if the contractor's list of patients is open, include a person to whom sub-paragraph (2) applies in its list of patients for a period of up to two years and paragraph 28(1) (b) does not apply in respect of any person included in the contractor's by virtue of this paragraph.

(2) This sub-paragraph applies to a person who is—

- (a) a serving member of the armed forces of the Crown who has received written authorisation from Defence Medical Services<sup>(5)</sup> to receive primary medical services from the contractor's practice; and
- (b) living or working within the contractor's practice area during the period in respect of which that written authorisation is given.

(3) Where the contractor has accepted a person to whom sub-paragraph (2) applies onto its list of patients, the contractor must—

- (a) obtain a copy of the patient's medical record or a summary of that record from Defence Medical Services; and
- (b) provide regular updates to Defence Medical Services at such intervals as are agreed with Defence Medical Services about any care and treatment which the contractor has provided to the patient.

(4) At the end of the period of two years, or on such earlier date as the contractor's responsibility for the patient comes to an end, the contractor must—

- (a) notify Defence Medical Services in writing that its responsibility for that person has come to an end; and
- (b) update the patient's medical record, or summary of that record, and return it to Defence Medical Services.

### **Temporary residents**

**19.**—(1) The contractor may, if the contractor's list of patients is open, accept a person as a temporary resident provided the contractor is satisfied that the person is—

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<sup>(4)</sup> 2005 c.9.

<sup>(5)</sup> Defence Medical Services is an umbrella organisation within the Ministry of Defence which is responsible for the provision of medical, dental and nursing services in the United Kingdom to members of the armed forces of the Crown.



(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 that 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 is to be regarded as temporarily resident in a place if, when that person arrives in that place, they intend to stay there for more than 24 hours but not for more than three months.

(3) Where a contractor wants to terminate its responsibility for a person accepted by it as a temporary resident before the end of —

(a) the period of three months; or

(b) such shorter period for which the contractor agreed to accept that person as a temporary resident,

the contractor must give notice of that fact to the person either orally or in writing and the contractor's responsibility for that person is to cease seven days after the date on which such notice is given.

(4) Where the contractor's responsibility for a person as a temporary resident comes to an end, the contractor must give notice in writing to the Board of its acceptance of that person as a temporary resident—

(a) at the end of the period of three months beginning with the date on which the contractor accepted that person as a temporary resident; or

(b) if the contractor's responsibility for that person as a temporary resident came to an end earlier than the end of the three month period referred to in paragraph (a), at the end of that period.

### **Refusal of applications for inclusion in list of patients or for acceptance as a temporary resident**

**20.**—(1) The contractor may only refuse an application made under paragraph 17 or 19 if the contractor has reasonable grounds for doing so which do not relate to the applicant's age, appearance, disability or medical condition, gender or gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sexual orientation or social class.

(2) The reasonable grounds referred to in sub-paragraph (1) may, in the case of an application made under paragraph 17, include the ground that the applicant—

(a) does not live in the contractor's practice area; or

(b) lives in the outer boundary area (the area referred to in regulation 13(2)).

(3) Where a contractor refuses an application made under paragraph 17 or 19, the contractor must give notice in writing of that refusal and of the reason for it to the applicant (or, in the case of a child or an adult who lacks capacity, the person making the application on the applicant's behalf) before the end of the period of the period of 14 days beginning with the date of the decision to refuse.

(4) The contractor must—

(a) keep a written record of—

(i) the refusal of any application made under paragraph 17,

(ii) the reasons for that refusal; and

(b) make such records available to the Board on request.

**Patient preference of a practitioner**

**21.—**(1) Where the contractor has accepted an application made under paragraph 17 of 19, the contractor must—

- (a) give notice in writing to the person (or, in the case of a child or an adult who lacks capacity, to the person who made the application on the applicant's behalf) of that person's right to express a preference to receive services from a particular performer or class of performer either generally or in relation to any particular condition; and
- (b) record in writing any such preference expressed by or on behalf of that person.

(2) The contractor must endeavour to comply with any reasonable preference expressed under sub-paragraph (1) but need not do so if the preferred performer—

- (a) has reasonable grounds for refusing to provide services to the person who expressed the preference; or
- (b) does not routinely perform the service in question within the contractor's practice.

**Removal from the list at the request of the patient**

**22.—**(1) The contractor must give notice in writing to the Board of a request made by any person who is a registered patient to be removed from the contractor's list of patients.

(2) Where the Board—

- (a) receives a notice given by the contractor under sub-paragraph (1); or
- (b) receives directly a request from a person to be removed from the contractor's list of patients,

the Board must remove that person from the contractor's list of patients.

(3) The removal of a person from a contractor's list of patients in accordance with this paragraph takes effect on whichever is the earlier of—

- (a) the date on which the Board is given notice of the registration of that person with another provider of essential services (or their equivalent); or
- (b) 14 days after the date on which the notice given under sub-paragraph (1) or the request made under sub-paragraph (2) is received by the Board

(4) The Board must, as soon as practicable, give notice in writing to—

- (a) the person who requested the removal; and
- (b) the contractor,

that the person's name is to be or has been removed from the contractor's list of patients on the date referred to in sub-paragraph (3).

(5) In this paragraph, and in paragraphs 23(1)(b) and (9), 24(6) and (7), 25(1), 28(2) and 29(3), a reference to a request received from, or advice, information or notice required to be given to, a person includes a request received from or advice, information or notice required to be given to—

- (a) in the case of a child, on behalf of the patient—
  - (i) either parent, or in the absence of both parents, the guardian or other adult who has care of the child,
  - (ii) a person duly authorised by a local authority to whose care the child has been committed under the Children Act 1989<sup>(6)</sup>, or
  - (iii) a person duly authorised by a voluntary organisation by whom the child is being accommodated under the Children Act 1989; or

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(6) 1989 c.41.

- (b) in the case of an adult patient who lacks capacity to make the relevant request or receive the relevant advice, information or notice—
  - (i) a relative of that person,
  - (ii) the primary carer of that person,
  - (iii) a donee of a lasting power of attorney granted by that person, or
  - (iv) a deputy appointed for that person by the court under the provisions of the Mental Capacity Act 2005(7).

### **Removal from the list at the request of the contractor**

**23.**—(1) Subject to paragraph 24, where a contractor has reasonable grounds for wanting a person to be removed from its list of patients which do not relate to the person's age, appearance, disability or medical condition, gender or gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sexual orientation or social class, the contractor must—

- (a) give notice in writing to the Board that it wants to have that person removed; and
  - (b) subject to paragraph (2), give notice in writing to that person of its specific reasons for requesting the removal of that person.
- (2) Where, in the reasonable opinion of the contractor—
- (a) the circumstances of the person's 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 person and the contractor,

the reason given under sub-paragraph (1) may consist of a statement that there has been such a breakdown.

(3) Except in the circumstances specified in sub-paragraph (4), a contractor may only request the removal of a person from its list of patients under sub-paragraph (1) if, before the end of the period of 12 months beginning with the date of the contractor's request to the Board, the contractor has—

- (a) warned the person of the risk of being removed from that list; and
  - (b) explained to that person the reasons for this.
- (4) The circumstances specified in this sub-paragraph are that—
- (a) the reason for the removal relates to a change of address;
  - (b) the contractor has reasonable grounds for believing that the giving of such a warning would—
    - (i) be harmful to the person's physical or mental health, or
    - (ii) put at risk the safety of any party to the agreement who is an individual, any member of the contractor's staff or any other person; or
  - (c) the contractor considers that it is not otherwise reasonable or practical for a warning to be given.
- (5) The contractor must keep a written record of—
- (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 person concerned; or
  - (b) the reason why no such warning was given.

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(6) The contractor must keep a written record of the removal of any person from its list of patients under this paragraph which must include—

- (a) the reason given for the removal;
- (b) the circumstances of the removal; and
- (c) in a case where sub-paragraph (2) applies, grounds for a more specific reason not being appropriate,

and the contractor must make this record available to the Board on request.

(7) The removal of a person from the contractor's list of patients in accordance with this paragraph must, subject to sub-paragraph (8), take effect from whichever is the earlier of—

- (a) the date on which the Board is given notice of the registration of that person with another provider of essential services (or their equivalent); or
- (b) the eighth day after the Board receives the notice referred to in sub-paragraph (1)(a).

(8) Where, on the date on which the removal of a person would take effect under sub-paragraph (7), the contractor is treating that person at intervals of less than seven days, the contractor must give notice in writing to the Board of that fact and the removal is to take effect on whichever is the earlier of—

- (a) the eighth day after the Board is given notice by the contractor that the person no longer needs such treatment; or
- (b) the date on which the Board is given notice of the registration of the person with another provider of essential services (or their equivalent).

(9) The Board must give notice in writing to—

- (a) the person in respect of whom the removal is requested; and
- (b) the contractor,

that the person's name has been or is to be removed from the contractor's list of patients on the date referred to in sub-paragraph (7) or (8).

### **Removal from the list of patients who are violent**

**24.—**(1) Where a contractor wants a person to be removed from its list of patients with immediate effect on the grounds that—

- (a) the person has committed an act of violence against any of the persons specified in sub-paragraph (2) or has behaved in such a way that any of those persons has feared for their safety; and
- (b) the contractor has reported the incident to the police,

the contractor must give notice to the Board in accordance with sub-paragraph (3).

(2) The persons specified in this sub-paragraph are—

- (a) any party to the agreement who is an individual;
- (b) a member of the contractor's staff;
- (c) a person engaged by the contractor to perform or assist in the performance of services under the agreement;
- (d) any other person present—
  - (i) on the contractor's practice premises, or
  - (ii) in the place where services were provided to the patient under the agreement.

(3) Notice under sub-paragraph (1) may be given by any means but, if not in writing, must subsequently be confirmed in writing before the end of a period of seven days beginning with the date on which the notice was given.

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

(5) A removal requested in accordance with sub-paragraph (1) takes effect at the time at which the contractor—

(a) makes a telephone call to the Board; or

(b) sends or delivers the notice to the Board.

(6) Where, under this paragraph, the contractor has given notice to the Board that it wants to have a person removed from its list of patients, the contractor must inform that person of that fact unless—

(a) it is not reasonably practicable for the contractor to do so; or

(b) the contractor has reasonable grounds for believing that to do so would—

(i) be harmful to the person's physical or mental health, or

(ii) put the safety of a person specified in sub-paragraph (2) at risk.

(7) Where a person is removed from the contractor's list of patients in accordance with this paragraph, the Board must give that person notice in writing of that removal.

(8) The contractor must record the removal of any person from its list of patients under this paragraph and the circumstances leading to that removal in the medical records of the person removed.

### **Removal from the list of patients registered elsewhere**

**25.—**(1) The Board must remove a person from the contractor's list of patients if—

(a) the person has subsequently been registered with another provider of essential services (or their equivalent) in England; or

(b) the Board has been given notice by a Local Health Board, a Health Board or a Health and Social Services Board that the person has subsequently been registered with a provider of essential services (or their equivalent) outside of England.

(2) A removal in accordance with sub-paragraph (1) takes effect—

(a) on the date on which the Board is given notice of the person's registration with the new provider; or

(b) with the consent of the Board, on such other date as has been agreed between the contractor and the new provider.

(3) The Board must give notice in writing to the contractor of any person removed from its list of patients under sub-paragraph (1).

### **Removal from the list of patients who have moved**

**26.—**(1) Subject to sub-paragraph (2), where the Board is satisfied that a person on the contractor's list of patients has moved and no longer resides in the contractor's practice area, the Board must—

(a) inform both the person and the contractor that the contractor is no longer obliged to visit and treat that person;

(b) advise the person in writing to either obtain the contractor's agreement to that person's continued inclusion in the contractor's list of patients or to apply for registration with another provider of essential services (or their equivalent); and

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- (c) inform the person that if, after the end of the period of 30 days beginning with the date on which the advice mentioned in paragraph (b) was given, that person has not acted in accordance with that advice and informed the Board accordingly, that person will be removed from the contractor's list of patients.

(2) If, at the end of period of 30 days mentioned in sub-paragraph (1)(c), the Board has not been informed by the person of the action taken, the Board must remove that person from the contractor's list of patients and inform that person and the contractor of that removal.

#### **Removal from list of patients whose address is unknown**

**27.** Where the address of a person who is on the contractor's list of patients is no longer known to the Board, the Board must—

- (a) give notice in writing to the contractor that it intends, at the end of the period of six months beginning with the date on which notice was given, to remove the person from the contractor's list of patients; and
- (b) at the end of the period referred to in sub-paragraph (a), remove the person from the contractor's list of patients unless, before the end of that period, the contractor satisfies the Board that the person is a patient to whom the contractor is still responsible for providing essential services.

#### **Removal from the list of patients absent from the United Kingdom etc.**

**28.—**(1) The Board must remove a person from a contractor's list of patients where it is given notice to the effect that the person—

- (a) intends to be away from the United Kingdom for a period of at least three months;
- (b) is in the armed forces of the Crown (except in the case of a patient to whom paragraph 18 applies);
- (c) is serving a term of imprisonment of more than two years or more than one term of imprisonment totalling, in the aggregate, more than two years;
- (d) has been absent from the United Kingdom for a period of more than three months; or
- (e) has died.

(2) The removal of a person from a contractor's list of patients under this paragraph takes effect from—

- (a) where sub-paragraph (1)(a) to (c) applies—
  - (i) the date of the person's departure, enlistment or imprisonment, or
  - (ii) the date on which the Board is given notice of the person's departure, enlistment or imprisonment,
 whichever is the later; or
- (b) where sub-paragraph (1)(d) and (e) applies, the date on which the Board is given notice of the person's absence or death.

(3) The Board must give notice in writing to the contractor of the removal of a person from the contractor's list of patients under this paragraph.

#### **Removal from the list of patients accepted elsewhere as temporary residents**

**29.—**(1) The Board must remove a person from a contractor's list of patients where the person has been accepted as a temporary resident by another contractor or other provider of essential services (or their equivalent) in any case where the Board is satisfied, after due inquiry, that—

- (a) the person's stay in the place of temporary residence has exceeded three months; and
  - (b) the person has not returned to their normal place of residence or to any other place within the contractor's practice area.
- (2) The Board must give notice in writing of any removal of a person from the contractor's list of patients under this paragraph—
- (a) to the contractor; and
  - (b) where practicable, to that person.
- (3) A notice given to a person under sub-paragraph (2)(b) must inform the person to whom it is given of—
- (a) that person's entitlement to make arrangements for the provision to that person of essential services (or their equivalent), including by the contractor by which that person has been treated as a temporary resident; and
  - (b) the name, postal and electronic mail address and telephone number of the Board.

#### **Removal from a list of pupils etc. of a school**

**30.**—(1) Where the contractor provides essential services under the agreement to persons on the grounds that they are pupils at, or staff or residents of, a school, the Board must remove any such person from a contractor's list of patients who does not appear on the particulars provided by that school of persons who are pupils at, or staff or residents of, that school.

(2) Where the Board has requested a school to provide the particulars referred to in sub-paragraph (1) and has not received those particulars, the Board must consult the contractor as to whether it should remove from the contractor's list of patients any persons appearing in that list as pupils at, or staff or residents of, that school.

(3) The Board must give notice in writing to the contractor of the removal of any person from the contractor's list of patients under this paragraph.

#### **Termination of responsibility for patients not registered with the contractor**

**31.**—(1) Where the contractor has—

- (a) received an application for the provision of medical services, other than essential services—
  - (i) from a person who is not included in the contractor's list of patients,
  - (ii) from a person that the contractor has not accepted as a temporary resident, or
  - (iii) made on behalf of a person referred to in paragraph (i) or (ii) by a person specified in paragraph 17(4); and
- (b) accepted the person making the application or on whose behalf the application is made as a patient for the provision of the service in question,

the contractor's responsibility for that person terminates in the circumstances described in sub-paragraph (2).

(2) The circumstances described in this sub-paragraph are that—

- (a) the contractor is informed that the person no longer wishes the contractor to be responsible for the provision of the service in question;
- (b) in a case where the contractor has reasonable grounds for terminating its responsibility to provide the service to the person which do not relate to the person's age, appearance, disability or medical condition, gender or gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sexual orientation or social

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- class, the contractor informs the person that it no longer wants to be responsible for providing that person with the service in question; or
- (c) it comes to the contractor's attention that the person—
- (i) no longer resides in the area for which the contractor has agreed to provide the service in question, or
  - (ii) is no longer included in the list of patients of another contractor to whose registered patients the contractor has agreed to provide that service.
- (3) Where a contractor wants to terminate its responsibility for a person under sub-paragraph (2)(b), the contractor must give notice of the termination to that person and the reason for it.
- (4) The contractor must keep a written record of any terminations under this paragraph and of the reasons for those terminations and must make this record available to the Board on request.
- (5) A termination under sub-paragraph (2)(b) takes effect—
- (a) where the grounds for termination are those specified in paragraph 24(1), from the date on which the notice is given; or
  - (b) in any other case, 14 days after the date on which the notice is given.

## PART 3

### List of patients: closure etc.

#### Application for closure of list of patients

- 32.**—(1) Where a contractor wants to close its list of patients, the contractor must send a written application to that effect (“the application”) to the Board.
- (2) The application must include the following information—
- (a) the options which the contractor has considered, rejected or implemented in an attempt to alleviate the difficulties which the contractor has encountered in respect of its open list and, if any of the options were implemented, the level of success in reducing or extinguishing such difficulties;
  - (b) details of any discussions between the contractor and its patients and a summary of those discussions including whether or not, in the opinion of those patients, the list of patients should be closed;
  - (c) details of any discussions between the contractor and the other contractors in the contractor's practice area and a summary of the opinion of the other contractors as to whether or not the list of patients should be closed;
  - (d) the period of time, being a period of not less than three months and not more than 12 months, during which the contractor wants its list of patients to be closed;
  - (e) details of any reasonable support from the Board which the contractor considers would enable its list of patients to remain open or would enable the period of proposed closure to be minimised;
  - (f) any plans which the contractor may have to alleviate the difficulties mentioned in the application during the period of the proposed closure in order for that list to re-open at the end of that period without the existence of those difficulties; and
  - (g) any other information which the contractor considers ought to be drawn to the attention of the Board.



(3) The Board must acknowledge receipt of the application before the end of the period of seven days beginning with the date on which the application was received by the Board.

(4) The Board must consider the application and may request such other information from the contractor as the Board requires in order to enable it to decide the application.

(5) The Board must enter into discussions with the contractor concerning—

- (a) the support which the Board may give to the contractor; or
- (b) any changes which the Board or the contractor may make,

which would enable the contractor to keep its list of patients open.

(6) The Board and the contractor must, throughout the period of the discussions referred to in sub-paragraph (5), use reasonable endeavours to achieve the aim of keeping the contractor's list of patients open.

(7) The Board or the contractor may, at any stage during the discussions, invite the Local Medical Committee (if any) for the area in which the contractor provides services under the agreement to attend any meetings arranged between the Board and the contractor to discuss the application.

(8) The Board may consult such persons as it appears to the Board may be affected by the closure of the contractor's list of patients and, if it does so, the Board must provide to the contractor a summary of the views expressed by those persons consulted in respect of the application.

(9) The Board must enable the contractor to consider and comment on all the information before the Board makes a decision in respect of the application.

(10) A contractor may withdraw the application at any time before the Board makes a decision in respect of that application.

(11) The Board must, before the end of the period of 21 days beginning with the date on which the application was received by the Board (or within such longer period as the parties may agree), make a decision to—

- (a) approve the application and determine the date from which the closure of the contractor's list is to take effect and the date on which the list of patients is to reopen; or
- (b) reject the application.

(12) The Board must give notice in writing to the contractor of its decision to—

- (a) approve the application in accordance with paragraph 33; or
- (b) reject the application in accordance with paragraph 34.

(13) A contractor may not submit more than one application to close its list of patients in any period of 12 months beginning with the date on which the Board makes its decision on the application unless—

- (a) paragraph 35 applies; or
- (b) there has been a change in the circumstances of the contractor which affects its ability to deliver services under the agreement.

### **Approval of an application to close a list of patients**

**33.—**(1) Where the Board approves an application to close a contractor's list of patients, the Board must—

- (a) give notice in writing to the contractor of its decision as soon as possible and the notice ("the closure notice") must include the details specified in sub-paragraph (2); and
- (b) at the same time as the Board gives notice to the contractor, send a copy of the closure notice to—

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- (i) the Local Medical Committee (if any) for the area in which the contractor provides services under the agreement, and
  - (ii) any person who the Board consulted in accordance with paragraph 32(8).
- (2) The closure notice must include—
  - (a) the period of time for which the contractor’s list of patients is to be closed which must be—
    - (i) the period specified in the application, or
    - (ii) where the Board and the contractor have agreed in writing to a different period, that different period,
 and, in either case, the period must not be less than three months and not more than 12 months;
  - (b) the date on which the closure of the contractor’s list of patients is to take effect (“the closure date”); and
  - (c) the date on which the list of patients is to re-open.
- (3) Subject to paragraph 36, a contractor must close its list of patients with effect from the closure date and the list of patients must remain closed for the duration of the closure period as specified in the closure notice.

#### **Rejection of an application to close a list of patients**

- 34.**—(1) Where the Board rejects an application to close a contractor’s list of patients, the Board must—
- (a) give notice in writing to the contractor of its decision as soon as possible and the notice must include the Board’s reasons for rejecting the application; and
  - (b) at the same time as the Board gives notice to the contractor, send a copy of the notice to—
    - (i) the Local Medical Committee (if any) for the area in which the contractor provides services under the agreement, and
    - (ii) any person who the Board consulted in accordance with paragraph 32(8).
- (2) Subject to sub-paragraph (3), if the Board decides to reject an application from a contractor to close its list of patients, the contractor may not make a further application to close its list of patients until whichever is the later of—
- (a) the end of the period of three months beginning with the date on which the Board’s decision to reject the application was made; or
  - (b) in a case where a dispute arising from the Board’s decision to reject the application has been referred to the NHS dispute resolution procedure, the end of the period of three months beginning with the date on which a final determination to reject the application was made in accordance with that procedure (or any court proceedings).
- (3) A contractor may make a further application to close its list of patients where there has been a change in the circumstances of the contractor which affects the contractor’s ability to deliver services under the agreement.

#### **Application for an extension of the closure period**

- 35.**—(1) A contractor may apply to extend the closure period by sending a written application (“the application”) to that effect to the Board no later than eight weeks before the date on which the closure period is due to expire.
- (2) The application must include the following information—

- (a) details of the options which the contractor has considered, rejected or implemented in an attempt to alleviate the difficulties which have been encountered during the closure period or which may be encountered when the closure period expires;
  - (b) the period of time during which the contractor wants its list of patients to remain closed (which may not be longer than 12 months);
  - (c) details of any reasonable support from the Board which the contractor considers would enable the contractor's list of patients to re-open or would enable the proposed extension to the closure period to be minimised;
  - (d) details of any plans which the contractor may have to alleviate the difficulties mentioned in the application to extend the closure period in order for the list of patients to re-open at the end of the proposed extension of the closure period without the existence of those difficulties; and
  - (e) any other information which the contractor considers ought to be drawn to the attention of the Board.
- (3) The Board must acknowledge receipt of the application before the end of the period of seven days beginning with the date on which the application was received by the Board.
- (4) The Board must consider the application and may request such other information from the contractor as it requires in order to enable it to decide the application.
- (5) The Board may enter into discussions with the contractor concerning—
- (a) the support which the Board may give to the contractor; or
  - (b) any changes which the Board or the contractor may make,
- which would enable the contractor to re-open its list of patients.
- (6) The Board must determine the application before the end of the period of 14 days beginning with the date on which the Board received that application (or before the end of such longer period as the parties may agree).
- (7) The Board must give notice in writing to the contractor of its decision to approve or reject the application as soon as possible after making that decision.
- (8) Where the Board approves the application, the Board must—
- (a) give notice in writing to the contractor of its decision (“the extended closure notice”) which must include the details specified in sub-paragraph (9); and
  - (b) at the same time as it gives notice in writing to the contractor, send a copy of the extended closure notice to—
    - (i) the Local Medical Committee (if any) for the area in which the contractor provides services under the agreement, and
    - (ii) any person who the Board consulted in accordance with paragraph 32(8).
- (9) The extended closure notice must include—
- (a) the period of time for which the contractor's list of patients is to remain closed which must be—
    - (i) the period specified in the application, or
    - (ii) where the Board and contractor have agreed in writing a different period to the period specified in that application, that agreed period,and, in either case, the period (“the extended closure period”) must not be less than three months and not more than 12 months beginning with the date on which the extended closure period is to take effect ;
  - (b) the date on which the extended closure period is to take effect; and

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- (c) the date on which the contractor's list of patients is to re-open.
- (10) Where the Board rejects an application, the Board must—
  - (a) give notice in writing to the contractor of its decision which must include its reasons for rejecting the application; and
  - (b) at the same time as it gives notice to the contractor, send a copy of the notice to the Local Medical Committee (if any) for the area in which the contractor provides services under the agreement.
- (11) Where an application is made in accordance with sub-paragraphs (1) and (2), the contractor's list of patients is to remain closed pending whichever is the later of—
  - (a) the determination by the Board of that application; or
  - (b) in a case where a dispute arising from the Board's decision to reject the application has been referred to the NHS dispute resolution procedure, the contractor ceasing to pursue that dispute through that procedure (or any court proceedings).

#### **Re-opening of list of patients**

**36.** The contractor may re-open its list of patients before the expiry of the closure period if the Board and the contractor agree that the contractor should do so.

## **PART 4**

### **Assignment of patients to lists**

#### **Application of this Part**

**37.** This Part applies in respect of the assignment by the Board of a person as a new patient to a contractor's list of patients where that person—

- (a) has been refused inclusion in a contractor's list of patients or has not been accepted as a temporary resident by a contractor; and
- (b) would like to be included in the list of patients of a contractor in whose outer boundary area (as specified in accordance with regulation 13(2)) that person resides.

#### **Assignment of patients to list of patients: open and closed lists**

**38.—**(1) Subject to paragraph 39, the Board may—

- (a) assign a new patient to a contractor whose list of patients is open; and
  - (b) only assign a new patient to a contractor whose list of patients is closed in the circumstances specified in sub-paragraph (2).
- (2) The circumstances specified in this sub-paragraph are where—
- (a) the assessment panel has determined under paragraph 40(7) that new patients may be assigned to the contractor in question, and that determination has not been overturned either by a determination of the Secretary of State under paragraph 41(13) or (where applicable) by a court; and
  - (b) the Board has entered into discussions with the contractor in question regarding the assignment of new patients if such discussions are required under paragraph 42.

### **Factors relevant to assignments**

**39.** When assigning a person as a new patient to a contractor's list of patients under paragraph 38(1)(a) or (b), the Board must have regard to—

- (a) the preferences and circumstances of the person;
- (b) the distance between the person's place of residence and the contractor's practice premises;
- (c) any request made by a contractor to remove the person from its list of patients within the preceding period of six months beginning with the date on which the application for assignment is received by the Board;
- (d) whether, during the preceding period of six months beginning with the date on which the application for assignment is received by the Board, the person has been removed from a list of patients on the grounds referred to in—
  - (i) paragraph 23 (relating to circumstances in which a patient may be removed from a contractor's list of patients at the request of the contractor),
  - (ii) paragraph 24 (relating to circumstances in which a patient who is violent may be removed from a contractor's list of patients), or
  - (iii) the equivalent provisions to those paragraphs in relation to arrangements made under section 83(2) of the Act<sup>(8)</sup> (which relates to the provision of primary medical services) or under a contract made in accordance with the General Medical Services Contracts Regulations;
- (e) in a case to which sub-paragraph (d)(ii) applies (or to which the equivalent provisions as mentioned in sub-paragraph (d)(iii) apply), whether the contractor has appropriate facilities to deal with such patients; and
- (f) such other matters as the Board considers relevant.

### **Assignments to closed lists: composition and determinations of the assessment panel**

**40.**—(1) Where the Board wants to assign a new patient to a contractor which has closed its lists of patients, the Board must prepare a proposal to be considered by the assessment panel.

(2) The Board must give notice in writing to—

- (a) contractors, including those contractors who provide primary medical services in accordance with arrangements made under section 83(2) of the Act (primary medical services) or under a contract made in accordance with the General Medical Services Contracts Regulations, which—
  - (i) have closed their lists of patients, and
  - (ii) may, in the opinion of the Board, be affected by the determination of the assessment panel; and
- (b) the Local Medical Committee (if any) for the area in which the contractors referred to in paragraph (a) provide essential services (or their equivalent),

that it has referred the matter to the assessment panel.

(3) The Board must ensure that the assessment panel is appointed to consider and determine the proposal made under sub-paragraph (1), and the composition of the assessment panel must be as described in sub-paragraph (4).

(4) The members of the assessment panel must be—

- (a) a member of the Board who is a director;

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<sup>(8)</sup> Section 83 was amended by paragraph 30 of Schedule 4 to the Health and Social Care Act 2012 (c.7)

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- (b) a patient representative who is a member of the Local Health and Wellbeing Board<sup>(9)</sup> or Local Healthwatch organisation<sup>(10)</sup>;
  - (c) a member of a Local Medical Committee but not a member of the Local Medical Committee (if any) for the area in which the contractors who may be assigned patients as a consequence of the panel's determination provide essential services.
- (5) In reaching its determination, the assessment panel must have regard to all relevant factors including—
- (a) whether the Board has attempted to secure the provision of essential services (or their equivalent) for new patients other than by means of assignment to a contractor with a closed list; and
  - (b) the workload of those contractors likely to be affected by any decision to assign such patients to their list of patients.
- (6) The assessment panel must reach a determination before the end of the period of 28 days beginning with the date on which the panel was appointed.
- (7) The assessment panel must—
- (a) determine whether the Board may assign new patients to a contractor which has a closed list of patients; and
  - (b) if it determines that the Board may make such an assignment, determine, where there is more than one contractor, the contractors to which patients may be assigned.
- (8) The assessment panel may determine that the Board may assign new patients to contractors other than any of the contractors specified in its proposals under sub-paragraph (1), as long as the contractors were given notice in writing under sub-paragraph (2)(a).
- (9) The assessment panel's determination must include its comments on the matters referred to in sub-paragraph (5), and notice in writing of that determination must be given to those contractor's referred to in sub-paragraph (2)(a).

#### **Assignments to closed lists: NHS dispute resolution procedure relating to determinations of the assessment panel**

**41.—**(1) Where an assessment panel makes a determination under paragraph 40(7)(a) that the Board may assign new patients to contractors who have closed their lists of patients, any contractor specified in the determination may refer the matter to the Secretary of State to review that determination.

(2) Where a matter is referred to the Secretary of State under sub-paragraph (1), it must be reviewed in accordance with the procedure specified in the following sub-paragraphs.

(3) Where more than one contractor specified in the determination would like to refer the matter for dispute resolution, those contractors may, if they all agree, refer the matter jointly and, in that case, the Secretary of State must review the matter in relation to those contractors together.

(4) The contractor (or contractors) must send to the Secretary of State, before the end of the period of seven days beginning with the date of the determination of the assessment panel in accordance with paragraph 40(7)(a), a written request for dispute resolution which must include or be accompanied by—

- (a) the names and addresses of the parties to the dispute;

<sup>(9)</sup> See section 194 of the Health and Social Care Act 2012 which requires a local authority to establish a Health and Wellbeing Board for its area.

<sup>(10)</sup> Local Healthwatch organisations are bodies corporate with which a local authority may enter into arrangements under section 222 of the Local Government and Public Involvement in Health Act 2007 (c.28) for the purpose of discharging its functions. Section 222 was amended by section 183 of, and Schedules 5 and 14 to, the Health and Social Care Act 2012.

- (b) a copy of the agreement (or agreements); and
  - (c) a brief statement describing the nature of and circumstances giving rise to the dispute.
- (5) The Secretary of State must, before the end of the period of seven days beginning with the date on which the matter was referred to the Secretary of State—
- (a) give notice in writing to the parties that the Secretary of State is dealing with the matter; and
  - (b) include with the notice a written request to the parties to make, in writing before the end of a specified period, any representations which those parties would like to make about the dispute.
- (6) The Secretary of State must give, with the notice under sub-paragraph (5), to the party other than the one which referred the matter to dispute resolution, a copy of any document by which the dispute was referred to dispute resolution.
- (7) The Secretary of State must, upon receiving any representations from a party—
- (a) give a copy of those representations to each other party; and
  - (b) request, in writing, that each party to which a copy of those representations is given makes, before the end of a specified period, any written observations which they would like to make about those representations.
- (8) The Secretary of State may—
- (a) invite representatives of the parties to appear before, and make oral representations to, the Secretary of State either together or, with the agreement of the parties, separately, and may, in advance, provide the parties with a list of matters or questions to which the Secretary of State would like them to give special consideration; or
  - (b) consult other persons whose expertise the Secretary of State considers is likely to assist the Secretary of State's consideration of the dispute.
- (9) Where the Secretary of State consults another person under sub-paragraph (8)(b), the Secretary of State must—
- (a) give notice in writing to that effect to the parties; and
  - (b) where the Secretary of State considers that the interests of any party might be substantially affected by the result of the consultation, give to the parties such opportunity as the Secretary of State considers reasonable in the circumstances to make observations about those results.
- (10) In considering the dispute, the Secretary of State must take into account—
- (a) any written representations made in response to a request under sub-paragraph (5)(b), but only if they are made before the end of the specified period;
  - (b) any written observations made in response to a request under sub-paragraph (7), but only if they are made before the end of the specified period;
  - (c) any oral representations made in response to an invitation under sub-paragraph (8)(a);
  - (d) the results of any consultation under sub-paragraph (8)(b); and
  - (e) any observations made in accordance with an opportunity given under sub-paragraph (9).
- (11) Subject to the other provisions of this paragraph and to any agreement between the parties, the Secretary of State may determine the procedure which is to apply to the dispute resolution in such manner as the Secretary of State considers appropriate in order to ensure the just, expeditious, economical and final determination of the dispute.
- (12) In this paragraph, "specified period" means—

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- (a) such period as the Secretary of State specifies in the request being a period of not less than one week or not more than two weeks beginning with the date on which the notice referred to is given; or
  - (b) such longer period as the Secretary of State may allow for the determination of the dispute where the period for determination of the dispute has been extended in accordance with sub-paragraph (16) and where the Secretary of State does so allow, a reference in this paragraph to the specified period is to the period as so extended.
- (13) Subject to sub-paragraph (16), the Secretary of State must—
- (a) determine the dispute before the end of the period of 21 days beginning with the date on which the matter was referred to the Secretary of State;
  - (b) determine whether the Board may assign new patients to contractors which have closed their lists of patients; and
  - (c) if the Secretary of State determines that the Board may assign new patients to such contractors, determine the contractors to which such new patients may be assigned.
- (14) The Secretary of State must not determine that patients may be assigned to a contractor which was not specified in the determination of the assessment panel under paragraph 40(7)(b).
- (15) In the case of a matter referred jointly by contractors in accordance with sub-paragraph (3), the Secretary of State may determine that patients may be assigned to one, some or all of the contractors which referred the matter.
- (16) The period of 21 days referred to in sub-paragraph (13) 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 Secretary of State;
  - (b) the Board; and
  - (c) the contractor (or contractors) which referred the matter to dispute resolution.
- (17) The Secretary of State must—
- (a) record the determination, and the reasons for it, in writing; and
  - (b) give notice in writing of the determination (including the record of the reasons) to the parties.

#### **Assignments to closed lists: assignments of patients by the Board**

- 42.**—(1) Before the Board assigns a new patient to a contractor, the Board must, subject to sub-paragraph (3)—
- (a) enter into discussions with the contractor regarding the additional support that the Board can offer the contractor; and
  - (b) use its best endeavours to provide such appropriate support.
- (2) In the discussions referred to in sub-paragraph (1)(a), both parties must use reasonable endeavours to reach agreement.
- (3) The requirement in sub-paragraph (1)(a) to enter into discussions applies—
- (a) to the first assignment of a patient to a particular contractor; and
  - (b) to any subsequent assignment to that contractor to the extent that it is reasonable and appropriate having regard to—
    - (i) the numbers of patients who have or may be assigned to it, and
    - (ii) the period of time since the last discussions under sub-paragraph (1)(a) took place.



## PART 5

### Sub-contracting

#### Sub-contracting of clinical matters

**43.**—(1) The contractor must not sub-contract any of its rights or duties under the agreement in relation to clinical matters to any person unless it has taken reasonable steps to satisfy itself that—

- (a) it is reasonable in all the circumstances to do so;
- (b) the person to whom any of those rights or duties is sub-contracted is qualified and competent to provide the service; and
- (c) the person holds adequate insurance in accordance with regulation 83.

(2) Where the contractor sub-contracts any of its rights or duties under the agreement in relation to clinical matters, it must—

- (a) inform the Board of the sub-contract as soon as reasonably practicable; and
- (b) provide the Board with such information in relation to the sub-contract as the Board may reasonably request.

(3) Where the contractor sub-contracts clinical services under sub-paragraph (1), the parties to the agreement are deemed to have agreed a variation to the agreement which has the effect of adding to the list of the contractor's premises any premises which are to be used by the sub-contractor for the purposes of the sub-contract and, in these circumstances, regulation 24(1) does not apply.

(4) A contractor must ensure that any person with whom it sub-contracts is prohibited from sub-contracting the clinical services which that person has agreed with the contractor to provide.

(5) The contractor, if it has a list of registered patients or a list of registered patients is held in respect of it, must not sub-contract any of its rights or duties under the agreement in relation to the provision of essential services to a company or firm that is—

- (a) wholly or partly owned by the contractor, or by any former or current employee of, or partner or shareholder in, the contractor;
- (b) formed by or on behalf of the contractor, or from which the contractor derives a pecuniary benefit; or
- (c) formed by or on behalf of a former or current employee of, or partner or shareholder in, the contractor, or from which such a person derives or may derive a pecuniary benefit,

where sub-paragraph (6) applies to that company or firm.

(6) This sub-paragraph applies to a company or firm which is or was formed wholly or partly for the purpose of avoiding the restrictions on the sale of goodwill of a medical practice in section 259(11) of the Act (sale of medical practices) and Schedule 21 to the Act (prohibition of sale of medical practices) or in any regulations made wholly or partly under those provisions.

## PART 6

### Provision of information: practice leaflet

#### Information to be included in a practice leaflet

**44.** A practice leaflet must include—

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(11) Section 259 was amended by paragraph 131 of Schedule 4 to the Health and Social Care Act 2012 (c.7).

*Status: This is the original version (as it was originally made).*

- (a) the name of the contractor;
- (b) in the case of an agreement with a qualifying body—
  - (i) the names of the directors, the company secretary and the shareholders of that qualifying body, and
  - (ii) the address of that qualifying body's registered office;
- (c) the contractor's telephone, fax number and website address (if any);
- (d) the full name of each person performing services under the agreement;
- (e) the professional qualifications of each health care professional providing services under the agreement;
- (f) whether the contractor undertakes the teaching or training of health care professionals or persons intending to become health care professionals;
- (g) whether the contractor provides essential services in its practice area, including the area known as the outer boundary area (within the meaning given in regulation 13(2)) by reference to a sketch diagram, plan or postcode;
- (h) the address of each of the contractor's premises;
- (i) the access arrangements which the contractor's premises have for providing services to disabled patients and, if none, the alternative arrangements for providing services to such patients;
- (j) how to register as a patient;
- (k) the right of patients to express a preference of practitioner in accordance with paragraph 21 and the means of expressing such a preference;
- (l) the services available under the agreement;
- (m) the opening hours of the contractor's premises and the method of obtaining access to services throughout the core hours;
- (n) the criteria for home visits and the method of obtaining such a visit;
- (o) the arrangements for services in the out of hours period (whether or not provided by the contractor) and how the patient may access such services;
- (p) where the services referred to in sub-paragraph (o) are not provided by the contractor, the fact that the Board is responsible for commissioning the services;
- (q) information about the assignment by the contractor to its new and existing patients of an accountable GP in accordance with paragraph 15;
- (r) information about the assignment by the contractor to its patients aged 75 and over of an accountable GP under paragraph 16;
- (s) the telephone number of the 111 service;
- (t) the method by which patients are to obtain repeat prescriptions;
- (u) if the contractor offers repeatable prescribing services, the arrangements for providing such services;
- (v) if the contractor is a dispensing contractor, the arrangements for dispensing prescriptions;
- (w) how patients may make a complaint or comment on the provision of services;
- (x) the rights and responsibilities of the patient, including keeping appointments;
- (y) the action that may be taken where a patient is violent or abusive to a party to the agreement who is an individual, any member of the contractor's staff or other persons present on the contractor's premises or in the place where treatment is provided under the agreement;

- (z) details of who has access to patient information (including information from which the identity of the individual can be ascertained) and the rights of patients in relation to the disclosure of such information; and
- (aa) the full name, postal and e mail address and telephone number of the Board from whom details of primary medical services in the area may be obtained.

## PART 7

### Notice requirements and rights of entry

#### Notices to the Board

**45.** In addition to any requirements to give notice elsewhere in these Regulations, the contractor must give notice in writing to the Board as soon as reasonably practicable of—

- (a) any serious incident that, in the reasonable opinion of the contractor, affects or is likely to affect the contractor's performance of its obligations under the agreement;
- (b) any circumstances which give rise to the Board's right to terminate the agreement under paragraph 57 or 58;
- (c) any appointments system which the contractor proposes to operate and the proposed discontinuance of any such system;
- (d) any change in the address of a registered patient of which the contractor is aware; and
- (e) the death of any patient of which the contractor is aware.

#### Notice provisions specific to an agreement with a qualifying body

**46.—(1)** Where a qualifying body is a party to the agreement, the contractor must give notice in writing to the Board as soon as—

- (a) any share in the qualifying body is transmitted or transferred (whether legally or beneficially) to another person on a date after the date on which the agreement was entered into;
- (b) a new director or secretary of the qualifying body is appointed;
- (c) the qualifying body passes a resolution, or a court of competent jurisdiction makes an order, that the qualifying body be wound up;
- (d) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the qualifying body;
- (e) circumstances arise which would enable the court to make a winding up order in respect of the qualifying body; or
- (f) the qualifying body is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986<sup>(12)</sup> (definition of inability to pay debts).

**(2)** A notice under paragraph (1)(a) must confirm that the new shareholder, or, as the case may be, the personal representative of a deceased shareholder—

- (a) falls within section 93(1) of the Act<sup>(13)</sup> (persons with whom agreements may be made); and
- (b) meets the further conditions imposed on shareholders by virtue of regulation 5.

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<sup>(12)</sup> 1986 c.45. Section 123 was modified by section 90 of, and Schedule 15 to, the Building Societies Act 1986 (c.5), and by the section 23 of, and Schedule 10 to, the Friendly Societies Act 1992 (c.40).

<sup>(13)</sup> Section 93 was amended by paragraph 37 of Schedule 4 to the Health and Social Care Act 2012 (c.7).

(3) A notice under paragraph (1)(b) must confirm that the new director, or, as the case may be, secretary meets the conditions imposed on directors and secretaries by virtue of regulation 5.

### **Notice of deaths**

**47.—**(1) The contractor must give notice in writing to the Board of the death on its practice premises of a patient no later than the end of the first working day after the date on which that death occurred.

(2) The notice given under sub-paragraph (1) must include—

- (a) the patient's full name;
- (b) the patient's National Health Service number (where known);
- (c) the date and place of the patient's death;
- (d) a brief description of the circumstances (as known) surrounding the patient's death;
- (e) the name of any medical practitioner or other person treating the patient while the patient was on the contractor's practice premises; and
- (f) the name (where known) of any other person who was present at the time of the patient's death.

### **Notices given to patients following variation of the agreement**

**48.—**(1) This paragraph applies where an agreement is varied in accordance with regulation 24 and Part 8 of this Schedule and, as a result of that variation—

- (a) there is to be a change in the range of services provided to the contractor's registered patients; or
- (b) patients who are on the contractor's list of patients are to be removed from that list.

(2) Where this paragraph applies, the Board must—

- (a) give notice in writing to those patients of that variation and of its effect; and
- (b) inform those patients of the steps that they may take to—
  - (i) obtain the services in question elsewhere, or
  - (ii) register elsewhere for the provision to them of essential services (or their equivalent).

### **Entry and inspection by the Board**

**49.—**(1) Subject to the conditions specified in sub-paragraph (2), the contractor must allow any person authorised in writing by the Board to enter and inspect the contractor's practice premises at any reasonable time.

(2) The conditions specified in this sub-paragraph are that—

- (a) reasonable notice of the intended entry has been given;
- (b) written evidence of the authority of the person seeking entry is produced to the contractor on request; and
- (c) entry is not made to any premises or part of the premises used as residential accommodation without the consent of the resident.

### **Entry and inspection by the Care Quality Commission**

**50.** The contractor must allow persons authorised by the Care Quality Commission to enter and inspect the contractor's practice premises in accordance with section 62 of the Health and Social Care Act 2008<sup>(14)</sup> (entry and inspection).

### **Entry and inspection by Local Healthwatch organisations**

**51.** The contractor must comply with the requirement to allow an authorised representative to enter and view premises and observe the carrying on of activities on those premises in accordance with regulations made under section 225 of the Local Government and Public Involvement in Health Act 2007<sup>(15)</sup> (duties of service-providers to allow entry by Local Healthwatch organisations or contractors).

## **PART 8**

### **Variation and termination of agreements**

#### **Variation of an agreement**

**52.—**(1) Subject to Part 6 and to paragraphs 43(3) and 64 of Schedule 2, a variation of, or amendment to, an agreement is not effective unless it is in writing and signed by or on behalf of the Board and the contractor.

(2) The Board may vary the agreement without the contractor's consent where—

- (a) it is reasonably satisfied that the variation is necessary in order to comply with the Act, any regulations made under or by virtue of the Act, or any direction given by the Secretary of State under or by virtue of the Act; and
- (b) it gives notice in writing to the contractor of the wording of the proposed variation and the date on which that variation is to take effect.

(3) The date on which the proposed variation referred to in sub-paragraph (2)(b) is to take effect must, unless it is not reasonably practicable, be a date which falls at least 14 days after the date on which the notice under that sub-paragraph is given to the contractor.

#### **Termination by agreement**

**53.** The Board and the contractor may agree in writing to terminate the agreement, and if the parties so agree, they must agree the date upon which that termination is to take effect and any further terms upon which the agreement is to be terminated.

#### **Termination on death of the contractor**

**54.—**(1) Where the agreement is with an individual medical practitioner and that medical practitioner dies, the agreement terminates at the end of the period of seven days beginning with the date of the contractor's death unless sub-paragraph (2) applies.

(2) This sub-paragraph applies where, before the end of the period of seven days referred to in sub-paragraph (1), the Board agrees in writing with the contractor's personal representatives that the

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<sup>(14)</sup> 2008 c.14.

<sup>(15)</sup> 2007 c.28. See section 225(5) for the meaning of "authorised representative". Section 225 was amended by section 179 of, and Schedule 14 to, the Health and Social Care Act 2014 (c.7) ("the 2012 Act"); section 186(6) to (11) of, and Schedule 5 to, the 2012 Act; and paragraphs 148 to 151 of Schedule 5 to the 2012 Act.

agreement should continue for a further period, not exceeding 28 days, from the end of the period of seven days.

(3) This paragraph does not affect any other rights to terminate the agreement which the Board may have under paragraphs 57 to 60.

### **Termination by giving notice**

**55.**—(1) The contractor or the Board may at any time terminate the agreement by giving notice in writing to the other party or parties to the agreement.

(2) Subject to sub-paragraphs (3) and (4), notice given under sub-paragraph (1) must specify the date on which the termination is to take effect and the agreement terminates on the date so specified.

(3) Where the period of notice in relation to the termination (which must be a period of at least six months) has previously been agreed between the parties and provided for in the agreement, the date of termination specified in the notice must be calculated in accordance with the agreed period of notice.

(4) Where a period of notice in relation to the termination has not previously been agreed between the parties and provided for in the agreement, the period of notice required must be six months and the date of termination specified in the notice must be calculated accordingly and the agreement terminates on the date so calculated.

(5) This paragraph does not affect any other rights to terminate the agreement which the contractor and the Board may have.

### **Late payment notices**

**56.**—(1) The contractor may give notice in writing (a “late payment notice”) to the Board if the Board has failed to make any payments due to the contractor in accordance with a term of the agreement regarding prompt payments which has the effect specified in regulation 16(1), and the contractor must specify in the late payment notice the payments that the Board has failed to make in accordance with that term.

(2) Subject to sub-paragraph (4), the contractor may, at least 28 days after the date on which a late payment notice under sub-paragraph (1) was given, terminate the agreement by giving a further written notice to the Board in the event of the Board’s continuing failure to make the payments that are due to the contractor as specified in the late payment notice.

(3) Sub-paragraph (4) applies if, following receipt of a late payment notice, the Board—

- (a) refers the matter to the NHS dispute resolution procedure before the end of a period of 28 days beginning with the date on which the Board received the late payment notice; and
- (b) gives notice in writing to the contractor that it has done so before the end of that period.

(4) Where this sub-paragraph applies, the contractor may not terminate the agreement in accordance with sub-paragraph (2) until—

- (a) there has been a final determination of the dispute under the NHS dispute resolution procedure and that determination permits the contractor to terminate the agreement; or
- (b) the Board ceases to pursue the NHS dispute resolution procedure,

whichever is the earlier.

(5) This paragraph does not affect any other rights to terminate the agreement that the contractor may have.

### **Termination by the Board for the provision of untrue etc. information**

**57.**—(1) Where sub-paragraph (2) applies, the Board may give notice in writing to the contractor terminating the agreement with immediate effect, or from such date as may be specified in the notice.

(2) This sub-paragraph applies if, after the agreement was entered into, it comes to the Board's attention that written information—

- (a) provided to the Board by the contractor before the agreement was entered into; or
- (b) included in a notice given to the Board under paragraph 46(1)(a) or (b),

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

### **Other grounds for termination by the Board**

**58.**—(1) The Board may give notice in writing to a contractor terminating the agreement with immediate effect, or from such date as may be specified in the notice, if sub-paragraph (4) applies to the contractor—

- (a) during the existence of the agreement; or
- (b) if later, on or after the date on which a notice in respect of the contractor's compliance with the conditions in regulation 5 was given under paragraph 46(1)(a) or (b).

(2) Sub-paragraph (4) applies—

- (a) where a contractor who is an individual medical practitioner is a party to the agreement, to that medical practitioner; or
- (b) where the agreement is with a contractor which is a qualifying body, to—
  - (i) the qualifying body,
  - (ii) any person both legally and beneficially owning a share in the qualifying body, or
  - (iii) any director or secretary of the qualifying body.

(3) In the case of a person who is a party to an agreement made before 1st April 2004 which is deemed to be an agreement made under section 92 of the Act, the reference to “during the existence of the agreement” in sub-paragraph (1) is to be construed as excluding any period before 1st April 2004.

(4) This sub-paragraph applies if—

- (a) the contractor is the subject of a national disqualification;
- (b) subject to sub-paragraph (5), the contractor has been disqualified or suspended (other than by an interim suspension order or direction pending an investigation or a suspension on the grounds of ill-health) from practising by a licensing body anywhere in the world;
- (c) subject to sub-paragraph (6), the contractor has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless, before the Board has given notice to the contractor terminating the agreement under this paragraph, the contractor is employed by the health service body from which the contractor was dismissed or by another health service body;
- (d) the contractor has been removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 151(2), (3) and (4) of the Act<sup>(16)</sup> respectively) unless the contractor's name has subsequently been included in such a list;
- (e) the contractor has been convicted in the United Kingdom of murder;

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<sup>(16)</sup> Section 151 was amended by paragraph 79 of Schedule 4 to the Health and Social Care Act 2012 (c.7).

- (f) the contractor has been convicted in the United Kingdom of a criminal offence other than murder and has been sentenced to a term of imprisonment of longer than six months;
- (g) subject to sub-paragraph (7), the contractor has been convicted elsewhere of an offence which would, if committed in England and Wales constitute murder, and—
  - (i) the offence was committed on or after 14th December 2001, and
  - (ii) the contractor was sentenced to a term of imprisonment of longer than six months;
- (h) the contractor has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933<sup>(17)</sup> (offences against children and young persons, with respect to which special provisions of this Act apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1955<sup>(18)</sup> (offences against children under the age of 17 years to which special provisions apply);
- (i) the contractor has at any time been included in—
  - (i) any barred list within the meaning of section 2 of the Safeguarding Vulnerable Groups Act 2006<sup>(19)</sup> (barred lists), or
  - (ii) any barred list within the meaning of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007<sup>(20)</sup> (barred lists),
 unless the contractor was removed from the list either on the grounds that it was not appropriate for the contractor to have been included in it or as the result of a successful appeal;
- (j) the contractor has within the period of 5 years before the signing of the agreement, been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission, the Charity Commission for Northern Ireland or the High Court, and that order was made on the grounds of misconduct or mismanagement in the administration of a charity for which the contractor was responsible or to which the contractor was privy, or which was contributed to, or facilitated by, the contractor's conduct;
- (k) the contractor has, within the period of five years before the signing of the agreement or the commencement of the agreement, whichever is the earlier, been removed from being concerned with the management or control of any body in any case where removal was by virtue of section 34(5)(e) of the Charities and Trustees Investment (Scotland) Act 2005<sup>(21)</sup> (powers of Court of Session);
- (l) the contractor—
  - (i) has been adjudged bankrupt and has not been discharged from the bankruptcy or the bankruptcy order has not been annulled, or
  - (ii) has had sequestration of the contractor's estate awarded and has not been discharged from the sequestration;
- (m) the contractor is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986<sup>(22)</sup> (bankruptcy restrictions order and undertaking) or in Schedule 2A to the Insolvency (Northern Ireland) Order 1989<sup>(23)</sup> (bankruptcy restrictions order and undertaking), or sections

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(17) 1933 c.12. Schedule 1 was amended by section 51 of, and Schedule 4 to, the Sexual Offences Act 1956 (c.99); section 170 of, and Schedule 10 to, the Criminal Justice Act 1988 (c.33); section 139 of, and Schedule 6 to, the Sexual Offences Act 2003 (c.42); section 58(1) of, and Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c.28); and section 115(1) of, and Schedule 10 to, the Protection of Freedoms Act 2012 (c. 9).

(18) 1995 c.46.

(19) 2006 c.47.

(20) S.I. 2007/1351 (N.I.11)

(21) 2005 asp 10.

(22) 1986 c.45. Schedule 4A was inserted by section 257(2) of and Schedule 20 to the Enterprise Act 2002 (c.40).

(23) S.I.1989/2405 (N.I. 19). Schedule 2A was inserted by article 13(2) of, and Schedule 5 to, S.I. 2005/455 (N.I.10)).



- 56A to 56K of the Bankruptcy (Scotland) Act 1985<sup>(24)</sup> (bankruptcy restrictions order, interim bankruptcy restrictions order and bankruptcy restrictions undertaking) unless the contractor has been discharged from that order or that order has been annulled;
- (n) the contractor—
- (i) is subject to a moratorium period under a debt relief order under Part VIIA of the Insolvency Act 1986<sup>(25)</sup> (debt relief orders) applies, or
  - (ii) is the subject of a debt relief restrictions order or an interim debt relief restrictions order under Schedule 4ZB to that Act<sup>(26)</sup> (debt relief restrictions order and undertaking);
- (o) the contractor has made a composition agreement or arrangement with, or a trust deed has been granted for, the contractor's creditors and the contractor has not been discharged in respect of it;
- (p) the contractor is a company which has been wound up under Part IV of the Insolvency Act 1986 <sup>(27)</sup>(winding up of companies registered under the Companies Acts);
- (q) an administrator, administrative receiver or receiver has been appointed in respect of the contractor;
- (r) the contractor has had an administration order made in respect of the contractor under Schedule B1 to the Insolvency Act 1986<sup>(28)</sup> (administration);
- (s) the contractor is subject to—
- (i) a disqualification order under section 1 of the Company Directors Disqualification Act 1986<sup>(29)</sup> (disqualification orders: general) or a disqualification undertaking under Section 1A of that Act<sup>(30)</sup> (disqualification undertakings: general), or
  - (ii) a disqualification order or disqualification undertaking under article 3 (disqualification orders: general) or article 4 (disqualification undertakings: general) of the Company Directors Disqualification (Northern Ireland) Order 2002<sup>(31)</sup> unless that order has ceased to have effect or has been annulled, or
  - (iii) a disqualification order under section 429(2) of the Insolvency Act 1986<sup>(32)</sup> (disabilities on revocation of an administration order against an individual); or
- (t) the contractor has refused to comply with a request made by the Board for the contractor to be medically examined because the Board is concerned that the contractor is incapable of adequately providing services under the agreement.
- (5) The Board may not terminate the agreement in accordance with sub-paragraph (4)(b) where the Board is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the contractor unsuitable to be—
- (a) a party to the agreement; or
  - (b) in the case of an agreement with a qualifying body—

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<sup>(24)</sup> 1985 c.66. Sections 56A to 56K were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

<sup>(25)</sup> 1986 c.45. Part VIIA was inserted by section 108(1) of, and Schedule 17 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

<sup>(26)</sup> Schedule 4ZB was inserted by section 108(2) of, and Schedule 19 to, the Tribunals, Courts and Enforcement Act 2007.

<sup>(27)</sup> 1986 c.45. Part IV was substituted by S.I. 2009/1941.

<sup>(28)</sup> 1986 c.45. Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40).

<sup>(29)</sup> 1986 c.46. Section 1 was amended by sections 5(1) and (2) and (8) of the Insolvency Act 2000 (c.40), section 204(1) and (3) of the Enterprise Act 2002 (c.40) and sections 111 and 164 of, and paragraphs 1 and 2 of Schedule 7 to, the Small Business, Enterprise and Employment Act 2015 (c.26).

<sup>(30)</sup> Section 1A was inserted by section 6(1) and (2) of the Insolvency Act 2000 (c.39), and was amended by section 111 of, and paragraphs 1, 3(1) and (2) of Schedule 7 to, the Small Business, Enterprise and Employment Act 2015.

<sup>(31)</sup> S.I. 2002/3150 (N.I. 4); as amended by S.I. 2004/347, S.I. 2005/1454 and 1455.

<sup>(32)</sup> 1986 c.45. Section 429 was amended by section 269 of, and Schedule 3 to, the Enterprise Act 2002, and section 106 of, and Schedule 16 to, the Tribunals, Courts and Enforcement Act 2007.

*Status: This is the original version (as it was originally made).*

- (i) a person both legally and beneficially owning a share in the qualifying body, or
- (ii) a director or secretary of the qualifying body,

as the case may be.

(6) The Board may not terminate the agreement in accordance with sub-paragraph (4)(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 specified in paragraph (a), the person concerned brings proceedings in any competent tribunal or court in respect of the dismissal, until proceedings before that tribunal or court are concluded,

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

(7) The Board must not terminate the agreement in accordance with sub-paragraph (4)(g) or, as the case may be (4)(h), where the Board is satisfied that the conviction does not make the person unsuitable to be—

- (a) a party to the agreement; or
- (b) in the case of a qualifying body—
  - (i) a person both legally and beneficially owning a share in the qualifying body, or
  - (ii) a director or secretary of the qualifying body,

as the case may be.

#### **Termination by the Board where patients' safety is at risk or where there is risk of financial loss to the Board**

**59.** The Board may give notice in writing to the contractor terminating the agreement with immediate effect from such date as may be specified in the notice if—

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

#### **Termination by the Board for unlawful sub-contracting**

**60.**—(1) This paragraph applies if the contractor breaches the condition specified in paragraph 43(5) relating to the sub-contracting of clinical services under the agreement and it comes to the attention of the Board that the contractor has done so.

(2) Where this paragraph applies, the Board must give notice in writing to the contractor—

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

#### **Termination by the Board: remedial notices and breach notices**

**61.**—(1) Where the contractor's breach of the agreement is not one to which paragraphs 57 to 60 apply and that breach is capable of remedy, the Board must, before taking any action it is otherwise

entitled to take by virtue of the agreement, give notice in writing to the contractor requiring it to remedy the breach (a “remedial notice”).

(2) A remedial notice must specify—

- (a) details of the breach;
- (b) the steps that the contractor must take to the satisfaction of the Board in order to remedy the breach; and
- (c) the period during which those steps must be taken (“the notice period”).

(3) The notice period must not be less than a period of 28 days beginning with the date on which the notice is given unless the Board is satisfied that a shorter period is necessary to protect—

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

(4) Where the Board is satisfied that the contractor has not taken the required steps to remedy the breach by the end of the notice period, the Board may give a further notice in writing to the contractor terminating the agreement with effect from such date as the Board specifies in the notice.

(5) Where the contractor’s breach of the agreement is not one to which any of paragraphs 57 to 60 apply, and the breach is not capable of remedy, the Board may give notice in writing to the contractor requiring the contractor not to repeat the breach (a “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 agreement resulting in either a remedial notice or a further breach notice,

the Board may give notice in writing to the contractor terminating the agreement with effect from such date as the Board specifies in the notice.

(7) The Board may not exercise its right to terminate the agreement under sub-paragraph (6) unless the Board is satisfied that the cumulative effect of the breaches is such to allow the agreement to continue would prejudice the efficiency of the services to be provided under the agreement.

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

### **Termination by the Board: additional provisions specific to agreements with qualifying bodies**

**62.** If the Board becomes aware that a contractor which is a qualifying body is carrying on any business which the Board considers to be detrimental to the contractor’s performance of its obligations under the agreement—

- (a) the Board may give notice in writing to the contractor requiring it to cease carrying on that business before the end of a period of not less than 28 days beginning with the date on which the notice is given (“the notice period”); and
- (b) if the contractor has not satisfied the Board that it has ceased carrying on that business by the end of the notice period, the Board may give a further notice in writing to the contractor terminating the agreement with immediate effect or from such date as is specified in the notice.

**Agreement sanctions**

**63.**—(1) In this paragraph and in paragraph 64, “agreement sanction” means—

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

(2) Where the Board is entitled to terminate the agreement in accordance with paragraph 57, 58, 59, 61(4) or (6) or 62, it may instead impose any of the agreement sanctions if the Board is reasonably satisfied that the agreement sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the Board’s entitlement to terminate the agreement.

(3) If the Board decides to impose an agreement sanction, the Board must—

- (a) give notice in writing to the contractor of the agreement sanction that it proposes to impose and the date upon which that sanction is to be imposed; and
- (b) include in the notice an explanation of the effect of the imposition of the sanction.

(4) Subject to paragraph 64, the Board may not impose the agreement sanction until the end of a period of at least 28 days beginning with the date on which the Board gives notice to the contractor under to sub-paragraph (3) unless the Board is satisfied that it is necessary to do so in order to protect—

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

(5) Where the Board imposes an agreement sanction, the Board may charge the contractor the reasonable costs of any additional administration that the Board has incurred in order to impose, or as a result of imposing, the agreement sanction.

**Agreement sanctions and the NHS dispute resolution procedure**

**64.**—(1) If there is a dispute between the Board and the contractor in relation to an agreement sanction that the Board is proposing to impose, the Board may not, subject to sub-paragraph (4), impose the agreement sanction except in the circumstances specified in sub-paragraphs (2) and (3).

(2) The circumstances specified in this sub-paragraph are if the contractor—

- (a) refers the dispute relating to the agreement sanction to the NHS dispute resolution procedure before the end of the period of 28 days beginning with the date on which the contractor was given notice by the Board in accordance with paragraph 60(4) (or such longer period as may be agreed in writing with the Board); and
- (b) gives notice in writing to the Board that it has done so.

(3) Where the circumstances specified in sub-paragraph (2) apply, the Board may not impose the agreement sanction unless—

- (a) there has been a final determination of the dispute in accordance with regulation 77 (or by a court) and that determination permits the Board to impose the agreement sanction; or
- (b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(4) If the contractor does not invoke the NHS dispute resolution procedure before the end of the period specified in sub-paragraph (2)(a), the Board may impose the agreement sanction with immediate effect.

(5) If the Board is satisfied that it is necessary to impose the agreement sanction before the NHS dispute resolution procedure is concluded in order to protect—

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

the Board may impose the agreement sanction with immediate effect, pending the outcome of that procedure (or any court proceedings).

### **Termination and the NHS dispute resolution procedure**

**65.**—(1) Where the Board is entitled to give notice in writing to the contractor terminating the agreement in accordance with paragraph 57, 58, 59, 61(4) or (6) or 62, the Board must, in the notice given to the contractor under those provisions, specify a date on which the agreement is to terminate that is at least 28 days after the date on which the Board gives notice to the contractor unless sub-paragraph (2) applies.

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

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

(3) Where—

- (a) sub-paragraph (1) applies but the exceptions in sub-paragraph (2) do not apply; and
- (b) the contractor invokes the NHS dispute resolution procedure before the end of the notice period referred to in sub-paragraph (1) and gives notice in writing to the Board that it has done so,

the agreement does not terminate at the end of the notice period but instead only terminates in the circumstances described in sub-paragraph (4).

(4) The circumstances described in this sub-paragraph for the termination of the agreement are if and when—

- (a) there has been a final determination of the dispute under the NHS dispute resolution procedure (or by a court) and that determination permits the Board to terminate the agreement; or
- (b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(5) If the Board is satisfied that it is necessary to terminate the agreement before the NHS dispute resolution procedure (or any court proceedings) is concluded in order to protect—

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

sub-paragraphs (3) and (4) do not apply and the Board may confirm, by giving notice in writing to the contractor, that the agreement will nevertheless terminate at the end of the period of the notice given under paragraph 57, 58, 59, 61(4) or (6) or 62.