

SCHEDULE 3

Other contractual terms

PART 8

Variation and termination of contracts

Variation: general

57.—(1) Subject to Part 6, and to paragraphs 44(8), 45(9), 58, 59 and 72, a variation of, or amendment to, a contract is not effective unless it is made in writing and signed by or on behalf of the Board and the contractor.

(2) The Board may vary a contract 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 notice under that sub-paragraph is given to the contractor.

Variation provisions specific to a contract with an individual medical practitioner

58.—(1) Where a contractor who is an individual medical practitioner proposes to practise in partnership with one or more persons, the contractor must give notice in writing to the Board of—

(a) the name of the person or persons with whom the contractor proposes to practise in partnership; and

(b) the date on which the contractor would like to change its status as a contractor from that of an individual medical practitioner to that of a partnership, which must be at least 28 days after the date on which the contractor gives notice to the Board under this sub-paragraph.

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

(a) in respect of each person with whom the contractor is proposing to practise in partnership confirm that the person—

(i) is either—

(aa) a medical practitioner, or

(bb) a person who satisfies the conditions specified in section 86(2)(b)(i) to (iv) of the Act⁽¹⁾ (persons eligible to enter into GMS contracts); and

(ii) satisfies the conditions imposed by regulations 5 and 6; and

(b) state whether the partnership is to be a general partnership or a limited partnership and give the names of the limited partners and the general partners in the partnership.

(3) A notice given under sub-paragraph (1) must be signed by the individual medical practitioner and by the person, or each of the persons, with whom the practitioner is proposing to practise in partnership.

(1) Section 86 was amended by section 202(1) of, and paragraph 32 of Schedule 4 to, the Health and Social Care Act 2012 (c.7).

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(4) The contractor must ensure that any person with whom it is to practise in partnership is bound by the contract, whether by virtue of a partnership deed or otherwise.

(5) If the Board is satisfied as to the accuracy of the matters specified in a notice given under sub-paragraph (1), the Board must give notice in writing to the contractor confirming that the contract is to continue with the partnership entered into by the contractor and its partners, from a date that the Board specifies in the notice.

(6) The date to be specified by the Board under sub-paragraph (5) is—

- (a) the date requested in the notice given by the contractor under sub-paragraph (1); or
- (b) where that date is not reasonably practicable, a date that is as close as is reasonably practicable to the requested date.

(7) Where the contractor has given notice to the Board under sub-paragraph (1), the Board may vary the contract but only to the extent that the Board is satisfied is necessary to reflect the change in the status of the contractor from that of an individual medical practitioner to a partnership.

(8) If, under sub-paragraph (7), the Board proposes to vary the contract, it must include in the notice given to the contractor under sub-paragraph (5) the wording of the proposed variation and the date upon which that variation is to take effect.

Variation provisions specific to a contract with two or more persons practising in partnership

59.—(1) Subject to sub-paragraph (4), where a contractor consists of two or more persons practising in partnership and that partnership is terminated or dissolved, the contract may only continue with one of the former partners if that partner is—

- (a) nominated in accordance with sub-paragraph (3); and
- (b) a medical practitioner who satisfies the condition in regulation 5(1)(a),

and only if the requirements in sub-paragraphs (2) and (3) are met.

(2) A contractor must give notice in writing to the Board of the intention to change its status from that of a partnership to that of an individual medical practitioner under sub-paragraph (1) at least 28 days before the date on which the contractor proposes to change its status.

(3) A notice given under sub-paragraph (2) must—

- (a) specify the date on which the contractor proposes to change its status from that of a partnership to that of an individual medical practitioner;
- (b) specify the name of the medical practitioner with whom the contract is to continue, which must be one of the partners in the partnership; and
- (c) be signed by each partner in the partnership.

(4) Where a contractor consists of two persons practising in partnership and the partnership is terminated or dissolved because one of the partners has died, the remaining partner in the partnership must give notice in writing to the Board of that death as soon as is reasonably practicable and, in that case, sub-paragraphs (5) and (6) apply.

(5) If the remaining partner in the partnership is a general medical practitioner, the contract is to continue with that general medical practitioner.

(6) If the remaining partner in the partnership is not a general medical practitioner, the Board—

- (a) must enter into discussions with that partner and use reasonable endeavours to reach an agreement to enable the provision of clinical services to continue under the contract;
- (b) may, if it considers it appropriate, consult the Local Medical Committee (if any) for the area in which the partnership was providing clinical services under the contract or such other person as the Board considers necessary;

- (c) may, if it considers it appropriate to enable the provision of clinical services under the contract to continue, offer the remaining partner in the partnership reasonable support; and
- (d) must give notice to the remaining partner in the partnership if agreement has been reached in accordance with sub-paragraph (7) or, in the event that agreement cannot be reached, in accordance with sub-paragraph (8).

(7) If the Board reaches an agreement, the Board must give notice in writing to the remaining partner in the partnership confirming—

- (a) the terms upon which the Board agrees to the contract continuing with that partner including the period, as specified by the Board, during which the contract is to continue (“the interim period”) and such a period must not exceed six months;
- (b) that the partner agrees to the employment or engagement of a general medical practitioner for the interim period to assist in the provision of clinical services under the contract; and
- (c) the support, if any, which the Board is to provide to enable the provision of clinical services under the contract to continue during the interim period.

(8) If—

- (a) the remaining partner in the partnership does not wish to employ or engage a medical practitioner;
- (b) an agreement in accordance with sub-paragraph (6) cannot be reached; or
- (c) the remaining partner in the partnership would like to withdraw from the agreed arrangements at any stage during the interim period,

the Board must give notice in writing to that partner terminating the contract with immediate effect.

(9) If, at the end of the interim period, the contractor has not entered into partnership with a general medical practitioner who is not a limited partner in the partnership, the Board must give notice in writing to the contractor terminating the contract with immediate effect.

(10) Where a contractor gives notice to the Board under sub-paragraph (2) or (4), the Board must—

- (a) acknowledge receipt of the notice in writing; and
- (b) in relation to a notice given under sub-paragraph (2), acknowledge receipt of the notice before the date specified in accordance with sub-paragraph (3)(a).

(11) Where a contractor gives notice to the Board under sub-paragraph (2) or (4), the Board may vary the contract but only to the extent that it is satisfied is necessary to reflect the change in status of the contractor from that of a partnership to an individual medical practitioner.

(12) If the Board varies the contract under sub-paragraph (11), the Board must give notice in writing to the contractor of the wording of the proposed variation and the date upon which that variation is to take effect.

(13) In this paragraph “general medical practitioner” has the same meaning as in regulation 5(2).

(14) Sub-paragraphs (5) to (9) do not affect any other right which the Board may have under the contract to vary or terminate the contract.

Termination by agreement

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

Termination on the death of an individual medical practitioner

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

(2) This sub-paragraph applies where—

- (a) the Board agrees in writing with the contractor’s personal representatives that the contract is to continue for a further period, not exceeding 28 days, from the end of the period of seven days; and
- (b) the contractor’s personal representatives confirm in writing to the Board that they wish to employ or engage one or more general medical practitioners to assist in the continuation of the provision of clinical services under the contract and, after discussion with the Board—
 - (i) the Board agrees to provide reasonable support which would enable clinical services under the contract to continue,
 - (ii) the Board and the contractor’s personal representatives agree the terms on which the provision of clinical services can continue,
 - (iii) the Board and the contractor’s personal representatives agree the period during which clinical services must be provided being a period of not more than 28 days beginning on the day after the end of the period of seven days referred to in sub-paragraph (1).

(3) This paragraph does not affect any other rights to terminate the contract which the contractor may have.

Termination by the contractor

62.—(1) A contractor may terminate the contract at any time by giving notice in writing to the Board.

(2) Where a contractor gives notice to the Board under sub-paragraph (1), the contract terminates six months after the date on which the notice was given (“the termination date”) unless the termination date does not fall on the last calendar day of a month, in which case the contract terminates instead on the last calendar day of the month in which the termination date falls.

(3) If the contractor is an individual medical practitioner, sub-paragraph (2) applies to the contractor as if the references to “six months” were instead references to “three months”.

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

Late payment notices

63.—(1) The contractor may give notice in writing (a “late payment notice”) to the Board if the Board has failed to make payments due to the contractor in accordance with any term of the contract regarding prompt payment which has the effect specified in regulation 23(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 (3), the contractor may, at least 28 days after the date on which a late payment notice under sub-paragraph (1) was given, terminate the contract 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 contract under sub-paragraph (2) until—
- (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 contractor to terminate the contract; 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 contract which the contractor may have.

Termination by the Board: general

64. A contract may only be terminated by the Board in accordance with the following provisions of this Part.

Termination by the Board for breach of conditions in regulation 5

65.—(1) Subject to paragraph (2), the Board must give notice in writing to the contractor terminating the contract with immediate effect where, in any case, a contractor who is an individual medical practitioner has ceased to be a general medical practitioner.

(2) Where the contractor referred to in sub-paragraph (1) has ceased to satisfy the condition specified in regulation 5(1)(a) by reason of a suspension of the type described in sub-paragraph (7), the Board is not required to give notice to the contractor under sub-paragraph (1) unless—

- (a) the contractor is unable to satisfy the Board that it has in place adequate arrangements for the provision of clinical services under the contract for so long as the suspension continues; or
 - (b) the Board is satisfied that the circumstances of the suspension are such that if the contract is not terminated with immediate effect—
 - (i) the safety of the contractor’s patients would be at serious risk, or
 - (ii) the Board would be at risk of material financial loss.
- (3) Sub-paragraph (4) applies where—
- (a) except in a case to which paragraph 59(4) applies, the contractor consists of two or more persons practising in partnership and the condition specified in regulation 5(1)(b) is no longer satisfied; or
 - (b) the contractor is a company limited by shares, and the condition specified in regulation 5(1)(c) is no longer satisfied.
- (4) Where this sub-paragraph applies, the Board must—
- (a) give notice in writing to the contractor terminating the contract with immediate effect; or
 - (b) give notice in writing to the contractor confirming that the Board is prepared to allow the contract to continue, for a period specified by the Board, in accordance with sub-paragraph (5) (“the interim period”).
- (5) The period specified by the Board under sub-paragraph (4)(b) must not exceed—
- (a) six months; or

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- (b) where the failure of the contractor to continue to satisfy the condition in regulation 5(1)(b) or 5(1)(c), is by reason of a suspension described in sub-paragraph (7), the period for which that suspension continues.
- (6) The Board must, during the interim period and with the consent of the contractor, employ or supply the contractor with one or more general medical practitioners for the interim period to assist the contractor in the provision of clinical services under the contract.
- (7) The suspensions described in this sub-paragraph are suspension—
 - (a) by a Fitness to Practise Panel under—
 - (i) section 35D of the Medical Act 1983(2) (functions of a fitness to practise panel) in a health case, other than an indefinite suspension under section 35D(6) of that Act, or
 - (ii) section 38(1) of the Medical Act 1983(3) (power to order immediate suspension etc. after a finding of impairment of fitness to practise); or
 - (b) by a Fitness to Practise Panel or an Interim Orders Panel under section 41A of the Medical Act 1983(4) (interim orders).
- (8) Before deciding which of the options in sub-paragraph (4) to pursue, the Board must, if it is reasonably practicable to do so, consult the Local Medical Committee (if any) for the area in which the contractor provides services under the contract.
- (9) If the contractor does not, in accordance with sub-paragraph (6), consent to the Board employing or supplying a general medical practitioner during the interim period, the Board must give notice in writing to the contractor terminating the contract with immediate effect.
- (10) If, at the end of the interim period, sub-paragraph (3)(a) or (b) continues to apply to the contractor, the Board must give notice in writing to the contractor terminating the contract with immediate effect.
- (11) In this paragraph—
 - (a) “health case” has the meaning given in section 35E(4) of the Medical Act 1983(5) (provisions supplementary to section 35D); and
 - (b) “general medical practitioner” has the meaning given in regulation 5(2).

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

66.—(1) The Board may give notice in writing to the contractor terminating the contract with immediate effect or from such date as may be specified by the Board in the notice where sub-paragraph (2) applies.

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

- (a) provided to the Board by the contractor before the contract was entered into; or
- (b) included in a notice given to the Board by the contractor under paragraph 50(1)(a) or (b) or 51(1),

relating to the conditions set out in regulations 5 and 6 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.

(2) 1983 c.54. Section 35D was substituted by S.I. 2002/3135, and was amended by section 99 of, and Schedule 7 to, the Health and Social Care Act 2008 (c. 14) and by S.I. 2014/1101 and S.I. 2015/794.

(3) Section 38 was substituted by S.I. 2002/3135 and was amended by S.I. 2015/794.

(4) Section 41A was substituted by S.I. 2002/3135 and was amended by S.I. 2006/1914 and S.I. 2015/794.

(5) 1983 c.54. Section 35D was substituted by S.I. 2002/3135 and was amended by section 99 of, and Schedule 7 to, the Health and Social Care Act 2008, and by S.I. 2006/1914, S.I. 2014/1101, and S.I. 2015/794.

Other grounds for termination by the Board

67.—(1) The Board may give notice in writing to a contractor terminating the contract with immediate effect, or from such date as may be specified in the notice, if sub-paragraph (3) applies to the contractor—

- (a) during the existence of a contract; or
 - (b) if later, on or after the date on which a notice in respect of the contractor's compliance with the condition in regulation 6 was given under paragraph 50(1)(a) or (b) or 51(1).
- (2) Sub-paragraph (3) applies—
- (a) where the contract is with a general medical practitioner, to that general medical practitioner;
 - (b) where the contract is with two or more persons practising in partnership, to the partnership or any partner in the partnership; and
 - (c) where the contract is with a company limited by shares to—
 - (i) the company,
 - (ii) any person both legally and beneficially owning a share in the company, or
 - (iii) any director or secretary of the company.
- (3) This sub-paragraph applies if—
- (a) the contractor does not satisfy the conditions prescribed in sections 86(2) or 86(3) of the Act⁽⁶⁾ (persons eligible to enter into GMS contracts);
 - (b) the contractor is the subject of a national disqualification;
 - (c) 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;
 - (d) subject to sub-paragraph (6), the contractor has been dismissed (otherwise than by reason of redundancy) from employment by a health service body unless, before the Board has given notice to the contractor terminating the contract under this paragraph, the contractor is employed by the health service body from which the contractor was dismissed or by another health service body;
 - (e) 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⁽⁷⁾ respectively) unless the contractor's name has subsequently been included in such a list;
 - (f) the contractor has been convicted in the United Kingdom of murder;
 - (g) 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;
 - (h) subject to sub-paragraph (7), the contractor has been convicted elsewhere of an offence which would, if it were 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;
 - (i) the contractor has been convicted of an offence, referred to in Schedule 1 to the Children and Young Persons Act 1933⁽⁸⁾ (offences against children and young persons, with respect

⁽⁶⁾ Section 86(3) was amended by section 202 of, and paragraph 32 of Schedule 4 to, the Health and Social Care Act 2012 (c.7).

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

⁽⁸⁾ 1933 c.12. Schedule 1 was amended by section 51 of, and Schedule 4 to, the Sexual Offences Act 1956 (c.69); section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c.33); section 139 of, and Schedule 6 to, the Sexual Offences Act

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to special provisions of this Act apply), or in Schedule 1 to the Criminal Procedure (Scotland) Act 1995(9) (offences against children under the age of 17 years to which special provisions apply);

- (j) the contractor has at any time been included in—
- (i) any barred list within the meaning of the Safeguarding Vulnerable Groups Act 2006(10), or
 - (ii) any barred list within the meaning of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(11) (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;
- (k) the contractor has, within the period of five years before the signing of the contract, 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;
- (l) the contractor has, within the period of five years before the signing of the contract or commencement of the contract (whichever is earlier), been removed from being concerned with the management or control of a body in any case where removal was by virtue of section 34(5)(e) of the Charities and Trustees Investment (Scotland) Act 2005(12) (powers of Court of Session); or
- (m) 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;
- (n) the contractor is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986(13) (bankruptcy restrictions order and undertaking), or Schedule 2A to the Insolvency (Northern Ireland) Order 1989(14) (bankruptcy restrictions order and undertaking) or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985(15) (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;
- (o) the contractor—
- (i) is subject to a moratorium period under a debt relief order under Part VIIA of the Insolvency Act 1986(16) (debt relief orders) applies, or

2003 (c.42); section 58(1) of, and Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c.28); section 177(1) of, and Schedule 21 to, the Coroners and Justice Act 2009 (c.25); section 115(1) of, and Schedule 10 to, the Protection of Freedoms Act 2012 (c.9); and section 57(1) of, and Schedule 5 to, the Modern Slavery Act 2015 (c.30).

(9) 1995 c.46.

(10) 2006 c.47.

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

(12) 2005 asp. 10.

(13) 1986 c.45. Schedule 4A was inserted by section 257(2) of, and Schedule 20 to, the Enterprise Act 2002 (c.40).

(14) S.I. 1985/2405 (N.I.19). Schedule 2A was inserted by S.I. 2005/1455 (N.I.10).

(15) 1985 c.66. Sections 56A to 56K were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

(16) Part VIIA was inserted by section 108(1) of, and Schedule 17 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

- (ii) is the subject of a debt relief restrictions order or an interim debt relief restrictions order under Schedule 4ZB to that Act⁽¹⁷⁾ (debt relief restrictions orders and undertakings), unless that order has ceased to have effect or has been annulled;
 - (p) 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;
 - (q) the contractor is a company which has been wound up under Part IV of the Insolvency Act 1986⁽¹⁸⁾ (winding up of companies registered under the Companies Acts);
 - (r) the contractor has had an administrator, administrative receiver or receiver appointed in respect of it;
 - (s) the contractor has had an administration order made in respect of the contractor under Schedule B1 to the Insolvency Act 1986⁽¹⁹⁾ (administration);
 - (t) the contractor is a partnership and—
 - (i) a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator, or
 - (ii) an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership;
 - (u) the contractor is subject to—
 - (i) a disqualification order under section 1 of the Company Directors Disqualification Act 1986⁽²⁰⁾ (disqualification orders: general) or a disqualification undertaking under section 1A of that Act⁽²¹⁾ (disqualification undertakings: general),
 - (ii) a disqualification order or disqualification undertaking under article 3 (disqualification orders) or article 4 (disqualification undertakings: general) of the Company Directors Disqualification (Northern Ireland) Order 2002⁽²²⁾, or
 - (iii) a disqualification order under section 429(2) of the Insolvency Act 1986⁽²³⁾ (disabilities on revocation of administration order against an individual); or
 - (v) the contractor has refused to comply with a request 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 contract and, in a case where the contract is with two or more individuals practising in partnership or with a company, the Board is satisfied that the contractor is taking adequate steps to deal with the matter.
- (4) The Board must not terminate the contract under sub-paragraph (3)(c) where the Board is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the person unsuitable to be—
- (a) a contractor;
 - (b) a partner, in the case of a contract with two or more persons practising in a partnership; or
 - (c) in the case of a contract with a company limited by shares—

⁽¹⁷⁾ Schedule 4ZB was inserted by section 108(2) of, and Schedule 19 to, the Tribunals, Courts and Enforcement Act 2007.

⁽¹⁸⁾ 1986 c.45. Part IV was substituted by S.I. 2009/1941.

⁽¹⁹⁾ 1986 c.45. Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002.

⁽²⁰⁾ 1986 c.46. Section 1 was amended by sections 5(1) and (2) and 8 of the Insolvency Act 2000 (c.39), section 204(1) and (3) of the Enterprise Act 2002, and sections 111 and 164(1) of, and paragraphs 1 and 2 of Schedule 7 to, the Small Business, Enterprise and Employment Act 2015 (c.26).

⁽²¹⁾ Section 1A was inserted by section 6(1) and (2) of the Insolvency Act 2000, 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.

⁽²²⁾ S.I. 2002/3150 (N.I. 4); as amended by S.I. 2004/347, S.I. 2005/1454 and 1455.

⁽²³⁾ 1986 c.45. Section 429 was amended by section 269 of, and Schedule 3 to, the Enterprise Act 2002 (c.40), and section 106 of, and Schedule 16 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

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- (i) a person legally and beneficially holding a share in the company, or
- (ii) a director or secretary of the company,

as the case may be.

- (5) The Board may not terminate the contract under sub-paragraph (3)(d)—
 - (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 person's dismissal, until proceedings before that tribunal or court are concluded,

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

(6) The Board must not terminate the contract under sub-paragraph (3)(h) where the Board is satisfied that the conviction does not make the person unsuitable to be—

- (a) a contractor;
- (b) a partner, in the case of a contract with two or more persons practising in partnership; or
- (c) in the case of a contract with a company limited by shares—
 - (i) a person both legally and beneficially holding a share in the company, or
 - (ii) a director or secretary of the company,

as the case may be.

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

68. The Board may give notice in writing to the contractor terminating the contract with immediate effect or with effect from such date as may be specified in the notice if—

- (a) the contractor has breached a term of the contract and, as a result of that breach, the safety of the contractor's patients would be at serious risk if the contract 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

69.—(1) This paragraph applies if the contractor breaches the condition specified in paragraph 44(10) relating to the sub-contracting of clinical services under the contract and it comes to the Board's attention that the contractor has done so.

- (2) Where this paragraph applies the Board must give notice in writing to the contractor—
 - (a) terminating the contract 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 that instruction, the Board must give notice in writing to the contractor terminating the contract with immediate effect.

Termination by the Board: remedial notices and breach notices

70.—(1) Where a contractor's breach of the contract is not one to which any of paragraphs 65 to 69 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 contract, 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 contract with effect from such date as the Board specifies in the notice.

(5) Where the contractor’s breach of the contract is not one to which any of paragraphs 65 to 69 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 contract resulting in either a remedial notice or a further breach notice,

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

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

(8) If the contractor is in breach of any obligation under the contract and a breach notice or a remedial notice in respect of the 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 contract in respect of the obligation which is the subject matter of the default.

Termination by the Board: additional provisions specific to contracts with two or more persons practising in partnership and companies limited by shares

71.—(1) If the Board becomes aware that a contractor which is a company limited by shares is carrying on any business which the Board considers to be detrimental to the contractor’s performance of its obligations under the contract—

- (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 at least 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 contract with immediate effect or from such date as may be specified in the notice.

(2) Where the contractor consists of two or more persons practising in partnership and one or more of those persons has or have left the partnership during the existence of the contract, the Board may give notice in writing to the contractor terminating the contract on such date as may be specified

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in the notice if, in the Board's reasonable opinion, the change in the membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Board to perform its obligations under the contract.

- (3) A notice given to the contractor under sub-paragraph (2) must specify—
 - (a) the date on which the contract is to terminate; and
 - (b) the Board's reasons for considering that the change in the membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Board to perform its obligations under the contract.

Contract sanctions

72.—(1) In this paragraph and in paragraph 73, “contract sanction” means—

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

(2) Where the Board is entitled to terminate the contract under paragraphs 66, 67, 68, 69 70(4) or (6) or 71, it may instead impose any of the contract sanctions if the Board is reasonably satisfied that the contract sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the Board's entitlement to terminate the contract.

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

(4) If the Board decides to impose a contract sanction, the Board must—

- (a) give notice in writing to the contractor of the contract 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.

(5) Subject to paragraph 73 the Board may not impose the contract 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 sub-paragraph (4) 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.

(6) Where the Board imposes a contract 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 contract sanction.

Contract sanctions and the NHS dispute resolution procedure

73.—(1) If there is a dispute between the Board and the contractor in relation to a contract sanction that the Board is proposing to impose, the Board may not, subject to sub-paragraph (5), impose the contract 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 contract sanction to the NHS dispute resolution procedure before the end of a period of 28 days beginning with the date on which the contractor was given notice in accordance with paragraph 72(4) (or such longer period as may be agreed in writing with the Board); and
- (b) gives notice to the Board in writing that it has done so.

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

- (a) there has been a final determination of the dispute in accordance with regulation 83 (or by a court) and that determination permits the Board to impose the contract 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 contract sanction with immediate effect.

(5) If the Board is satisfied that it is necessary to impose the contract 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 contract sanction with immediate effect, pending the outcome of that procedure (or any court proceedings).

Termination and the NHS dispute resolution procedure

74.—(1) Where the Board is entitled to give notice in writing to the contractor terminating the contract under paragraphs 66, 67, 68, 70(4) or (6) or 71, the Board must, in the notice given to the contractor under those provisions, specify a date on which the contract terminates 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 contract 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 contract 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 contract; or
- (b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the earlier.

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

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

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sub-paragraphs (3) and (4) do not apply and the Board may confirm, by giving notice in writing to the contractor, that the contract will nevertheless terminate at the end of the period of the notice given under paragraphs 66, 67, 68, 70(4) or (6) or 71.

Consultation with the Local Medical Committee

75.—(1) If the Board is considering—

- (a) terminating the contract under paragraphs 66, 67, 68, 70(4) or (6) or 71;
- (b) whether a remedial notice or a breach notice under paragraph 70 should be given in writing to the contractor; or
- (c) imposing a contract sanction,

the Board must, if it is reasonably practicable to do so, consult the Local Medical Committee (if any) for the area in which the contractor is providing services under the contract before it terminates the contract or imposes a contract sanction.

(2) Whether or not the Local Medical Committee has been consulted under sub-paragraph (1), if the Board imposes a contract sanction on a contractor or terminates a contract in accordance with this Part, it must, as soon as reasonably practicable, give notice in writing to the Local Medical Committee of the contract sanction imposed or of the termination of the contract (as the case may be).