

SCHEDULE 1

CONTENT OF AGREEMENTS

PART 8

VARIATION AND TERMINATION OF AGREEMENTS

Variation of an agreement: general

61.—(1) Subject to [^{F1}regulations 25 and 28A], paragraphs 33(8), 65 and 75 of this schedule [^{F2}, paragraph 1 of schedule 3A] and sub-paragraph (2), no amendment or variation will have effect unless it is in writing and signed by or on behalf of the Health Board and the provider.

(2) In addition to the specific provision made in paragraph 75 the Health Board may vary the agreement without the provider’s consent where it—

- (a) is reasonably satisfied that it is necessary to vary the agreement so as to comply with the relevant legislation; and
- (b) notifies the provider in writing of the wording of the proposed variation and the date upon which that variation is to take effect,

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

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

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

Textual Amendments

- F1** Words in sch. 1 para. 61(1) substituted (18.10.2021) by [The National Health Service \(General Medical Services and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/302\)](#), regs. 1, **16(d)(i)**
- F2** Words in sch. 1 para. 61(1) inserted (18.10.2021) by [The National Health Service \(General Medical Services and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/302\)](#), regs. 1, **16(d)(ii)**
- F3** sch. 1 para. 61(3)(b) omitted (25.5.2018) by virtue of [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), **Sch. 19 para. 429(4)(a)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

(1) 2011 asp 5.
(2) 2016 asp 14.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018, PART 8. (See end of Document for details)

F4 sch. 1 para. 61(3)(da)(db) inserted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 429\(4\)\(b\)](#) (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

Variation of an agreement: execution

62.—(1) If the agreement or any amendment or variation to the agreement under paragraph 61(1) is executed in counterpart, each counterpart when executed and delivered is to constitute an original of the agreement or amendment or variation to the agreement; but both of the counterparts will together constitute the same agreed agreement, amendment or variation and no counterpart is to be effective until each party has executed and delivered an executed counterpart to the other party.

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

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

Termination by agreement

63. The Health Board and the provider may agree in writing to terminate the agreement, and if the parties so agree, they must agree the date upon which that termination should take effect and any further terms upon which the agreement should be terminated.

Termination by the provider

64.—(1) A provider may terminate the agreement by serving notice in writing on the Health Board at any time.

(2) Where a provider serves notice pursuant to sub-paragraph (1), the agreement will, subject to sub-paragraph (3), terminate 6 months after the date on which the notice is served (“the termination date”), save that if the termination date is not the last calendar day of a month, the agreement will instead terminate on the last calendar day of the month in which the termination date falls.

(3) Where the provider is an individual, sub-paragraph (2) will apply to the provider, save that the reference to “6 months” will instead be to “3 months”.

(4) This paragraph and paragraph 66 are without prejudice to any other rights to terminate the agreement that the provider may have.

Withdrawal by parties to an agreement other than Health Boards

65.—(1) Where the provider comprises more than one party to the agreement, a party to the agreement may withdraw from the agreement by serving notice in writing on the Health Board and the other parties to the agreement at any time.

(2) Where a party serves notice pursuant to sub-paragraph (1), the agreement will, subject to sub-paragraph (3), be varied to the extent that that party is no longer a party to the agreement 6 months after the date on which the notice is served (“the variation date”), save that if the variation date is not the last calendar day of a month, the agreement will instead vary on the last calendar day of the month in which the variation date falls.

(3) Where a party to the agreement is an individual, sub-paragraph (2) will apply to that party, save that the reference to “6 months” will instead be to “3 months”.

(4) This paragraph is without prejudice to the right of the Health Board to terminate an agreement in accordance with paragraph 74.

Late payment notices

66.—(1) The provider may give notice in writing (a “late payment notice”) to the Health Board if the Board has failed to make any payments due to the provider in accordance with a term of the agreement that has the effect specified in regulation 22 and the provider must specify in the late payment notice the payments that the Board has failed to make in accordance with that regulation.

(2) (Subject to sub-paragraph (3), the provider may, at least 28 days after having served a late payment notice, terminate the agreement by a further written notice if the Health Board has still failed to make the payments due to the provider, and that were specified in the late payment notice served on the Health Board pursuant to sub-paragraph (1).

(3) If, following receipt of a late payment notice, the Health Board refers the matter to the NHS dispute resolution procedure within 28 days of the date upon which it is served with the late payment notice, and it notifies the provider in writing that it has done so within that period of time, the provider may not terminate the agreement pursuant to sub-paragraph (2) until whichever is the earlier of the following dates—

- (a) there has been a determination of the dispute pursuant to paragraph 59 and that determination permits the provider to terminate the agreement; or
- (b) the Health Board ceases to pursue the NHS dispute resolution procedure.

Termination by the Health Board: general

67.—(1) The Health Board may only terminate the agreement with the provider or a party to the agreement in accordance with the provisions in this Part.

(2) The Health Board may serve notice in writing on a party to the agreement terminating the agreement with that party with immediate effect, or from such date as may be specified in the notice if—

- (a) in the case of an agreement entered into prior to 22nd December 2010, after the agreement has been made, it comes to the attention of the Health Board that written information provided to the Health Board by that party to the agreement—
 - (i) before the agreement was entered into; or
 - (ii) pursuant to paragraphs 42(2) or (3) or 43(2) of schedule 1 of the 2004 Regulations as in force at 21st December 2010, in relation to the conditions set out in regulation 3 of the 2004 Regulations as in force at 21st December 2010 (and compliance with those conditions),
was, when given, untrue or inaccurate in a material respect; or
- (b) in the case of an agreement entered into on or after 22nd December 2010, after the agreement has been made, it comes to the attention of the Health Board that written information provided to the Health Board by that party to the agreement—
 - (i) before the agreement was entered into; or
 - (ii) pursuant to paragraphs 48(2) or (3), 49(2) or 50(2),

in relation to the conditions set out in regulations 3 and 3A of the 2004 Regulations or regulations 4 and 5 of these Regulations (and compliance with those conditions), was, when given, untrue or inaccurate in a material respect.

Other grounds for termination by the Health Board

68.—(1) In the case of agreements entered into prior to 22nd December 2010, the Health Board may serve notice in writing on a party to the agreement terminating the agreement with that party with immediate effect, or from such date as may be specified in the notice, if—

- (a) where an individual is a party to the agreement, that individual;
- (b) where a partnership is a party to the agreement, any partner or the partnership; and
- (c) where a company limited by shares is a party to the agreement—
 - (i) the company;
 - (ii) any person legally or beneficially owning a share in the company; or
 - (iii) any director or secretary of the company,

falls within sub-paragraph (3) during the existence of the agreement.

(2) Where the provider comprises more than one party to the agreement, a Health Board that serves notice pursuant to sub-paragraph (1) must send a copy of that notice to any other party to the agreement whose agreement is not being terminated.

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

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

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

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

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018, PART 8. (See end of Document for details)

- (h) the person has been convicted of an offence referred to in schedule 1 of the Criminal Procedure (Scotland) Act 1995⁽⁵⁾ or schedule 1 of the Children and Young Persons Act 1933⁽⁶⁾;
- (i) the person has—
 - (i) had sequestration of the person’s estate awarded or been adjudged bankrupt unless (in either case) the person has been discharged or the bankruptcy order has been annulled;
 - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under schedule 4A of the Insolvency Act 1986⁽⁷⁾ or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985⁽⁸⁾ or sections 155 to 160 of the Bankruptcy (Scotland) Act 2016⁽⁹⁾, unless that order has ceased to have effect or has been annulled;
 - (iii) made a composition or arrangement with, or granted a trust deed for, the person’s creditors unless the person has been discharged in respect of it; or
 - (iv) been wound up under Part IV of the Insolvency Act 1986;
- (j) there is—
 - (i) an administrator, administrative receiver or receiver appointed in respect of it; or
 - (ii) an administration order made in respect of it under schedule B1 of the Insolvency Act 1986⁽¹⁰⁾;
- (k) that person is a partnership or limited liability partnership and—
 - (i) a dissolution of the partnership or limited liability partnership is ordered by any competent court, tribunal or arbitrator; or
 - (ii) an event happens that makes it unlawful for the business of the partnership or limited liability partnership to continue, or for members of the partnership to carry on in partnership or limited liability partnership;
- (l) the person has been—
 - (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005⁽¹¹⁾ (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of [^{F5}any body; or]
 - (ii) removed from the office of charity trustee or a charity by an order made by the Charity Commission for England and Wales or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which the person by the person’s conduct contributed to or facilitated; or
- (m) the person is subject to—

⁽⁵⁾ 1995 c.46. Schedule 4A was added by section 257 and schedule 20 of the Enterprise Act 2002 (c.40) (“the 2002 Act”).

⁽⁶⁾ 1933 c.12 as amended by section 170 and paragraph 8 of schedule 15 and schedule 16 of the Criminal Justice Act 1988 (c.33); schedules 3 and 4 of the Sexual Offences Act 1956 (c.69); paragraph 7 of schedule 6 of the Sexual Offences Act 2003 (c.42); paragraph 2 of schedule 10 of the Domestic Violence, Crime and Victims Act 2004 (c.28); paragraph 53 of schedule 21 of the Coroners and Justice Act 2009 (c.25) and paragraph 1 of schedule 5 of the Modern Slavery Act 2015 (c.30).

⁽⁷⁾ 1986 c.45 was inserted by section 257 and schedule 20 of the 2002 Act.

⁽⁸⁾ 1985 c.66. Sections 56A to 56K were substituted by section 33 of the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11) and repealed by the Bankruptcy (Scotland) Act 2016 (asp 21).

⁽⁹⁾ 2016 asp 21.

⁽¹⁰⁾ 1986 c.45. Schedule B1 was inserted by paragraph 1 of schedule 16 of the 2002 Act.

⁽¹¹⁾ 2005 asp 10.

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- (i) disqualification order under section 1 of the Company Directors Disqualification Act 1986⁽¹²⁾;
 - (ii) a disqualification undertaking under section 1A of that Act;
 - (iii) a disqualification order under article 3 of the Company Directors Disqualification (Northern Ireland) Order 2002⁽¹³⁾;
 - (iv) a disqualification undertaking under article 4 of that Order; or
 - (v) a disqualification order under section 429(2)(b) of the Insolvency Act 1986⁽¹⁴⁾; ^{F6}...
- (n) the person has refused to comply with a request by the Health Board for that person to be medically examined on the grounds that the Health Board is concerned that the person is incapable of adequately providing services under the agreement and, in a case where that person is a partner in a partnership, or a legal and beneficial owner of shares in a company, that is a party to the agreement, the Health Board is not satisfied that the partnership or company is taking adequate steps to deal with the matter; or
- (o) that person would otherwise fall within paragraph 67(3)(e) of schedule 3 of the National Health Service (General Medical Services Contracts) Regulations 2015⁽¹⁵⁾.
- (4) A Health Board may not terminate the agreement pursuant to sub-paragraph (3)(b) where the Health Board is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the person unsuitable to be—
- (a) a party to the agreement;
 - (b) in the case where the person is a partner in a partnership that is a party to the agreement, a partner in that partnership; or
 - (c) in the case where the person is—
 - (i) a person legally or beneficially holding a share in a company limited by shares that is a party to the agreement; or
 - (ii) a director or secretary of a company limited by shares that is a party to the agreement, a person legally or beneficially holding share in that company or a director or secretary of that company, as the case may be.
- (5) A Health Board may not terminate the agreement pursuant to sub-paragraph (3)(c)—
- (a) until a period of at least three months has elapsed since the date of the dismissal of the person concerned; or
 - (b) if, during the period of time specified in sub-paragraph (a), the person concerned brings proceedings in any competent tribunal or court in respect of the person's dismissal, until proceedings before that tribunal or court are concluded,
- and the Health Board may only terminate the agreement at the end of the period specified in sub-paragraph (b) if there is no finding of unfair dismissal at the end of those proceedings.
- (6) A Health Board may not terminate the agreement pursuant to sub-paragraph (3)(g) where the Health Board is satisfied that the conviction does not make the person unsuitable to be—
- (a) a party to the agreement;
 - (b) in the case where the person is a partner in a partnership that is a party to the agreement, a partner in that partnership;

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

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

⁽¹⁴⁾ Section 429(2) was amended by paragraph 15 of schedule 23 of the Enterprise Act 2002.

⁽¹⁵⁾ S.I. 2015/1862.

Changes to legislation: There are currently no known outstanding effects for the *The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018, PART 8*. (See end of Document for details)

- (c) in the case where the person is—
 - (i) a person legally and beneficially holding a share in a company limited by shares that is a party to the agreement; or
 - (ii) a director or secretary of a company limited by shares that is a party to the agreement.

(7) In this paragraph “health service body” does not include any provider who is to be treated as a health service body in accordance with regulation 10.

Textual Amendments

- F5** Words in *sch. 1 para. 68(3)(1)(i)* substituted (1.4.2018) by *The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94)*, regs. 1, **15(j)(i)**
- F6** Word in *sch. 1 para. 68(3)(m)(v)* omitted (1.4.2018) by virtue of *The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94)*, regs. 1, **15(j)(ii)**

Other grounds for termination by the Health Board for agreements entered into on or after 22nd December 2010

69.—(1) In the case of agreements entered into on or after 22nd December 2010, the Health Board may serve notice in writing on a party to the agreement terminating the agreement with the party with immediate effect, or from such date as may be specified in the notice, if—

- (a) in the case of an agreement with an individual, that individual;
- (b) in the case of an agreement with a partnership, any partner or the partnership;
- (c) in the case of an agreement with a limited liability partnership, any member or the limited liability partnership; and
- (d) in the case of an agreement with a company—
 - (i) the company;
 - (ii) any member of the company; or
 - (iii) any director or secretary of the company,

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

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

- (a) subject to sub-paragraph (3), the person does not satisfy the requirements of section 17CA(1), (2) or (3) of the Act⁽¹⁶⁾;
- (b) the person has been disqualified;
- (c) subject to sub-paragraph (5), the person is disqualified or suspended from practising by any licensing body anywhere in the world (other than by—
 - (i) a direction under section 32A(2) (applications for interim suspension) or 32B(1) (suspension pending appeal) of the Act;
 - (ii) a Health Board in terms of regulation 8A of the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004; or
 - (iii) any provision in force in England, Wales or Northern Ireland corresponding to the provisions referred to in sub-heads (i) and (ii);

⁽¹⁶⁾ Section 17CA was inserted by section 38 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3).

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- (d) subject to sub-paragraph (6), the person has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless before the Health Board has served a notice terminating the agreement pursuant to this paragraph, the person is employed by the health service body that dismissed the person or by another health service body;
- (e) the person is disqualified from a list unless the person's name has subsequently been included in such a list;
- (f) the person has been convicted in the United Kingdom of murder;
- (g) the person has been convicted in the United Kingdom of a criminal offence, other than of murder, and has been sentenced to a term of imprisonment of over six months;
- (h) subject to sub-paragraph (7), the person has been convicted elsewhere of an offence—
 - (i) which would, if committed in Scotland, constitute murder; or
 - (ii) constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (i) the person has been convicted of an offence referred to in schedule 1 of the Criminal Procedure (Scotland) Act 1995 (offences against children under the age of 17 to which special provisions apply) or schedule 1 of the Children and Young Persons Act 1933 (offences against children and young persons with respect to which special provisions apply);
- (j) the person has—
 - (i) had sequestration of the person's estate awarded or been adjudged bankrupt unless (in either case) the person has been discharged or the bankruptcy order has been annulled,
 - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under schedule 4A of the Insolvency Act 1986 or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985, or sections 155 to 160 of the Bankruptcy (Scotland) Act 2016, unless that order has ceased to have effect or has been annulled,
 - (iii) made a composition or arrangement with, or granted a trust deed for, the person's creditors unless the person has been discharged in respect of it, or
 - (iv) been wound up under Part IV of the Insolvency Act 1986;
- (k) there is—
 - (i) an administrator, administrative receiver or receiver appointed in respect of it; or
 - (ii) an administration order made in respect of it under schedule B1 of the Insolvency Act 1986;
- (l) that person is a partnership or limited liability partnership and—
 - (i) a dissolution of the partnership or limited liability partnership is ordered by any competent court, tribunal or arbitrator; or
 - (ii) an event happens that makes it unlawful for the business of the partnership or limited liability partnership to continue, or for members of the partnership or limited liability partnership to carry on in partnership or limited liability partnership;
- (m) the person has been—
 - (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session), from being concerned in the management or control of any body; or
 - (ii) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission for England and Wales or the High Court on the grounds

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of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which the person by the person's conduct contributed to or facilitated;

- (n) the person is subject to a disqualification order under the company Directors Disqualification Act 1986, the Company Directors Disqualification (Northern Ireland) Order 2002 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order);^{F7}...
 - (o) the person has refused to comply with a request by the Health Board for that person to be medically examined on the grounds that the Health Board is concerned that the person is incapable of adequately providing services under the agreement and, in a case where the agreement is with a partnership, limited liability partnership or a company, the Health Board is not satisfied that the partnership, limited liability partnership or company is taking adequate steps to deal with the matter; or
 - (p) the person would otherwise fall within paragraph 67(3)(e) of schedule 3 of the National Health Service (General Medical Services Contracts) Regulations 2015.
- (3) Subject to sub-paragraph (4), a Health Board may not terminate the agreement pursuant to sub-paragraph (2)(a) where—
- (a) a party to the agreement who is an individual;
 - (b) in the case of a party to an agreement which is a partnership, a partner;
 - (c) in the case of a party to an agreement which is a limited liability partnership, a member; or
 - (d) in the case of a party to an agreement which is a company, a member of the company, after having entered into an agreement (“the relevant agreement”), retires and is therefore not performing or is not engaged in the provision of primary medical services, in accordance with regulation 5.
- (4) Sub-paragraph (3) only applies for the period of time following the date of retirement, which is the equivalent to the length of time that the relevant person referred to in sub-paragraph (3)(a), (b), (c) or (d) has performed or been engaged in the provision of primary medical services for the purposes of the relevant agreement, up to a maximum period of 2 years following the date of retirement.
- (5) A Health Board may not terminate the agreement pursuant to sub-paragraph (2)(c) where the Health Board is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the person unsuitable to be—
- (a) a party to the agreement;
 - (b) in the case where the person is a partner in a partnership that is a party to the agreement, a partner in that partnership;
 - (c) in the case where the person is a member of a limited liability partnership that is a party to the agreement, a member of that partnership; or
 - (d) in the case where the person is a member, director or secretary of a company that is a party to the agreement—
 - (i) a member of the company; or
 - (ii) a director or secretary of the company,as the case may be.
- (6) A Health Board may not terminate the agreement pursuant to sub-paragraph (2)(d)—
- (a) until a period of at least three months has elapsed since the date of the dismissal of the person concerned; or

Changes to legislation: There are currently no known outstanding effects for the *The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018, PART 8*. (See end of Document for details)

- (b) if, during the period of time specified in sub-paragraph (a), the person concerned brings proceedings in any competent tribunal or court in respect of the person's dismissal, until proceedings before that tribunal or court are concluded,
and the Health Board may only terminate the agreement at the end of the period specified in sub-paragraph (b) if there is no finding of unfair dismissal at the end of those proceedings.

(7) A Health Board may not terminate the agreement pursuant to sub-paragraph (2)(h) where the Health Board is satisfied that the conviction does not make the person unsuitable to be—

- (a) a party to the agreement;
(b) in the case where the person is a partner in a partnership that is a party to the agreement, a partner in that partnership;
(c) in the case where the person is a member of a limited liability partnership that is a party to the agreement, a member of that limited liability partnership; or
(d) in the case where the person is a member, director or secretary of a company that is a party to the agreement—
(i) a member of the company; or
(ii) a director or secretary of the company,

as the case may be.

(8) In this paragraph, “health service body” does not include any person who is to be regarded as a health service body in accordance with regulation 10.

Textual Amendments

- F7** Word in sch. 1 para. 69(2)(n) omitted (1.4.2018) by virtue of [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **15(k)**

Other grounds for termination by the Health Board

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

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

Termination by the Health Board for unlawful sub contracting

71. If the provider breaches the condition specified in paragraph 33(10) and it comes to the Health Board's attention that the provider has done so, the Health Board must serve notice in writing on the provider—

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

Termination by the Health Board: remedial notices and breach notices

72.—(1) Where a provider has breached the agreement other than as specified in paragraphs 67(2) to 71 and the breach is capable of remedy, the Health Board must, before taking any action it is otherwise entitled to take by virtue of the agreement, serve a notice on the provider requiring it to remedy the breach (“a remedial notice”).

(2) A remedial notice must specify—

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

(3) The notice period shall, unless the Health Board is satisfied that a shorter period is necessary to—

- (a) protect the safety of the provider’s patients; or
- (b) protect itself from material financial loss,

be no less than 28 days from the date that notice is given.

(4) Where a Health Board is satisfied that the provider has not taken the required steps to remedy the breach by the end of the notice period, the Health Board may terminate the agreement with the provider with effect from such date as the Health Board may specify in a further notice to the provider.

(5) Where a provider has breached the agreement other than as specified in paragraphs 67(2) to 71 and the breach is not capable of remedy, the Health Board may serve notice on the provider requiring the provider not to repeat the breach (“breach notice”).

(6) If, following a breach notice or a remedial notice, the provider—

- (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 Health Board may serve notice on the provider terminating the agreement with effect from such date as may be specified in that notice.

(7) The Health Board may not exercise its right to terminate the agreement under subparagraph (6) unless it is satisfied that the cumulative effect of the breaches is such that the Health Board considers that to allow the agreement to continue would be prejudicial to the efficiency of the services to be provided under the agreement.

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

Termination by the Health Board: additional provisions specific to agreements with one or more [^{F8}bodies corporate]

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

- (a) the Health Board will be entitled to give notice to the company, partnership or limited liability partnership requiring that the company, partnership or limited liability partnership

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ceases carrying on that business before the end of a period of not less than 28 days beginning on the day on which the notice is given (“the notice period”); and

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

(2) Where the provider comprises more than one party to the agreement, a Health Board that serves notice pursuant to sub-paragraph (1)(a) or (b) must send a copy of that notice to any other party to the agreement.

Textual Amendments

- F8** Words in sch. 1 para. 73 heading substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, **15(I)**

Termination by the Health Board: changes in the provider

74.—(1) The Health Board may be entitled to terminate the agreement with the provider by notice in writing on such date as may be specified in that notice where, during the existence of the agreement—

- (a) one or more parties to the agreement have withdrawn from or ceased to be parties to the agreement;
- (b) where one or more partnerships are parties to the agreement, one or more partners have left that partnership or those partnerships;
- (c) where one or more limited liability partnerships are parties to the agreement, one or more members have left that limited liability partnership or those limited liability partnerships; or
- (d) where one or more companies are parties to the agreement, one or more members have left that company or those companies,

if in its reasonable opinion, the Health Board considers that the change in the parties to the agreement or membership of the partnership, limited liability partnership or company (as the case may be) is likely to have a serious adverse impact on the ability of the provider or the Health Board to perform its obligations under the agreement.

(2) A notice given to the provider pursuant to sub-paragraph (1) must specify—

- (a) the date upon which the agreement is to be terminated; and
- (b) the Health Board’s reasons for considering that the change in the parties to the agreement or the membership of the partnership, limited liability partnership or company (as the case may be) is likely to have a serious adverse impact on the ability of the provider or the Health Board to perform its obligations under the agreement.

Agreement sanctions

75.—(1) In this paragraph and paragraphs 76 and 78, “agreement sanction” means—

- (a) the termination of specified obligations under the agreement;
- (b) the suspension of specified obligations under the agreement for a period of up to six months; or

(c) the withholding or deducting of monies otherwise payable under the agreement.

(2) Where the Health Board is entitled to terminate the agreement with the provider or with a party to the agreement pursuant to paragraph 69(2), 70, 71, 72(4) or (6), 73, 74 it may instead impose any of the agreement sanctions if the Health Board is reasonably satisfied that the agreement sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the Health Board's entitlement to terminate the agreement.

(3) Where the agreement includes the provision of essential services, the Health Board must not, under sub-paragraph (2), be entitled to impose any agreement sanction that has the effect of terminating or suspending any obligation to provide, or any obligation that relates to, essential services.

(4) If the Health Board decides to impose an agreement sanction, it must notify the provider of the agreement sanction that it proposes to impose, the date upon which that sanction will be imposed and provide in that notice an explanation of the effect of the imposition of that sanction.

(5) Subject to paragraph 76 the Health Board must not impose the agreement sanction until at least 28 days after it has served notice on the provider pursuant to sub-paragraph (4) unless the Health Board is satisfied that it is necessary to do so in order to—

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

(6) Where the Health Board imposes an agreement sanction, the Health Board must be entitled to charge the provider the reasonable costs of additional administration that the Health Board has incurred in order to impose, or as a result of imposing, the agreement sanction.

Agreement sanctions and the dispute resolution procedure

76.—(1) If there is a dispute between the Health Board and the provider in relation to an agreement sanction that the Health Board is proposing to impose, the Health Board must not, subject to sub-paragraph (4), impose the proposed agreement sanction except in the circumstances specified in sub-paragraph (2)(a) or (b).

(2) If the provider refers the dispute relating to the agreement sanction to the local dispute resolution process within 28 days beginning on the date on which the Health Board served notice on the provider in accordance with paragraph 75(4) (or such longer period as may be agreed in writing with the Health Board), and notifies the Health Board in writing that it has done so, the Health Board must not impose the agreement sanctions unless—

- (a) there has been a resolution of the dispute between the parties which allows the Health Board to impose the agreement sanction;
- (b) there has been no resolution of the dispute between the parties as a result of the local dispute resolution process and the provider does not refer the matter to the Scottish Ministers under paragraph 57 or 58 within 28 days of the end of the period specified in—
 - (i) paragraph 56(8); or
 - (ii) the date on which the local dispute resolution process was completed, whichever is the earlier;
- (c) either party refers the matter to the Scottish Ministers under paragraph 57 or 58 within the period specified in sub-paragraph (b) and either^{F9}—
 - (i) there has been a determination of the dispute pursuant to paragraph 59 and that determination permits the Health Board to impose the agreement sanction; or
 - (ii) the provider ceases to pursue the NHS dispute resolution procedure.

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(3) If the provider does not invoke the local dispute resolution process within the time specified in sub-paragraph (2), the Health Board must be entitled to impose the agreement sanction with immediate effect.

(4) If the Health Board is satisfied that it is necessary to impose the agreement sanction before the local dispute resolution process or the NHS dispute resolution procedure is concluded in order to—

- (a) protect the safety of the provider’s patients; or
- (b) protect itself from material financial loss,

the Health Board is entitled to impose the agreement sanction with immediate effect, pending the outcome of that procedure.

Textual Amendments

- F9** Sch. 1 para. 76(2)(c) punctuation inserted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\), regs. 1, 15\(m\)](#)

Termination and the NHS dispute resolution procedure

77.—(1) Where the Health Board is entitled to serve written notice on the provider or a party to the agreement terminating the agreement with the provider or a party to the agreement pursuant to paragraphs 67 to 74, the Health Board must, in the notice served on the provider or the party to the agreement pursuant to those provisions, specify a date on which the agreement with the provider or a party to the agreement terminates that is not less than 28 days after the date on which the Health Board has served that notice on the provider or the party to the agreement unless sub-paragraph (2) applies.

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

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

(3) In a case falling with sub-paragraph (1), where the exceptions in sub-paragraph (2) do not apply, where the provider invokes the local dispute resolution process before the end of the period of notice referred to in sub-paragraph (1), and it notifies the Health Board in writing that it has done so, the agreement must not terminate at the end of the notice period but instead must only terminate in the circumstances specified in sub-paragraph (4).

(4) The agreement must only terminate if and when—

- (a) there has been a resolution of the dispute between the parties which allows the Health Board to terminate the agreement with the provider or the party to the agreement;
- (b) there has been no resolution of the dispute between the parties as a result of the local dispute resolution process and the provider does not refer the matter to the Scottish Ministers under paragraph 57 or 58 within 28 days of the end of the period specified in—
 - (i) paragraph 56(8); or
 - (ii) the date on which the local dispute resolution process was completed,
 whichever is the earlier;
- (c) either party refers the matter to the Scottish Ministers under paragraph 57 or 58 within the period specified in sub-paragraph (b); and either

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- (i) there has been a determination of the dispute pursuant to paragraph 59 and that determination permits the Health Board to terminate the agreement with the provider or the party to the agreement; or
 - (ii) the provider ceases to pursue the NHS dispute resolution procedure
- whichever is earlier.

(5) If the Health Board is satisfied that it is necessary to terminate the agreement before the local dispute resolution process or the NHS dispute resolution procedure is concluded in order to—

- (a) protect the safety of the provider’s patients; or
- (b) protect itself from material financial loss,

sub-paragraphs (3) and (4) must not apply and the Health Board must be entitled to confirm, by written notice to be served on the provider, that the agreement with the provider or a party to the agreement will nevertheless terminate at the end of the period of the notice it served pursuant to paragraphs 67 to 74.

Consultation with the area medical committee

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

- (a) terminating the agreement with the provider or with a party to the agreement pursuant to paragraph 67 to 74; or
- (b) imposing an agreement sanction,

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

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

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