

## SCHEDULE 1

### CONTENT OF AGREEMENTS

#### PART 8

#### VARIATION AND TERMINATION OF AGREEMENTS

##### **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<sup>(1)</sup>;
  - (ii) a Health Board in terms of regulation 8A of the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004<sup>(2)</sup>; 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;

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(1) 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.

(2) 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, Paragraph 68. (See end of Document for details)

- (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;
- (h) the person has been convicted of an offence referred to in schedule 1 of the Criminal Procedure (Scotland) Act 1995(3) or schedule 1 of the Children and Young Persons Act 1933(4);
- (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(5) or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985(6) or sections 155 to 160 of the Bankruptcy (Scotland) Act 2016(7), 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(8);
- (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(9) (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of [F<sup>1</sup>any body; or]

(3) 1995 c.46. Schedule 4A was added by section 257 and schedule 20 of the Enterprise Act 2002 (c.40) (“the 2002 Act”).

(4) 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).

(5) 1986 c.45 was inserted by section 257 and schedule 20 of the 2002 Act.

(6) 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).

(7) 2016 asp 21.

(8) 1986 c.45. Schedule B1 was inserted by paragraph 1 of schedule 16 of the 2002 Act.

(9) 2005 asp 10.

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- (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—
    - (i) disqualification order under section 1 of the Company Directors Disqualification Act 1986<sup>(10)</sup>;
    - (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<sup>(11)</sup>;
    - (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<sup>(12)</sup>; <sup>F2</sup>...
  - (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<sup>(13)</sup>.
- (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,

<sup>(10)</sup> 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).

<sup>(11)</sup> 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.

<sup>(12)</sup> Section 429(2) was amended by paragraph 15 of schedule 23 of the Enterprise Act 2002.

<sup>(13)</sup> S.I. 2015/1862.

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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;
- (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**

- F1** 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\(j\)\(i\)](#)
- F2** 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\(j\)\(ii\)](#)

**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, Paragraph 68.