

SCHEDULE 3

OTHER CONTRACTUAL TERMS

PART 9

VARIATION AND TERMINATION OF AGREEMENTS

60.—(1) Subject to paragraph 32(3), no amendment or variation shall have effect unless it is in writing and signed by or on behalf of [F1NHS England] and the contractor.

(2) In addition to the specific provision made [F2in paragraphs 61A and] 73, [F1NHS England] may vary the agreement without the contractor's consent where it—

- (a) is reasonably satisfied that it is necessary to vary the agreement so as to comply with the Act, any regulations made pursuant to that Act, or any direction given by the Secretary of State pursuant to that Act; and
- (b) notifies the contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect,

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

Textual Amendments

- F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**
- F2** Words in [Sch. 3 para. 60\(2\)](#) substituted (12.6.2023) by [The National Health Service \(Primary Dental Services\) \(Amendment\) Regulations 2023 \(S.I. 2023/554\)](#), regs. 1(1), **3(2)(a)**

Variation of an agreement: activity under the agreement

61.—(1) Where the contractor or [F1NHS England] is of the opinion that there needs to be a variation to the number of—

- (a) units of dental activity; or
- (b) units of orthodontic activity,

to be provided under the agreement, sub-paragraphs (2) and (3) shall apply.

(2) The contractor or [F1NHS England] shall notify the other party to the agreement in writing of its opinion of the need for a variation, specifying in that notice the variation that it considers necessary, together with its reasons.

(3) Following service of the notice referred to in sub-paragraph (2), both parties shall use their best endeavours to communicate and co-operate with each other with a view to determining what (if any) variation should be made to the number of—

- (a) units of dental activity; or
- (b) units of orthodontic activity,

and any related variations to the agreement, including to the monies to be paid to the contractor under the agreement, and shall where appropriate effect the variation in accordance with paragraph 60.

Textual Amendments

F1 Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), [Sch. para. 1](#)

[F3]Variation of an agreement: rebasing for persistent under performance

61A.—(1) In this paragraph—

“contracted activity” means the number of units of dental activity or units of orthodontic activity the contractor is required to provide under the agreement,

“Covid years” means the financial years ending on 31st March 2021 and 31st March 2022,

“rebasing” means a permanent variation of the agreement pursuant to sub-paragraph (2) and “rebase” is to be read accordingly,

“rebasing date” means the date, notified by NHS England under a rebasing notice, from which the rebasing takes effect,

“rebasing notice” means a notice in writing sent by NHS England to the contractor, notifying the contractor of the wording of a proposed rebasing and the rebasing date,

“relevant financial years” means any three consecutive financial years, save for the Covid years, which—

- (a) are not before the financial year ending on 31st March 2020, and
- (b) immediately precede the financial year in which the rebasing notice is served on the contractor.

(2) If all the conditions in sub-paragraph (3) are met, NHS England may rebase the agreement to—

- (a) reduce the contracted activity, and
- (b) carry out any related variations of the agreement, including in relation to the monies to be paid to the contractor under the agreement,

but the rebasing must not result in the contracted activity being reduced to less than the highest number of units of dental or orthodontic activity provided by the contractor in any one of the relevant financial years.

(3) The conditions referred to in sub-paragraph (2) are—

- (a) in respect of each relevant financial year—
 - (i) NHS England invited the contractor to participate in a mid-year review of its performance under the agreement, pursuant to paragraph 58(5)(b), whether the contractor has engaged with this procedure or not,
 - (ii) the contractor provided less than 96% of contracted activity,
 - (iii) there have not been force majeure circumstances under the agreement, which have caused the under delivery pursuant to sub-paragraph (ii),
 - (iv) NHS England issued a breach notice to the contractor by reason of under delivery pursuant to sub-paragraph (ii), which has not been set aside, and no formal dispute is pending in respect of the circumstances that have given rise to the breach notice, and
- (b) NHS England has not been able to agree with the contractor a permanent variation of the agreement under paragraph 61(3).

(4) If NHS England decides to rebase a contract—

- (a) it must serve a rebasing notice on the contractor and allow a minimum of 28 days, starting with the day the rebasing notice is served on the contractor, before taking any action pursuant to that notice, and
- (b) it must specify in the rebasing notice a rebasing date it considers appropriate, [^{F4}which must be no earlier than 1st April in the financial year immediately following the financial year in which the rebasing notice is served on the contractor].]

Textual Amendments

- F3** Sch. 3 para. 61A inserted (12.6.2023) by The National Health Service (Primary Dental Services) (Amendment) Regulations 2023 (S.I. 2023/554), regs. 1(1), **3(2)(b)**
- F4** Words in Sch. 3 para. 61A(4)(b) substituted (1.4.2024) by The National Health Service (Primary Dental Services and Dental Charges) (Amendment) Regulations 2024 (S.I. 2024/271), regs. 1(2), **3(2)**

Termination by agreement

62. [^{F1}NHS England] and the contractor may agree in writing to terminate the agreement, and if the parties so agree, they shall agree the date upon which that termination should take effect and any further terms upon which the agreement should be terminated.

Textual Amendments

- F1** Words in Regulations substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), reg. 1(1), **Sch. para. 1**

Termination on the death of an individual

63.—(1) Where the agreement is with a single individual and that individual dies, the agreement shall terminate at the end of the period of [^{F5}28 days] after the date of his death unless, before the end of that period—

- (a) subject to sub-paragraph (2), [^{F1}NHS England] has agreed in writing with that individual's personal representatives that the agreement should continue for a further period, [^{F6}not exceeding 6 months] after the end of the period of [^{F5}28 days]; and
- (b) that individual's personal representatives have confirmed in writing to [^{F1}NHS England] that they are employing or engaging one or more dental practitioners to assist in the provision of dental services under the agreement throughout the period for which it continues.

(2) Where [^{F1}NHS England] is of the opinion that another individual may wish to enter into an agreement in respect the mandatory services which were provided by the deceased, the [^{F7}6 month period] referred to in sub-paragraph (1)(a) may be extended by a period not exceeding six months as may be agreed.

(3) Sub-paragraph (1) does not affect any other rights to terminate the agreement which [^{F1}NHS England] may have under paragraphs 67 to 71.

Textual Amendments

- F1** Words in Regulations substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), reg. 1(1), **Sch. para. 1**

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Personal Dental Services Agreements) Regulations 2005, PART 9. (See end of Document for details)

- F5** Words in Sch. 3 para. 63(1) substituted (1.6.2011) by [The National Health Service \(Primary Dental Services\) \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/1182\)](#), regs. 1, **15(3)(a)**
- F6** Words in Sch. 3 para. 63(1)(a) substituted (1.6.2011) by [The National Health Service \(Primary Dental Services\) \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/1182\)](#), regs. 1, **15(3)(b)**
- F7** Words in Sch. 3 para. 63(2) substituted (1.4.2012) by [The National Health Service \(Primary Dental Services\) \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/502\)](#), regs. 1, **3**

Termination by the contractor

64.—(1) A contractor may terminate the agreement by serving notice in writing on [F1NHS England] at any time.

(2) Where a contractor serves notice pursuant to sub-paragraph (1), the agreement shall terminate three 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 shall instead terminate on the last calendar day of the month in which the termination date falls.

(3) This paragraph and paragraph 65 are without prejudice to any other rights to terminate the agreement that the contractor may have.

Textual Amendments

- F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

Late payment notices

65.—(1) The contractor may give notice in writing (a “late payment notice”) to [F1NHS England] if [F1NHS England] has failed to make any payments due to the contractor in accordance with a term of the agreement that has the effect specified in regulation 17, and the contractor shall specify in the late payment notice the payments that [F1NHS England] has failed to make in accordance with that regulation.

(2) Subject to sub-paragraph (3), the contractor may, at least 28 days after having served a late payment notice, terminate the agreement by a further written notice if [F1NHS England] has still failed to make the payments that were due to the contractor and that were specified in the late payment notice served on [F1NHS England] pursuant to sub-paragraph (1).

(3) If, following receipt of a late payment notice, [F1NHS England] refers the matter to the NHS dispute resolution procedure within 28 days of the date upon which it is served with the late payment notice, and it notifies the contractor in writing that it has done so within that period of time, the contractor may not terminate the agreement pursuant to sub-paragraph (2) until—

- (a) there has been a determination of the dispute pursuant to paragraph 56 and that determination permits the contractor to terminate the agreement; or
- (b) [F1NHS England] ceases to pursue the NHS dispute resolution procedure,
- (c) whichever is the sooner.

Textual Amendments

- F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

Termination by [F1NHS England]: general provisions

66. [F1NHS England] may only terminate the agreement in accordance with the provisions in this Part.

Textual Amendments

F1 Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

Termination by [F1NHS England]: notice

67.—(1) [F1NHS England] may terminate the agreement by serving notice in writing on the contractor at any time.

(2) Where a notice is served pursuant to sub-paragraph (1), the agreement shall terminate on the date provided for in the agreement.

Textual Amendments

F1 Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

Termination by [F1NHS England] for the provision of untrue etc. information

68. [F1NHS England] may serve notice in writing on the contractor terminating the agreement forthwith, or from such date as may be specified in the notice if, after the agreement has been entered into, it comes to the attention of [F1NHS England] that written information provided to it by the contractor before the agreement was entered into in relation to the conditions set out in regulation 4 or 5 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.

Textual Amendments

F1 Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

Termination by [F1NHS England] on grounds of suitability etc.

69.—(1) [F1NHS England] may serve notice in writing on the contractor terminating the agreement forthwith, or from such date as may be specified in the notice if—

- (a) in the case of an agreement with an individual as a party, that individual;
- [F8](b) in the case of an agreement with a dental corporation, any director, chief executive or secretary of that corporation;
- (c) in the case of a company limited by shares, any director, chief executive or secretary of that company; or
- (d) in the case of a limited liability partnership, any member of that partnership.]

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

- (a) he or it is the subject of a national disqualification;

- (b) subject to sub-paragraph (3), he or it is 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 any licensing body anywhere in the world;
- (c) subject to sub-paragraph (4), he has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless before [^{F1}NHS England] has served a notice terminating the agreement pursuant to this paragraph, he is employed by the health service body that dismissed him or by another health service body;
- (d) he or it is removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 49F(2), (3) and (4) of the Act ^{M1} respectively) unless his name has subsequently been included in such a list;
- (e) he has been convicted in the United Kingdom of—
 - (i) murder; or
 - (ii) a criminal offence other than murder, committed on or after 14th December 2001, and has been sentenced to a term of imprisonment of over six months;
- (f) subject to sub-paragraph (5), he has been convicted outside the United Kingdom of an offence—
 - (i) which would, if committed in England and Wales, constitute murder; or
 - (ii) committed on or after 14th December 2001, which would if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (g) he has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933 ^{M2} (offences against children and young persons with respect to which special provisions of this Act apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995 ^{M3} (offences against children under the age of 17 years to which special provisions apply);
- (h) he or it has—
 - (i) been [^{F9}made] bankrupt or had sequestration of his estate awarded [^{F10}or is a person in relation to whom a moratorium period under a debt relief order (under Part 7A of the Insolvency Act 1986) applies] unless ^{F11}... he has been discharged [^{F12}from the bankruptcy or the sequestration] 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 [^{F13}, or a debt relief restrictions order or interim debt relief restrictions order under Schedule 4ZB,] to the Insolvency Act 1986 ^{M4}, 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, his or its creditors unless he or it has been discharged in respect of it; or
 - (iv) been wound up under Part 4 of the Insolvency Act 1986;
- (i) 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 to the Insolvency Act 1986 ^{M5};
- (j) he has been—
 - (i) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct

- or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated; or
- (ii) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 ^{M6} (powers of the Court of Session to deal with management of charities) [^{F14}or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session)], from being concerned in the management or control of any body;
- (k) he is subject to a disqualification order under the Company Directors Disqualification Act 1986 ^{M7}, the Companies (Northern Ireland) Order 1986 ^{M8} or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order); or
- (l) he has refused to comply with a request by [^{F1}NHS England] for him to be medically examined on the ground that it is concerned that he is incapable of adequately providing services under the agreement.
- (3) [^{F1}NHS England] shall not terminate the agreement pursuant to sub-paragraph (2)(b) where it 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; ^{F15}...
- [^{F16}(b) in the case of an agreement with a dental corporation, any director, chief executive or secretary of that corporation;
- (c) in the case of a company limited by shares, any director, chief executive or secretary of that company; or
- (d) in the case of a limited liability partnership, any member of that partnership.]
- (4) [^{F1}NHS England] shall not terminate the agreement pursuant to sub-paragraph (2)(c)—
- (a) until a period of at least three months has elapsed since the date of the dismissal of the person concerned; or
- (b) if, during the period of time specified in paragraph (a), the person concerned brings proceedings in any competent tribunal or court in respect of his dismissal, until proceedings before that tribunal or court are concluded,
- and [^{F1}NHS England] may only terminate the agreement at the end of the period specified in paragraph (b) if there is no finding of unfair dismissal.
- (5) [^{F1}NHS England] shall not terminate the agreement pursuant to sub-paragraph (2)(f) where it is satisfied that the conviction does not make the person unsuitable to be—
- (a) a contractor; ^{F17}...
- [^{F18}(b) in the case of an agreement with a dental corporation, any director, chief executive or secretary of that corporation;
- (c) in the case of a company limited by shares, any director, chief executive or secretary of that company; or
- (d) in the case of a limited liability partnership, any member of that partnership.]

Textual Amendments

- F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Personal Dental Services Agreements) Regulations 2005, PART 9. (See end of Document for details)

- F8** Sch. 3 para. 69(1)(b)-(d) substituted for Sch. 3 para. 69(1)(b) (1.4.2013) by The National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013 (S.I. 2013/364), regs. 1(1), **39(43)(a)(ii)** (with Sch. 2)
- F9** Word in Sch. 3 para. 69(2)(h)(i) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 2 para. 13**
- F10** Words in Sch. 3 para. 69(2)(h)(i) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 3 para. 48(3)(a)(i)** (with art. 7)
- F11** Words in Sch. 3 para. 69(2)(h)(i) omitted (1.10.2012) by virtue of The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 3 para. 48(3)(a)(ii)** (with art. 7)
- F12** Words in Sch. 3 para. 69(2)(h)(i) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 3 para. 48(3)(a)(iii)** (with art. 7)
- F13** Words in Sch. 3 para. 69(2)(h)(ii) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 3 para. 48(3)(b)** (with arts. 7, 8)
- F14** Words in Sch. 3 para. 69(2)(j)(ii) inserted (1.4.2013) by The National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013 (S.I. 2013/364), regs. 1(1), **39(43)(b)(ii)** (with Sch. 2)
- F15** Word in Sch. 3 para. 69(3)(a) omitted (1.4.2013) by virtue of The National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013 (S.I. 2013/364), regs. 1(1), **39(43)(c)(ii)** (with Sch. 2)
- F16** Sch. 3 para. 69(3)(b)-(d) substituted for Sch. 3 para. 69(3)(b) (1.4.2013) by The National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013 (S.I. 2013/364), regs. 1(1), **39(43)(c)(iii)** (with Sch. 2)
- F17** Word in Sch. 3 para. 69(5)(a) omitted (1.4.2013) by virtue of The National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013 (S.I. 2013/364), regs. 1(1), **39(43)(e)(ii)** (with Sch. 2)
- F18** Sch. 3 para. 69(5)(b)-(d) substituted for Sch. 3 para. 69(5)(b) (1.4.2013) by The National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013 (S.I. 2013/364), regs. 1(1), **39(43)(e)(iii)** (with Sch. 2)

Marginal Citations

- M1** Section 49F was inserted into the Act by section 25 of the 2001 Act and amended by the 2002 Act, Schedule 3, paragraph 21; and the 2003 Act, Schedule 14, Part 2.
- M2** 1933 c. 12; as amended by the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 58(1), Schedule 10, paragraph 2; the Sexual Offences Act 2003 (c. 42), section 139 and Schedule 6, paragraph 7; the Criminal Justice Act 1988 (c. 33), section 170 and Schedule 15, paragraph 8 and Schedule 16, paragraph 16; and the Sexual Offences Act 1956 (c. 69), sections 48 and 51 and Schedules 3 and 4; as modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9.
- M3** 1995 c. 46.
- M4** 1986 c. 45. Schedule 4A was inserted by section 257 of, and Schedule 3 to, the Enterprise Act 2002 (c. 40).
- M5** Schedule B1 was inserted by section 248 of, and Schedule 16 to, the Enterprise Act 2002.
- M6** 1990 c. 40.
- M7** 1986 c. 46; as amended by the Insolvency Act 2000 (c. 39).
- M8** S.I. 1986/1032 (N.I.6).

Termination by [F1NHS England]: patient safety and material financial loss

70. [F1NHS England] may serve notice in writing on the contractor terminating the agreement forthwith or with effect from such date as may be specified in the notice if—

- (a) the contractor has breached the agreement and as a result of that breach, the safety of the contractor's patients is at serious risk if the agreement is not terminated; or
- (b) the contractor's financial situation is such that [F1NHS England] considers that [F1NHS England] is at risk of material financial loss.

Textual Amendments

- F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), [Sch. para. 1](#)

Termination by [F1NHS England]: remedial notices and breach notices

71.—(1) Where a contractor has breached the agreement other than as specified in paragraphs 68 to 70 and the breach is capable of remedy, [F1NHS England] shall, before taking any action it is otherwise entitled to take by virtue of the agreement, serve a notice on the contractor requiring it to remedy the breach (“remedial notice”).

(2) A remedial notice shall specify—

- (a) details of the breach;
- (b) the steps the contractor must take to the satisfaction of [F1NHS England] 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 [F1NHS England] is satisfied that a shorter period is necessary to—

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

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

(4) Where [F1NHS England] is satisfied that the contractor has not taken the required steps to remedy the breach by the end of the notice period, [F1NHS England] may terminate the agreement with effect from such date as [F1NHS England] may specify in a further notice to the contractor.

(5) Where a contractor has breached the agreement otherwise than as specified in paragraphs 68 to 70 and the breach is not capable of remedy, [F1NHS England] may serve notice on the contractor requiring the contractor not to repeat the breach (“breach notice”).

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

- (a) repeats the breach that was the subject of the breach notice or the remedial notice; or
- (b) otherwise breaches the agreement resulting in either a remedial notice or a further breach notice,

[F1NHS England] may serve notice on the contractor terminating the agreement with effect from such date as may be specified in that notice.

(7) [F1NHS England] shall 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 [F1NHS

England] 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 contractor is in breach of any obligation and a breach notice or a remedial notice in respect of that default has been given to the contractor, [F¹NHS England] 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.

Textual Amendments

F1 Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), [Sch. para. 1](#)

[F¹⁹Termination by [F¹NHS England]: additional provisions specific to contracts with dental corporations, companies limited by shares and limited liability partnerships]

72.—(1) Where a party to the agreement is a [F²⁰dental corporation, company limited by shares, or limited liability partnership], if [F¹NHS England] becomes aware that the [F²⁰dental corporation, company limited by shares, or limited liability partnership] is carrying on any business which [F¹NHS England] considers to be detrimental to the contractor's performance of its obligations under the agreement—

- (a) [F¹NHS England] shall be entitled to give notice to the contractor requiring that the [F²⁰dental corporation, company limited by shares, or limited liability partnership] ceases carrying on that business before the end of a period of not less than 28 days beginning on the day on which the notice is given (“the notice period”); and
- (b) if the contractor has not satisfied [F¹NHS England] that the [F²⁰dental corporation, company limited by shares, or limited liability partnership] has ceased carrying on that business by the end of the notice period, [F¹NHS England] may, by a further written notice, terminate the agreement forthwith or from such date as may be specified in the notice.

(2) Where the contractor is a [F²¹dental corporation or company limited by shares] and on or after the coming into force for all purposes of article 39 of the Dentists Act Order during the existence of the agreement—

- (a) the majority of the directors of the [F²¹dental corporation or company limited by shares] cease to be either dental practitioners or dental care professionals;
- (b) the [F²¹dental corporation or company limited by shares] has been convicted of an offence under section 43(1) of the Dentists Act ^{M9} (directors of bodies corporate); or
- (c) the [F²¹dental corporation or company limited by shares], or a director or former director of that [F²¹dental corporation or company limited by shares], has had a financial penalty imposed on it or him by the General Dental Council pursuant to section 43B (financial penalties in relation to bodies corporate) or 44 ^{M10} (further financial penalties on bodies corporate) of the Dentists Act,

[F¹NHS England] may, by written notice, terminate the agreement if it considers that as a consequence the [F²¹dental corporation or company limited by shares] is no longer suitable to be a contractor.

[F²²(3) Where the contractor is a company limited by shares and the company ceases—

- (a) to be a company limited by shares; or
- (b) to satisfy the conditions in section 108(1A) of the 2006 Act,

[^{F1}NHS England] shall serve notice in writing on the contractor terminating the contract forthwith.

- (4) Where the contractor is a limited liability partnership and—
- (a) the partnership ceases to be a limited liability partnership; or
 - (b) section 108(1B) or (1C) of the 2006 Act ceases to apply in respect of that partnership,

[^{F1}NHS England] shall serve notice in writing on the contractor terminating the contract forthwith.]

Textual Amendments

- F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**
- F19** Sch. 3 para. 72 heading substituted (1.4.2013) by [The National Health Service \(Primary Dental Services\) \(Miscellaneous Amendments and Transitional Provisions\) Regulations 2013 \(S.I. 2013/364\)](#), regs. 1(1), **39(46)(d)** (with Sch. 2)
- F20** Words in Sch. 3 para. 72(1) substituted (1.4.2013) by [The National Health Service \(Primary Dental Services\) \(Miscellaneous Amendments and Transitional Provisions\) Regulations 2013 \(S.I. 2013/364\)](#), regs. 1(1), **39(46)(a)(i)** (with Sch. 2)
- F21** Words in Sch. 3 para. 72(2) substituted (1.4.2013) by [The National Health Service \(Primary Dental Services\) \(Miscellaneous Amendments and Transitional Provisions\) Regulations 2013 \(S.I. 2013/364\)](#), regs. 1(1), **39(46)(b)(i)** (with Sch. 2)
- F22** Sch. 3 para. 72(3)(4) inserted (1.4.2013) by [The National Health Service \(Primary Dental Services\) \(Miscellaneous Amendments and Transitional Provisions\) Regulations 2013 \(S.I. 2013/364\)](#), regs. 1(1), **39(46)(c)** (with Sch. 2)

Marginal Citations

- M9** Section 43 of the Dentists Act 1984 is substituted by the Dentists Act Order 2005, article 39.
- M10** Section 43B is inserted into, and section 44 is, substituted by the Dentists Act Order, article 39.

Agreement sanctions

73.—(1) In this paragraph and paragraph 74, “agreement sanction” means—

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

(2) Where [^{F1}NHS England] is entitled to terminate the agreement pursuant to paragraph 68, 69, 70, 71(4), 71(6) or 72, it may instead impose any of the agreement sanctions if [^{F1}NHS England] is reasonably satisfied that the agreement sanction to be imposed is appropriate and proportionate to the circumstances which provide grounds for [^{F1}NHS England] to terminate the agreement.

(3) If [^{F1}NHS England] decides to impose an agreement sanction, it must notify the contractor 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.

(4) Subject to paragraph 74, [^{F1}NHS England] shall not impose the agreement sanction until at least 28 days after it has served notice on the contractor pursuant to sub-paragraph (3) unless it is satisfied that it is necessary to do so in order to—

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

(5) Where [F1NHS England] imposes an agreement sanction, it shall be entitled to charge the contractor the reasonable costs of additional administration that [F1NHS England] has incurred in order to impose, or as a result of imposing, the agreement sanction.

Textual Amendments

F1 Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

Agreement sanctions and the NHS dispute resolution procedure

74.—(1) If there is a dispute between [F1NHS England] and the contractor in relation to an agreement sanction that [F1NHS England] is proposing to impose, [F1NHS England] shall not, subject to sub-paragraph (4), impose the proposed agreement sanction except in the circumstances specified in sub-paragraph (2).

(2) If the contractor refers the dispute relating to the agreement sanction to the NHS dispute resolution procedure within 28 days beginning on the date on which [F1NHS England] served notice on the contractor in accordance with paragraph 73(3) (or such longer period as may be agreed in writing with [F1NHS England]), and notifies [F1NHS England] in writing that it has done so, [F1NHS England] shall not impose the agreement sanction unless—

- (a) there has been a determination of the dispute pursuant to paragraph 56 and that determination permits [F1NHS England] to impose the agreement sanction; or
- (b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(3) If the contractor does not invoke the NHS dispute resolution procedure within the time specified in sub-paragraph (2), [F1NHS England] shall be entitled to impose the agreement sanction forthwith.

(4) If [F1NHS England] is satisfied that it is necessary to impose the agreement sanction before the NHS dispute resolution procedure is concluded in order to—

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

[F1NHS England] shall be entitled to impose the agreement sanction forthwith, pending the outcome of that procedure.

Textual Amendments

F1 Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

Termination and the NHS dispute resolution procedure

75.—(1) Where [F1NHS England] is entitled to serve written notice on the contractor terminating the agreement pursuant to paragraph 68, 69, 70, 71(4), 71(6) or 72, it shall, in the notice served on the contractor pursuant to those provisions, specify a date on which the agreement terminates that is not less than 28 days after the date on which [F1NHS England] has served that notice on the contractor unless sub-paragraph (2) applies.

(2) This sub-paragraph applies if [F1NHS England] is satisfied that a period less than 28 days is necessary in order to—

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

(3) In a case falling with sub-paragraph (1), where—

- (a) the exceptions in sub-paragraph (2) do not apply;
- (b) the contractor invokes the NHS dispute resolution procedure before the end of the period of notice referred to in sub-paragraph (1); and
- (c) the contractor notifies [F1NHS England] in writing that it has done so,

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

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

- (a) there has been a determination of the dispute pursuant to paragraph 56 and that determination permits [F1NHS England] to terminate the agreement; or
- (b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(5) If [F1NHS England] is satisfied that it is necessary to terminate the agreement before the NHS dispute resolution procedure is concluded in order to—

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

sub-paragraphs (3) and (4) shall not apply and [F1NHS England] shall be entitled to confirm, by written notice to be served on the contractor, that the agreement will nevertheless terminate at the end of the period of the notice it served pursuant to paragraph 68, 69, 70, 71(4), 71(6) or 72.

Textual Amendments

F1 Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service (Personal Dental Services Agreements) Regulations 2005, PART 9.