NATIONAL HEALTH SERVICE

The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004

The Scottish Ministers, in exercise of the powers conferred on them by sections 17A(6), 17K, 17L, 17N, 17Q, 28(1), 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

PART 1
GENERAL

Citation and commencement

1. These Regulations may be cited as the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 and shall come into force on [ ] 2004.

Interpretation

2. In these Regulations—

“the Act” means the National Health Service (Scotland) Act 1978(b);

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(c);

“additional services” means one or more of—

(a) cervical screening services,
(b) contraceptive services,
(c) vaccinations and immunisations,
(d) childhood vaccinations and immunisations,
(e) child health surveillance services,
(f) maternity medical services, and
(g) minor surgery;

“adjudicator” means—

(a) in relation to dispute resolution where both parties are health service bodies, and where the Scottish Ministers consider it appropriate not to determine the matter themselves, a person appointed by the Scottish Ministers under section 17A(6) of the Act to consider and determine the dispute in accordance with the NHS dispute resolution procedure;

(a) 1978 c.29; section 17A(6) was inserted by the National Health Service and Community Care Act 1990 (c.19), section 30; sections 17K, 17L, 17N and 17O were inserted by the Primary Medical Services (Scotland) Act 2004 asp 1, section 4; section 28(1) or as amended by the National Health Service (Amendment) Act 1986 (c.66), section 3(4); section 105(7) was amended by the Health Services Act 1980 (c.53), Schedule 5, paragraph 5 and by the Health Services and Social Security Adjudications Act 1983 (c.41), Schedule 7, paragraph 24; section 108(1) defines “prescribed” and “regulations”. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.49).

(b) 1978 c.29.

(c) S.I. 2003/1250.
(b) in relation to any other dispute resolution, the panel appointed by the Scottish Ministers in accordance with paragraph 84(4) of Schedule 5 (other contractual terms) to consider and determine the dispute in accordance with the NHS dispute resolution procedure;

“approved medical practice” shall be construed in accordance with section 11(4) of the Medical Act 1983(a);

“area medical committee” means the committee of that name recognised under section 9 of the Act (local consultative committees) in the area of the Health Board;

“assessment panel” means a committee or sub-committee of a Health Board (other than the Health Board which is a party to the contract in question) appointed to exercise functions under paragraphs 2, 3, 4 and 5 of Schedule 1 and paragraphs 26 (rejection of closure notice by the Health Board) and 29 (assignments to closed lists: determinations of the assessment panel) of Schedule 5;

“CCT” means Certificate of Completion of Training awarded under article 8 of the 2003 Order, including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in article 20(3)(a) of that Order;

“cervical screening services” means the services described in paragraph 2(2) of Schedule 1;

“chemist” means—

(a) a registered pharmacist,

(b) a person lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968(b), or

(c) a supplier of appliances, who is included in the list of a Health Board under the Pharmaceutical Regulations;

“child” means a person who has not attained the age of 16 years;

“child health surveillance services” means the services described in paragraph 6(2) of Schedule 1;

“childhood vaccinations and immunisations” means the services described in paragraph 5(2) of Schedule 1;

“closed”, in relation to the contractor’s list of patients, means closed to applications for inclusion in the list of patients other than from immediate family members of registered patients;

“contraceptive services” means the services described in paragraph 3(2) of Schedule 1;

“contract”, including in the expression “NHS contract” means, except where the context otherwise requires, a general medical services contract under section 17J of the Act(c) (Health Boards power to enter into general medical services contracts);

“contractor” means a person with whom a Health Board enters into a contract;

“contractor’s list of patients” means the list prepared and maintained by the Primary Care Trust under paragraph 9 of Schedule 5;

“core hours” means the period beginning at 8 am and ending at 6.30 pm on any day from Monday to Friday Christmas Day, New Year’s Day and other public or local holidays agreed with the Health Board;

“disqualified” means, unless the context otherwise requires, local or national disqualification by the Tribunal (or a decision under provisions in force in England, Wales or Northern Ireland corresponding to local or national disqualification), but does not include conditional disqualification;

(a) 1983 c.54; section 11(4) was amended by the National Health Service (Primary Care) Act 1997 (c.46), section 35(4) and Schedule 1, paragraph 61(2).

(b) 1968 c.67; section 69 was amended by the Statute Law (Repeals) Act 1993 (c.50) and the Pharmacists (Fitness to Practise) Act 1997 (c.19), Schedule 4, paragraph 5.

(c) Section 17J was inserted by the Primary Medical Services (Scotland) Act 2004 asp XX, section 4.
“Drug Tariff” means the statement published under regulation 9 (payments to pharmacists and standards of drugs and appliances) of the Pharmaceutical Regulations;

“enhanced services” are—

(a) medical services other than essential services, additional services or out of hour services; or

(b) essential services or additional services or an element of such a service that a contractor agrees under the contract to provide in accordance with specifications set out in a plan, which requires of the contractor an enhanced level of service provision to that which it needs generally to provide in relation to that service or element of service;

“essential services” means the services prescribed in regulation 16;

“General Practitioner Register” means the register kept by the General Medical Council under article 10 of the 2003 Order;

“global sum” has the meaning given to it in the GMS Statement of Financial Entitlements;

“GMS Statement of Financial Entitlements” means the directions given by the Scottish Ministers under section 17M of the Act(a) (payments by Health Boards under general medical services contracts);

“GP Registrar”—

(a) prior to the coming into force of article 5 of the 2003 Order, means a medical practitioner who is being trained in general practice by a medical practitioner who—**

(i) has been approved for that purpose by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998(b), and

(ii) performs primary medical services, and

(b) after the coming into force of that article, means a medical practitioner who is being trained in general practice by a GP Trainer whether as part of training leading to the award of a CCT or otherwise;

“GP Trainer” means a general practitioner who is—

(a) prior to the coming into force of article 4(5)(d) of the 2003 Order, approved as a GP Trainer by the Joint Committee on Postgraduate Training for general practice under regulation 7 of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998; or

(b) after the coming into force of that article, approved by the Postgraduate Medical Education and Training Board under article 4(5)(d) of the 2003 Order for the purposes of providing training to a GP Registrar under article 5(1)(c)(i).

“Health and Social Services Board” means a Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972(c);

“Health Authority” means a Health Authority established under section 8 of the National Health Service Act 1977;

“Health Board” means, unless the context otherwise requires, the Health Board which is a party, or prospective party, to a contract;

“health care professional” has the same meaning as in section 17D(2) of the Act and “health care profession” shall be construed accordingly;

“health service body” means, except in regulation 5(2) and Schedule 5 paragraph 90(4)—

(a) any person or body referred to in section 17A(2); and

(b) persons entering into a contract who are to be regarded as a health service body in accordance with regulation 10 (health service body status);

(a) Section 17J was inserted by the Primary Medical Services (Scotland) Act 2004 asp section 4.


(c) S.I. 1972/1265.
“immediate family member” means—
(a) a spouse,
(b) a person (whether or not of the opposite sex) whose relationship with the registered patient has the characteristics of the relationship between husband and wife,
(c) a parent,
(d) a son,
(e) a daughter, or
(f) a grandparent;

“independent nurse prescriber” means—
(a) a person whose name is registered—
(i) in Part 1 or 12 of the Nursing and Midwifery Register and has a district nurse qualification additionally recorded in the professional register pursuant to rule 11 of the Nurses, Midwives and Health Visitors Rules 1983; or
(ii) in Part 11 of the professional register as a health visitor, and against whose name is recorded in the Nursing and Midwifery Register an annotation signifying that the person is qualified to order drugs, medicines and appliances from the Nurse Prescribers’ Formulary for Community Nurses and Health Visitors in Part 8B of the Drug Tariff; or
(b) person—
(i) whose name is registered in Parts 1, 3, 5, 8, 10, 11, 12, 13, 14 or 15 of the Nursing and Midwifery Register, and
(ii) against whose name is recorded in the Nursing and Midwifery Register an annotation signifying that the person is qualified to order drugs, medicines and appliances from the Nurse Prescribers’ Extended Formulary in Part 8C of the Drug Tariff;

“Local Health Board” means a Local Health Board established under section 16B of the National Health Service Act 1977(a);

“licensing authority” shall be construed in accordance with section 6(3) of the Medicines Act 1968(b);

“licensing body” means any body that licenses or regulates any profession;

“limited partnership” means a partnership registered in accordance with section 5 of the Limited Partnerships Act 1907(c);

“list” has the meaning assigned to it in section 29(8) of the Act;

“maternity medical services” means the services described in paragraph 7(1) of Schedule 1;

“medical card” means a card issued by a Health Board, Primary Care Trust, Local Health Board, Health Authority or Health and Social Services Board to a person for the purpose of enabling that person to obtain, or establishing the person’s title to receive, primary medical services;

“medical officer” means a medical practitioner who is—
(a) employed or engaged by the Department for Work and Pensions, or
(b) provided by an organisation in pursuance of a contract entered into with the Secretary of State for Work and Pensions;

“Medical Register” means the registers kept under section 2 of the Medical Act 1983(d);

“minor surgery” means the services described in paragraph 8 of Schedule 1;

(a) 1977 c.49. Section 16B was inserted by the National Health Service Reform and Health Care Professions Act 2002 (c.17), section 6.
(b) 1968 c.67.
(c) 1907 c.24.
(d) 1983 c.54; section 2 was amended by S.I. 1996/1591 and 2002/3135.
“national disqualification” means—
(a) a national disqualification by the Tribunal; or
(b) a decision under provisions in force in England, Wales or Northern Ireland corresponding to a national disqualification by the Tribunal;

“NHS contract” has the meaning assigned to it in section 17A(3) of the Act(a), except that “contract” has the meaning given to it in these Regulations;

“the NHS dispute resolution procedure” means the procedure for resolution of disputes specified—
(a) in paragraphs 84(3) to (12) (NHS dispute resolution procedure) and 85 (determination of disputes) of Schedule 5 (other contractual terms); or
(b) in a case to which paragraph 30 (assignments to closed lists: NHS dispute resolution procedure relating to determinations of the assessment panel) of Schedule 5 (other contractual terms) applies, in that paragraph;

“NHS Trust” means a National Health Service Trust established under section 5 of the National Health Service and Community Care Act 1990(b);

“open”, in relation to the contractor’s list of patients, means open to applications from patients in accordance with paragraph 10 (application for inclusion in a list of patients) of Schedule 5;

“out of hours period” means—
(a) the period beginning at 6.30 pm on any day from Monday to Thursday and ending at 8 am on the following day;
(b) the period between 6.30 pm on Friday and 8 am on the following Monday; and
(c) Christmas Day, New Year’s Day and other public or local holidays agreed with the Health Board,

and “part” of an out of hours period means any part of any one or more of periods described in sub-paragraphs (a) to (c);

“out of hours services” means—
(a) services which would be essential services if provided in core hours; and
(b) additional services which are required to be provided in all or part of the out of hours period;

“parent” includes, in relation to any child, any adult person who, in the opinion of the contractor, is for the time being discharging in respect of that child the obligations normally attaching to a parent in respect of a child;

“patient” means—
(a) a registered patient,
(b) a temporary resident,
(c) persons to whom the contractor is required to provide immediately necessary or necessary treatment under regulation 16(6) or (8) respectively,
(d) any other person to whom the contractor has agreed to provide services under the contract, and
(e) any person for whom the contractor is responsible under regulation 20;

“Pharmaceutical Regulations” means the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995(e);

“the POM Order” means the Prescription Only Medicines (Human Use) Order 1997(a);

(a) Section 17A(3) was inserted by the National Health Service and Community Care Act 1990 (c.19), section 30 and amended by the Health Act 1999 (c.8), Schedule 3, paragraph 46(b) and Schedule 4.
(b) 1990 c.19.
“practice” means the business operated by the contractor for the purpose of delivering services under the contract;

“practice area” means the area referred to in regulation 28(1)(d);

“practice leaflet” means a leaflet drawn up in accordance with paragraph 63 of Schedule 5;

“practice premises” means an address specified in the contract as one at which services are to be provided under the contract;

“prescriber” means—
(a) a medical practitioner,
(b) an independent nurse practitioner, and
(c) a supplementary prescriber;

“prescription form” means a form provided by the Health Board and issued by a prescriber to enable a person to obtain pharmaceutical services;

“prescription only medicine” means a medicine referred to in article 3 of the POM Order (medicinal products on prescription only);

“Primary Care Trust” means a Primary Care Trust established under section 16A of the National Health Service Act 1977(b) (primary care trusts);

“primary carer” means, in relation to an adult, the adult or organisation primarily caring for that adult;

“primary medical services performers’ list” means the list of primary medical services performers prepared in accordance with regulations made under section 17P of the Act(e) (persons performing primary medical services);

“registered patient” means—
(a) a person who is recorded by the Health Board as being on the contractor’s list of patients, or
(b) a person whom the contractor has accepted for inclusion on its list of patients, whether or not notification of that acceptance has been received by the Health Board and who has not been notified by the Health Board as having ceased to be on that list;

“relevant register” means—
(a) in relation to a nurse, the Nursing and Midwifery Register; and
(b) in relation to a pharmacist, the register maintained in pursuance of section 2(1) of the Pharmacy Act 1954(d) or the register maintained in pursuance of articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976(e);

“restricted availability appliance” means an appliance which is approved for particular categories of persons or particular purposes only;

“section 17C provider” means a person or body who is providing primary medical services in accordance with an agreement pursuant to section 17C of the Act(f);

“Scheduled drug” means—
(a) a drug, medicine or other substance specified in any directions given by the Scottish Ministers as being a drug, medicine or other substance which may not be ordered for patients in the provision of medical services under the contract, or
(b) a drug, medicine or other substance which is specified in any directions given by the Scottish Ministers as being a drug, medicine or other substance which can only be ordered for specified patients and specified purposes unless—

(b) 1977 c.49. Section 16A was inserted by the Health Act 1999 (c.8), section 2(1).
(c) Section 17P was inserted by section 5(2)) of the 2004 Act.
(d) [ ].
(e) [ ].
(f) Section 17C was inserted by the National Health service (Primary Care) Act 1997 (c.46), section 21(2) and was amended by the 2004 Act, section 2(2)
(i) the patient is a person of the specified description, and
(ii) the drug, medicine or other substance is prescribed for that patient for the
specified purposes;

“supplementary prescriber” means a person whose name is registered in–
(a) Parts 1, 3, 5, 8, 10, 11, 12, 13, 14 or 15 of the professional register;
(b) the Register of Pharmaceutical Chemists maintained in pursuance of section 2(1) of the
Pharmacy Act 1954; or
(c) the register maintained in pursuance of articles 6 and 9 of the Pharmacy (Northern
Ireland) Order 1976,
and against whose name is recorded in the relevant register an annotation signifying that the
person is qualified to order drugs medicines and appliances as a supplementary prescriber;

“temporary resident” means a person accepted by the contractor as a temporary resident under
paragraph 13 of Schedule 5 and for whom the contractor’s responsibility has not been
terminated in accordance with that paragraph;

“the Tribunal” has the meaning indicated in section 29 of the Act((a) (the NHS Tribunal);
“working day” means any day apart from Saturday, Sunday, Christmas Day, New Year’s Day
and other public or local holidays agreed with the Health Board;

“writing”, except in paragraph 85(1) of Schedule 5 (other contractual terms) and unless the
context otherwise requires, includes transmission by electronic means and “written” should be
construed accordingly.

PART 2
CONTRACTORS

3. Subject to [the Transitional Regulations], a Health Board may not enter into a contract unless
the conditions set out in regulations 4 (conditions relating solely to medical practitioners) and 5
(general conditions relating to all contracts) are met.

Conditions relating solely to medical practitioners

4.—(1) In the case of a contract to be entered into with a medical practitioner, the medical
practitioner’s name must be included in the General Practitioner Register otherwise than by virtue
of paragraph 1(d) of Schedule 6 to the 2003 Order.

(2) In the case of a contract to be entered into with a partnership–

(a) at least one partner (who must not be a limited partner) must be a medical practitioner
whose name is included in the General Practitioner Register otherwise than by virtue of
paragraph 1(d) of Schedule 6 to the 2003 Order; and

(b) any other partner who is a medical practitioner must–

(i) have the partner’s name included in the General Practitioner Register otherwise than
by virtue of paragraph 1(d) of Schedule 6 to the 2003 Order; or

(ii) be employed by a Health Board, a Primary Care Trust, Local Health Board, NHS
Trust, an NHS Foundation Trust, or a Health and Social Services Trust.

(3) In the case of a contract to be entered into with a company limited by shares–

(a) at least one share in the company must be legally and beneficially owned by a medical
practitioner whose name is included in the General Practitioner Register otherwise than
by virtue of paragraph 1(d) of Schedule 6 to the 2003 Order; and

(a) Section 29 was substituted by the Health Act 1999 (c.8), section 58(1) and amended by the Community Care and Health
(Scotland) Act 2002 asp 5, Schedule 1, paragraph 2(4) and by the 2004 Act, Schedule, paragraph XX.
(b) any other share or shares in the company that are legally and beneficially owned by a medical practitioner must be so owned by a medical practitioner—
   (i) whose name is included in the General Practitioner Register otherwise than by virtue of paragraph 1(d) of Schedule 6 to the 2003 Order, or
   (ii) who is employed by a Health Board or a Primary Care Trust, Local Health Board, NHS Trust, an NHS Foundation Trust, or a Health and Social Services Trust.

(4) Until the coming into force of article 10 of the 2003 Order, the condition of being included on the General Practitioner Register otherwise than by virtue of paragraph 1(d) of Schedule 6 to the 2003 Order shall be treated as being met where the medical practitioner is either—
   (a) until the coming into force of paragraph 22 of Schedule 8 to the 2003 Order, suitably experienced within the meaning of section 21(2) of the Act, section 31(2) of the National Health Service Act 1977 or Article 8(2) of the Health and Personal Social Services (Northern Ireland) Order 1978(a);
   (b) upon the coming into force of paragraph 22 of Schedule 8 to the 2003 Order, an eligible general practitioner pursuant to that paragraph other than by virtue of having an acquired right under paragraph 1(d) of Schedule 6 to the 2003 Order.

General conditions relating to all contracts

5.—(1) It is a condition in the case of a contract to be entered into—
   (a) with a medical practitioner, that the medical practitioner;
   (b) with a partnership, that any member of the partnership or the partnership; and
   (c) with a company limited by shares that—
      (i) the company,
      (ii) any person legally and beneficially owning a share in the company, and
      (iii) any director or secretary of the company,
      must not fall within paragraph (2).

(2) A person falls within this paragraph if—
   (a) the person has been the subject of a national disqualification;
   (b) the person is disqualified or suspended (other than by an interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;
   (c) subject to paragraph (3), within the period of five years prior to signing of the contract or commencement of the contract, whichever is the earlier, the person has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless the person has subsequently been employed by that health service body or another health service body or that dismissal was the subject of a finding of unfair dismissal by any competently established tribunal or court;
   (d) within the period of five years prior to signing the contract or commencement of the contract, whichever is the earlier, the person has been 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, and has been sentenced to a term of imprisonment of over six months;
   (g) subject to paragraph (4) the person has been convicted elsewhere of an offence which would if committed in Scotland constitute a criminal offence, and been sentenced to a term of imprisonment of over six months;

(a) S.I. 1978/1907.
(h) the person has been convicted of an offence referred to in Schedule 1 to the Criminal Procedure (Scotland) Act 1995(a);

(i) the person has—
   (i) had sequestration of the person’s estate awarded or been adjudged bankrupt or unless (in either case) the person has been discharged or the bankruptcy order has been annulled;
   (ii) 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
   (iii) an administrator, administrative receiver or receiver appointed in respect of it;

(j) the person has been—
   (i) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(b) (powers of the Court of Session to deal with management of charities), 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 Commissioners 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 that person’s conduct contributed to or facilitated; or

(k) the person is subject to a disqualification order under the Company Directors Disqualification Act 1986(c), the Companies (Northern Ireland) Order 1986(d) or to an order made under section 429(2)(b) of the Insolvency Act 1986(e) (failure to pay under county court administration order).

(3) Where a person has been employed as a member of a health care profession any subsequent employment must also be as a member of that profession if the exception in paragraph (2)(c) is to apply to that person.

(4) A person shall not fall within paragraph (2)(g) where the Health Board is satisfied that the conviction does not make the person unsuitable to be—
   (a) a contractor;
   (b) a partner, in the case of a contract with a partnership;
   (c) in the case of a contract with a company limited by shared—
      (i) a person legally and beneficially holding a share in the company; or
      (ii) a director or secretary of the company,
   as the case may be.

(5) In this regulation, “health service body” means a person or body referred to in section 17A(2) of the Act.

Reasons

6.—(1) Where a Health Board is of the view that the conditions at regulations 4 (conditions relating solely to medical practitioners) and 5 (general conditions relating to all contracts), for entering into a contract are not met it shall notify in writing the person intending to enter into the contract of its view and of that person’s right of appeal under regulation 7 (appeal).

(2) The Health Board shall also notify in writing any other person or persons of its decision where that person is, or those persons are, the subject of the Health Board’s decision.

(a) 1995 c.46.
(b) 1990 c.40.
(c) 1986 c.46 as amended by the Insolvency Act 2000 (2000 c.39).
(d) S.I.1986/1032 (N.1.6).
(e) 1986 c.45.
Appeal

7. A person who has been served with a notice under regulation 6(1) may appeal to the Scottish Ministers against the decision of the Health Board by giving notice in writing to the Scottish Ministers within the period of 28 days beginning on the day that the Health Board served its notice.

Prescribed period under section 17L(6) of the Act

8. The period prescribed for the purposes of section 17L(6) of the Act is six months.

PART 3
PRE-CONTRACT DISPUTE RESOLUTION

Pre-contract disputes

9.—(1) Except where both parties to the prospective contract are health service bodies (in which case section 17A(5) of the Act(a) applies), if, in the course of negotiations intending to lead to a contract, the prospective parties to that contract are unable to agree on a particular term of the contract, either party may refer the terms of the proposed contract to the Scottish Ministers to consider and determine the matter.

(2) Disputes referred to the Scottish Ministers in accordance with paragraph (1) or section 17A(5) of the Act shall be considered and determined in accordance with—

(a) the NHS dispute resolution procedure, as if—

(i) in paragraph 84(3)(b) of Schedule 5 (other contractual terms), “contract” read “terms of the proposed contract”;

(ii) in paragraph 84(4), “contract” read “proposed contract”;

(iii) paragraph 85(2) of Schedule 5 (other contractual terms) were omitted; and

(b) (where it applies) paragraph (3) of this regulation.

(3) In the case of a dispute referred to the Scottish Ministers under paragraph (1), the determination—

(a) may specify terms to be included in the proposed contract;

(b) may require the Health Board to proceed with the proposed contract;

(c) may not require the proposed contractor to proceed with the proposed contract; and

(d) shall be binding upon the prospective parties to the contract.

PART 4
HEALTH SERVICE BODY STATUS

Health service body status

10.—(1) Where a proposed contractor elects in a written notice served on the Health Board at any time prior to the contract being entered into to be regarded as a health service body it shall be so regarded from the date on which the contract is entered into.

(2) If, pursuant to paragraph (1) a contractor is to be regarded as a health service body, it shall not affect the nature of, or any rights or liabilities arising under, any other contract entered into by a contractor before the date on which the contractor is to be so regarded.

(a) Section 17A(5) was inserted by the National Health Service and Community Care Act 1990 (c.19), section 30.
(3) Where a contract is made with a partnership, and that partnership is to be regarded as a health service body in accordance with paragraph (1), the contractor shall continue to be regarded as a health service body for as long as the contract continues irrespective of any change in the membership of the partnership.

(4) Subject to paragraph (5), a contractor shall cease to be a health service body if the contract terminates.

(5) Where a contractor ceases to be a health service body pursuant to paragraph (4), it shall continue to be regarded as a health service body for the purposes of—

(a) being a party to any other NHS Contract entered into after it became a health service body but before the date on which the contractor ceased to be a health service body (for which purpose it ceases to be such a body on the termination of that NHS Contract);

(b) the NHS dispute resolution procedure where that procedure has been commenced—

(i) before the termination of the contract, or

(ii) after the termination of the contract, in connection with or arising out of the termination of the contract, for which purpose it ceases to be such a body on the conclusion of that procedure.

PART 5

CONTRACTS: MANDATORY TERMS

Parties to the contract

11. A contract must specify—

(a) the names of the parties;

(b) in the case of a partnership—

(i) whether or not it is a limited partnership; and

(ii) the names of the partners and, in the case of a limited partnership, their status as a general or limited partner; and

(c) in the case of each party, the address to which official correspondence and notices should be sent.

NHS contracts

12. If the contractor is to be regarded as a health service body pursuant to regulation 10 (health service body status), the contract must state that it is an NHS contract.

Contracts with a partnership

13.—(1) Subject to paragraph 92(2) of Schedule 5 (termination provisions specific to contracts with individuals practising in partnership), where the contract is with a partnership, the contract shall provide for the contract to be made with the partnership as it is from time to time constituted, and the contract shall make specific provision to this effect.

(2) Where the contract is with a partnership, the contractor must be required by the terms of the contract to ensure that any person who becomes a member of the partnership after the contract has come into force is bound automatically by the contract whether by virtue of a partnership deed or otherwise.

Commencement

14. A contract shall provide for services to be provided under it from any date after 31st March 2004, but not before that date.
Duration

15.—(1) Except in the circumstances specified in paragraph (2), a contract must provide for it to subsist until it is terminated in accordance with the terms of the contract or the general law.

(2) The circumstances referred to in paragraph (1) are that the Health Board wishes to enter into a temporary contract for a period not exceeding twelve months for the provision of services to the former patients of a contractor, following the termination of that contractor’s contract.

Essential services

16.—(1) For the purposes of section 17K(1) of the Act, the primary medical services which must be provided for the contractor’s patients under a general medical services contract (“essential services”) are the services described in paragraphs (3), (5), (6) and (8).

(2) A contractor must provide the services described in paragraphs (3) and (5) in core hours to such extent as is necessary to meet reasonable needs.

(3) The services described in this paragraph are services required for the management of its registered patients and temporary residents who are—

(a) ill, or believe themselves to be ill, with conditions from which recovery is generally expected;
(b) terminally ill; or
(c) suffering from chronic disease.

(4) For the purposes of paragraph (3)—

(a) “disease” means a disease included in the list of three-character categories contained in the tenth revision of the International Statistical Classification of Diseases and Related Health Problems(a); and

(b) “management” includes—

(i) offers of consultation to and, where appropriate, physical examination for the purpose of identifying the need, if any, for treatment or further investigation; and

(ii) the making available of such treatment or further investigation as is necessary and appropriate, taking account, wherever practicable, of the views of the patient, including, where appropriate, the referral of the patient for other services under the Act and liaison with other health care professionals involved in the patients treatment and care.

(5) The other services described in this paragraph are the provision of appropriate ongoing treatment and care to all registered patients and temporary residents taking account of their specific needs including—

(a) the provision of advice in connection with the patient’s health, including relevant health promotion advice; and

(b) the referral of the patient for other services under the Act.

(6) A contractor must provide primary medical services required in core hours for the immediately necessary treatment of any person to whom the contractor has been requested to provide treatment owing to an accident or emergency at any place in its practice area.

(7) In paragraph (6), “emergency” includes any medical emergency whether or not related to services provided under the contract.

(8) A contractor must provide primary medical services required in core hours for the necessary treatment of any person falling within paragraph (9) who requests such treatment, for the period specified in paragraph (10).

(9) A person falls within paragraph (8) if he is a person—

(a) whose application for inclusion in the contractor’s list of patients has been refused in accordance with paragraph 12 (refusal of applications for inclusion in the lists of patients)

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of Schedule 5 and who is not registered with another provider of essential services (or their equivalent) in the area of the Health Board;

(b) who has been removed from the contractor’s list of patients under paragraph 15 (removal from the list at the request of the contractor) or 16 (removal of violent patients from the list) of Schedule 5;

(c) whose application for acceptance as a temporary resident has been rejected under paragraph 13 (temporary residents) of Schedule 5; or

(d) who is present in the contractor’s practice area for less than 24 hours.

(10) The period referred to in paragraph (8) is—

(a) in the case of paragraph (9)(a) and (b), 14 days beginning with the date on which that person’s application was rejected (or, as the case may be, with the date on which the contractor requested the removal of that person from its list of patients) or until that person has been subsequently registered elsewhere for the provision of essential services (or their equivalent), whichever occurs first;

(b) in the case of paragraph (9)(c), 14 days beginning with the date on which that person’s application was rejected or until that person has been accepted by another contractor or section 17C provider as a temporary resident, whichever occurs first; and

(c) in the case of paragraph (9)(d), 24 hours or such shorter period as the person is present in the contractor’s practice area.

Additional services

17.—(1) Where the contract is with one of the persons specified in paragraph (2), the contract must provide for the contractor to provide in core hours to—

(a) the contractor’s registered patients; and

(b) persons accepted by it as temporary residents,

such of the additional services as are equivalent to services which that medical practitioner or practitioners was or were providing to that practitioner’s or those practitioners’ patients on that date unless, prior to the signing of the contract, the Health Board has accepted in writing a written request from the contractor that the contract should not require it to provide all or any of those additional services.

(2) The persons referred to in paragraph (1) are—

(a) an individual medical practitioner who, on 31st March 2004, was providing services under section 19 of the Act (arrangements and regulations for general medical services);

(b) a partnership at least one member of which was, on 31st March 2004, a medical practitioner providing services under that section; or

(c) a company in which one or more of the shareholders was, on 31st March 2004, a medical practitioner providing services under that section.

(3) This regulation applies only to contracts which commence or are deemed to commence on 1st April 2004.

18. A contract which includes the provision of any additional services must—

(a) in relation to all such services, contain a term which has the same effect as that specified in paragraph 1 of Schedule 1; and

(b) in relation to each relevant service, contain terms which have the same effect as those specified in Schedule 1, which are relevant to that service.

Out of hours services

19.—(1) A contract under which primary medical services are to be provided before 1st January 2005 (whether or not such services will be provided after that date) must provide for the services specified in paragraph (2) to be provided throughout the out-of-hours period unless—
(a) the Health Board has—
   (i) agreed to the commencement of an out of hours opt out in accordance with paragraph 5 of Schedule 2 before 1st January 2005, or
   (ii) accepted in writing, prior to the signing of the contract, a written request from the contractor that the contract should not require the contractor to provide such services; or

(b) the contract is with—
   (i) a medical practitioner who, on 31st March 2004, was relieved of responsibility for providing services to the practitioner’s patients under paragraph 17(2) of Schedule 1 to the National Health Service (General Medical Services) (Scotland) Regulations 1995(a);
   (ii) a partnership in which all of the partners who meet the requirement in regulation 4(2)(a) were relieved of responsibility for providing services to their patients under that paragraph on that date; or
   (iii) a company in which all of the medical practitioners who own shares in that company and who meet the requirement in regulation 4(3)(a) were relieved of responsibility for providing services to their patients under that paragraph on that date.

(2) Subject to regulation 22, the services referred to in paragraph (1) are—

   (a) the services which must be provided in core hours under regulation 16 (essential services); and
   (b) such additional services as are included in the contract pursuant to regulation 17 (additional services).

20.—(1) Where the contract is with—
   (a) a medical practitioner who, on 31st March 2004, was responsible for providing services during all or part of the out of hours period to the patients of a medical practitioner who meets the requirements in paragraph (2);
   (b) a partnership, at least one member of which was, on 31st March 2004, a medical practitioner responsible for providing such services; or
   (c) a company in which one or more of the shareholders was, on 31st March 2004, a medical practitioner responsible for providing such services,

the contract with that contractor must require the contractor to continue to provide such services to those patients until the happening of one of the events in paragraph (3).

(2) The requirements referred to in paragraph (1)(a) are that—
   (a) the medical practitioner was relieved of responsibility for providing services to the practitioner’s patients under paragraph 17(2) of Schedule 1 (terms of service) to the National Health Service (General Medical Services) (Scotland) Regulations 1995; and
   (b) the contract is not required to include a requirement for the contractor to provide out of hours services under regulation 19(1)(b).

(3) The events referred to in paragraph (1) are—
   (a) the contractor has opted out of the provision of out of hours services in accordance with paragraph 4 or 5 of Schedule 2;
   (b) the medical practitioner who was relieved of responsibility under paragraph 17(2) of Schedule 1 (terms of service) to the National Health Service (General Medical Services) (Scotland) Regulations 1995 has agreed to resume responsibility for providing services to those patients in the out of hours period; or
   (c) the Health Board has agreed in writing that the contractor need no longer provide some or all of those services to some or all of those patients.

(a) S.I. 1995/416.
21. A contract which includes the provision of out of hours services must contain terms which have the same effect as those set out in regulations 22 and 23.

22. A contractor which provides out of hours services pursuant to regulation 19 (out of hours service) or 20 shall only be required to provide such services if, in the reasonable opinion of the contractor in the light of the patient’s medical condition, it would not be reasonable in all the circumstances for the patient to wait for the services required until the next time at which the patient could obtain such services during core hours.

23. —(1) From 1st January 2005, a contractor which provides out of hours services must, in the provision of such services, meet the quality standards set out in the document entitled [ ] or, subject to paragraph (2), in any document which the contractor has been notified in writing by the Health Board has replaced that document.

(2) The notification referred to in paragraph (1) shall specify the date from which compliance with the revised standards is required which must not be earlier than six weeks from the date of the notice.

Duty of co-operation in relation to additional and out of hours services

24. A contract which includes the provision of any additional service or out of hours services must contain a term which has the same effect as those in regulations 25 and 26.

25. A contractor which does not provide to its registered patients—

(a) a particular additional service;

(b) a particular enhanced service; or

(c) out of hours services, either at all or in respect of some periods or some services,

shall comply with the requirements specified in paragraph (2).

(2) The requirements referred to in paragraph (1) are that the contractor shall—

(a) co-operate with any person responsible for the provision of that service or those services;

(b) comply with any reasonable request for information from such a person or from the Health Board relating to the provision of that service or those services; and

(c) in the case of out of hours services, take reasonable steps to ensure that any patient who contacts the practice premises during the out of hours period is provided with information about how to obtain services during that period.

(3) Nothing in this regulation shall require a contractor whose contract does not include the provision of out of hours services to make the contractor available during the out of hours period.

26. Where a contractor will cease to be required to provide to its patients—

(a) a particular additional service;

(b) a particular enhanced service; or

(c) services during all or part of the out of hours period;

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

Opt outs of additional and out of hours services

27. —(1) where a contract provides for the contractor to provide an additional service that is to be funded through the global sum or out of hours services pursuant to regulation 19 or 20, the contract must contain terms relating to the procedure for opting out of additional and out of hours services which have the same effect as those specified in Schedule 2.

(2) Schedule 2 shall have effect.
Services generally

28.—(1) Subject to regulations 16 to 26 and to Schedule 5 (other contractual terms), a contract must specify—
   (a) the services to be provided;
   (b) subject to paragraph (2), the address of each of the premises to be used by the contractor or any sub-contractor for the provision of such services;
   (c) to whom such services are to be provided;
   (d) the area as respects which persons resident in it will, subject to any other terms of the contract relating to patient registration, be entitled—
      (i) to register with the practice, or
      (ii) seek acceptance by the practice as a temporary resident; and
   (e) whether, at the date on which the contract comes into force, the contractor’s list of patients is open or closed.

(2) The premises referred to in paragraph (1)(b) do not include—
   (a) the homes of patients; or
   (b) any other premises where services are provided on an emergency basis.

(3) Where, on the date on which the contract is signed, the Health Board is not satisfied that all or any of the premises specified in accordance with sub-paragraph (1)(b) meet the requirements set out in paragraph 1 of Schedule 5, the contract must include a plan, drawn up by the Health Board in consultation with the contractor, which specifies—
   (a) the steps to be taken by the contractor to bring the premises up to the relevant standard;
   (b) any financial support that may be available from the Health Board; and
   (c) the timescale on which the steps referred to in sub-paragraph (a) will be taken.

(4) Where, in accordance with paragraph (1)(e), the contract specifies that the contractor’s list of patients is closed it must also specify in relation to that closure each of the items listed in paragraph 24(8)(a) to (e) of Schedule 5.

29.—(1) Except in the case of the services referred to in paragraph (2), the contract must state the period (if any) for which the services are to be provided.

(2) The services referred to in paragraph (1) are—
   (a) essential services;
   (b) additional services funded under the global sum; and
   (c) out of hours services provided pursuant to regulations 19 and 20.

30. A contract must contain a term which requires the contractor—
   (a) to provide essential and (where applicable) additional services at such times, within core hours, as are appropriate to meet the reasonable needs of its patients; and
   (b) to have in place arrangements for the contractor’s patients to access such services throughout the core hours in case of emergency.

Certificates

31.—(1) A contract must contain a term which has the effect of requiring the contractor to issue free of charge to a patient or a patient’s personal representatives any medical certificate of a description prescribed in column 1 of Schedule 3, which is reasonably required under or for the purposes of the enactments specified in relation to the certificate in column 2 of that Schedule, except where, for the condition to which the certificate relates, the patient—
   (a) is being provided with primary medical services by a person other than the contractor; or
   (b) is not being treated by or under the supervision of a health care professional.
(2) The exception in paragraph (1)(a) shall not apply where the certificate is issued pursuant to regulation 2(1)(b) of the Social Security (Medical Evidence) Regulations 1976(a) (which provides for the issue of a certificate in the form of a special statement by a doctor on the basis of a written report made by another doctor).

Finance

32.—(1) Subject to paragraph (2), the contract must contain a term which has the effect of requiring the Health Board to make payments to the contractor under the contract promptly and in accordance with both the terms of the contract and any other terms based on which the payment is made.

(2) The obligation referred to in paragraph (1) is subject to any right the Health Board may have to set off, against any amount payable to the contractor under the contract, any amount—

(a) that is owed by the contractor to the Health Board under the contract; or

(b) that the Health Board may withhold from the contractor in accordance with the terms of the contract or any other terms based on which the payment is made.

33. The contract must contain a term to the effect that where, pursuant to any directions of the Scottish Ministers under the Act, a Health Board is required to make a payment to a contractor under a contract but subject to conditions, those conditions are to be a term of the contract.

Fees and charges

34.—(1) The contract must contain terms relating to fees and charges which have the same effect as those set out in paragraphs (2) to (4).

(2) The contractor shall not, directly or indirectly, demand or accept a fee or other remuneration from any patient of the contractor for—

(a) the provision of any treatment whether under the contract or otherwise; or

(b) any prescription for any drug or appliance,

except in the circumstances set out in Schedule 4.

(3) Where a person applies to a contractor for the provision of essential services and claims to be on that contractor’s list of patients, but fails to produce that person’s medical card on request and the contractor has reasonable doubts about that person’s claim, the contractor shall give any necessary treatment and shall be entitled to demand and accept a fee accordingly under paragraph (e) of Schedule 4, subject to the provision for repayment contained in paragraph (4).

(4) Where a person from whom a contractor received a fee under paragraph (e) of Schedule 4 applies to the Health Board for a refund within 14 days of payment of the fee (or such longer period not exceeding a month as the Health Board may allow, if it is satisfied that the failure to apply within 14 days was reasonable) and the Health Board is satisfied that the person was on the contractor’s list of patients when the treatment was given, the Health Board may recover the amount of the fee from the contractor, by deduction from the contractor’s remuneration or otherwise, and shall pay that amount to the person who paid the fee.

Other contractual terms

35.—(1) A contract must contain other terms which have, or make provision having, the same effect as those specified in Schedule 5 (other contractual terms).

(2) Paragraph 30 and Part 7 of Schedule 5 shall have effect.

Name
A member of the Scottish Executive

St. Andrew’s House
Edinburgh
2004
SCHEDULE 1

ADDITIONAL SERVICES

Additional services generally

1. The contractor shall provide, in relation to each additional service, such facilities and equipment as are necessary to enable the contractor properly to perform that service.

Cervical screening

2.—(1) A contractor whose contract includes the provision of cervical screening services shall
   (a) provide all the services described in sub-paragraph (2); and
   (b) make such records as are referred to in sub-paragraph (3),

in accordance with guidance relating to the NHS Scotland Cervical Screening Programme issued from time to time by the Scottish Executive.

(2) The services referred to in sub-paragraph (1)(a) are—
   (a) the provision of any necessary information and advice to assist women identified by the Health Board as recommended nationally for a cervical screening test in making an informed decision as to participation in the NHS Scotland Cervical Screening Programme;
   (b) the performance of cervical screening tests on women who have agreed to participate in that Programme;
   (c) informing women of the results of the test; and
   (d) ensuring that test results are followed up appropriately;

(3) The records referred to in sub-paragraph (1)(b) are an accurate record of the carrying out of a cervical screening test, where it was done, the result of the test and any clinical follow up requirements.

Contraceptive services

3.—(1) A contractor whose contract includes the provision of contraceptive services shall make available to all its patients who request such services the services described in sub-paragraph (2).

(2) The services referred to in sub-paragraph (1) are—
   (a) the giving of advice about the full range of contraceptive methods;
   (b) the medical examination, where appropriate, of patients seeking such advice;
   (c) the treatment of such patients for contraceptive purposes and the prescription of contraceptive substances and appliances (excluding the fitting and implant of intrauterine devices and implants);
   (d) the supply or prescribing or advice as appropriate of emergency hormonal contraception;
   (e) the provision of advice and referral in cases of contraceptive failure including advice about availability of free pregnancy testing in the practice area;
   (f) the giving of first line advice about sexual health promotion and sexually transmitted infections;
   (g) the referral as necessary for specialist sexual health services, including tests for sexually transmitted infections.
Vaccinations and immunisations

4.—(1) A contractor whose contract includes the provision of vaccinations and immunisations shall comply with the requirements in sub-paragraphs (2) and (3).

(2) The contractor shall—

(a) offer to provide all necessary vaccinations and immunisations (excluding childhood vaccinations and immunisations) to patients in accordance with the publication “Immunisations against infectious disease” published in 1996 and the updates thereof;

(b) provide necessary information and advice to patients about such vaccinations and immunisations;

(c) record in the patient’s record kept in accordance with paragraph 60 of Schedule 5 any refusal of the offer referred to in paragraph (a);

(d) where the offer is accepted, provide the vaccinations offered under paragraph (a) in accordance with the publications referred to in that paragraph and include in the patient’s record kept in accordance with paragraph 60 of Schedule 5—

(i) the patient’s consent to the immunisation,

(ii) the batch numbers, expiry date and title of the vaccine,

(iii) the date of administration,

(iv) in a case where two vaccines are administered in close succession, the injection site of each vaccine,

(v) any contraindications to immunisation, and

(vi) any adverse reactions to a dose of vaccine.

(3) The contractor shall ensure that all staff involved in administering vaccines are trained in the recognition and immediate treatment of anaphylaxis in accordance with the publication referred to in sub-paragraph (2)(a).

Childhood vaccinations and immunisations

5.—(1) A contractor whose contract includes the provision of childhood vaccinations and immunisations shall comply with the requirements in sub-paragraphs (2) and (3).

(2) The contractor shall—

(a) offer to provide all necessary vaccinations and immunisations to patients in accordance with the publication “Immunisations against infectious disease” published in 1996 and the updates thereof;

(b) provide necessary information and advice to patients and, where appropriate, their parents, about such vaccinations and immunisations;

(c) record in the patient’s record kept in accordance with paragraph 60 of Schedule 5 any refusal of the offer referred to in paragraph (a);

(d) where the offer is accepted, provide the vaccinations offered under paragraph (a) and include in the patient’s record kept in accordance with paragraph 60 of Schedule 5 in accordance with the publications referred to in that sub-paragraph—

(i) their consent or, where appropriate, that of their parents, to the immunisation;

(ii) the batch numbers, expiry date and title of the vaccine;

(iii) the date of administration;

(iv) in a case where two vaccines are administered in close succession, the injection site of each vaccine;

(v) any contraindications to immunisation; and

(vi) any adverse reactions to a dose of vaccine.
(3) The contractor shall ensure that all staff involved in administering vaccines are trained in the recognition of anaphylaxis in accordance with the publication referred to in sub-paragraph (2)(a).

Child health surveillance

6.—(1) A contractor whose contract includes the provision of child health surveillance services shall, in respect of any child of five or under for whom it has responsibility under the contract—
   (a) provide all the services described in sub-paragraph (2), other than any examination so described which the parent refuses to allow the child to undergo, until the date upon which the child attains the age of five years; and
   (b) maintain such records as are specified in sub-paragraph (3).
(2) The services referred to in sub-paragraph (1)(a) are—
   (a) the monitoring—
      (i) by the consideration of any information concerning the child received by or on behalf of the contractor, and
      (ii) on any occasion when the child is examined or observed by or on behalf of the contractor (whether pursuant to (b) below, or otherwise),
      of the health, well-being and physical, mental and social development (all of which characteristics are referred to in this paragraph as “development”) of the child while under the age of 5 years with a view to detecting any deviations from normal development;
   (b) the examination of the child on as many occasions and at such intervals as shall have been agreed with the Health Board in whose area the child resides for the purposes of the provision of child health surveillance services generally in that area.
(3) The records mentioned in sub-paragraph (1)(b) are an accurate record of—
   (a) the development of the child while under the age of 5 years, compiled as soon as is reasonably practicable following the first examination mentioned in sub-paragraph (2)(b) and, where appropriate, amended following each subsequent examination mentioned in that sub-paragraph; and
   (b) the responses (if any) to offers made to the child’s parent for the child to undergo any examination referred to in sub-paragraph (2)(b).

Maternity medical services

7.—(1) A contractor whose contract includes the provision of maternity medical services shall—
   (a) provide to female patients who have been diagnosed as pregnant all necessary maternity medical services throughout the ante-natal period;
   (b) provide to female patients and their babies all necessary maternity medical services throughout the postnatal period;
   (c) provide all necessary maternity medical services to female patients whose pregnancy has terminated as a result of miscarriage or abortion or, where the contractor has a conscientious objection to the termination of pregnancy, prompt referral to another provider of primary medical services who does not have such conscientious objections.
(2) In this regulation—
   “ante-natal period” means the period from the start of the pregnancy to the onset of labour;
   “maternity medical services” means all primary medical services relating to pregnancy;
   “post natal period” means the period starting from the conclusion of delivery of the baby or the patient’s discharge from secondary care services, whichever is the later, and ending on the fourteenth day after the birth.
Minor surgery

8.—(1) A contractor whose contract includes the provision of minor surgery shall comply with the requirements in sub-paragraphs (2) and (3).

(2) The contractor shall make available to patients where appropriate—

(a) curettage;
(b) cautery; and
(c) cryocautery of warts, verrucae and other skin lesions.

(3) The contractor shall ensure that its record of any treatment provided under this paragraph includes the consent of the patient to that treatment.
SCHEDULE 2

OPT OUTS OF ADDITIONAL AND OUT OF HOURS SERVICES

Opt outs of additional services: general

1.—(1) Subject to paragraph 5, in this Schedule—
   “opt out notice” means a notice given under sub-paragraph (5) to permanently opt out or
temporarily opt out of the provision of the additional service;
   “permanent opt out” in relation to the provision of an additional service that is funded through
the global sum, means the termination of the obligation under the contract for the contractor to
provide that service; and “permanently opt out” shall be construed accordingly;
   “permanent opt out notice” means an opt out notice to permanently opt out;
   “preliminary opt out notice” means a notice given under sub-paragraph (2) that a contractor
wishes to temporarily opt out or permanently opt out;
   “temporary opt out” in relation to the provision of an additional service that is funded through
the global sum, means the suspension of the obligation under the contract for the contractor to
provide that service for a period of more than six months and less than twelve months and
includes an extension of a temporary opt out and “temporarily opt out” and “temporarily opted
out” shall be construed accordingly; and
   “temporary opt out notice” means an opt out notice to temporarily opt out.

(2) A contractor who wishes to permanently or temporarily opt out shall give to the relevant
Health Board in writing a preliminary opt out notice which shall state the reasons for wishing to opt
out.

(3) As soon as is reasonably practicable and in any event within the period of 7 days beginning
with the receipt of the preliminary opt out notice by the Health Board, the Health Board shall enter
into discussions with the contractor concerning the support which the Health Board may give the
contractor, or other changes which the Health Board or the contractor may make, which would
enable the contractor to continue to provide the additional service.

(4) The discussions mentioned in sub-paragraph (3) shall be completed within the period of 10
days beginning with the date of the receipt of the preliminary opt out notice by the Health Board or
as soon as reasonably practicable thereafter.

(5) Subject to sub-paragraph (9), if following the discussions mentioned in sub-paragraph (3), the
contractor still wishes to opt out of the provision of the additional service, the contractor shall send
an opt out notice to the relevant Health Board.

(6) An opt out notice shall specify—
   (a) the additional service concerned;
   (b) whether the contractor wishes to—
      (i) permanently opt out; or
      (ii) temporarily opt out;
   (c) the reasons for wishing to opt out;
   (d) the date from which the contractor would like the opt out to commence, which must—
      (i) in the case of a temporary opt out be at least 14 days after the date of service of the
      opt out notice, and
      (ii) in the case of a permanent opt out must be the day either three or six months after the
date of service of the opt out notice; and
   (e) in the case of a temporary opt out, the desired duration of the opt out.
(7) Where a contractor has given two previous temporary opt out notices within the period of 3 years ending with the date of the service of the latest opt out notice (whether or not the same additional service is concerned), the latest opt out notice shall be treated as a permanent opt out notice (even if the opt out notice says that the contractor wishes to temporarily opt out).

(8) Paragraph 2 applies following the giving of a temporary opt out notice and paragraph 3 applies following the giving of a permanent opt out notice or a temporary opt out notice which is pursuant to sub-paragraph (7).

(9) No temporary opt out notice may be served by a contractor prior to 1st April 2004.

Temporary opt outs

2.—(1) As soon as is reasonably practicable and in any event within the period of 7 days beginning with the date of receipt of a temporary opt out notice under paragraph 1(5), the Health Board shall—

   (a) approve the opt out notice and specify in accordance with sub-paragraphs (3) and (4) the date on which the temporary opt out is to commence and the date that it is to come to an end ("the end date"); or

   (b) reject the opt out notice in accordance with sub-paragraph (2),

and shall notify the contractor of its decision as soon as possible, including reasons for its decision.

(2) A Health Board may reject the opt out notice on the ground that the contractor—

   (a) is providing additional services to patients registered with another contractor or enhanced services; or

   (b) has no pressing need to temporarily opt out having regard to its ability to deliver the additional service.

(3) The date specified by the Health Board for the commencement of the temporary opt out shall wherever reasonably practicable be the date requested by the contractor in the contractor’s opt out notice.

(4) Before determining the end date, the Health Board shall make reasonable efforts to reach agreement with the contractor.

(5) Where the Health Board approves an opt out notice, the contractor’s obligation to provide the additional service specified in the notice shall be suspended from the date specified by the Health Board in its decision under sub-paragraph (1), and shall remain suspended until the end date unless—

   (a) the contractor and the Health Board agree an earlier date, in which case the suspension shall come to an end on the earlier date agreed;

   (b) the Health Board specifies a later date under sub-paragraph (6), in which case the suspension shall end on the later date specified;

   (c) sub-paragraph (9) applies and—

      (i) the Health Board refuses the contractor’s request for a permanent opt out within the period of 28 days ending with the end date, in which case the suspension shall come to an end 28 days after the end date;

      (ii) the Health Board refuses the contractor’s request for a permanent opt out after the end date, in which case the suspension shall come to an end 28 days after the date of service of the notice; or

      (iii) the Health Board notifies the contractor after the end date that the assessment panel has not approved its proposed decision to refuse the contractor’s request to permanently opt out under sub-paragraph (17), in which case the suspension shall come to an end 28 days after the date of service of the notice under that paragraph.
(6) Before the end date, a Health Board may, in exceptional circumstances and with the agreement of the contractor, notify the contractor in writing of a later date on which the temporary opt out is to come to an end, being a date no more than six months later than the end date.

(7) Where the Health Board considers that—

(a) the contractor will be unable to satisfactorily provide the additional service at the end of the temporary opt out; and

(b) it would not be appropriate to exercise its discretion under sub-paragraph (6) to specify a later date on which the temporary opt out is to come to an end or the contractor does not agree to a later date;

the Health Board may notify the contractor in writing at least 28 days before the end date that a permanent opt out shall follow a temporary opt out.

(8) Where a Health Board notifies the contractor under sub-paragraph (7) that the permanent opt out shall follow a temporary opt out, the permanent opt out shall take effect—

(a) immediately after the end of the temporary opt out; or

(b) if the contractor disputes the decision of the Health Board, 28 days after the final resolution of the dispute if the decision of the Health Board is upheld, whichever is the later.

(9) A contractor who has temporarily opted out may, at least three months prior to the end date, notify the Health Board in writing that it wishes to permanently opt out of the additional service in question.

(10) Where the contractor has notified the Health Board under sub-paragraph (9) that it wishes to permanently opt out, the temporary opt out shall be followed by a permanent opt out beginning on the day after the end date unless the Health Board refuses the contractor’s request to permanently opt out in accordance with sub-paragraph (9) by giving notice in writing to the contractor to this effect.

(11) A Health Board may only give a notice under sub-paragraph (10) with the approval of the assessment panel.

(12) The Health Board must ensure that the assessment panel is appointed as soon as is practicable to consider and determine whether the Board should be permitted to refuse a permanent opt out.

(13) The Health Board shall provide the assessment panel with such information as the assessment panel may reasonably require to enable it to reach a determination.

(14) The members of the assessment panel shall be—

(a) the Chief Executive of the Health Board of which the assessment panel is a committee or sub-committee;

(b) a person representative of the contractor’s patients; and

(c) a person representative of area medical committee.

(15) Where a Health Board seeks the approval of the assessment panel to a proposed decision to refuse a permanent opt out, it shall notify the contractor of having done so.

(16) If the assessment panel has not reached a decision as to whether or not to approve the Health Board’s proposed decision to refuse a permanent opt out before the end date, the contractor’s obligation to provide the additional service shall remain suspended until the date specified in sub-paragraph (5)(c)(ii) or (iii) (whichever is applicable).

(17) Where after the end date the assessment panel notified the Health Board that it does not approve the Health Board’s proposed decision to refuse a permanent opt out, the Health Board shall notify the contractor in writing of this fact as soon as is reasonably practicable.

(18) The duty under the contract to provide the additional service is suspended at 08.00 on the day the temporary opt out or permanent opt out takes effect unless—

(a) the day is a Saturday, Sunday, Christmas Day, Easter or a Bank Holiday, in which case the opt out shall take effect on the next working day at 08.00; or

(b) the Health Board and the contractor agree a different day or time.
Permanent opt outs

3.—(1) In this paragraph—

“A day” is the day specified by the contractor in its permanent opt out notice to a Health Board for the commencement of the permanent opt (or temporary opt out in the circumstances set out in paragraph 1(7));

“B day” is the day 6 months after the date of service of the permanent opt out notice; and

“C day” is the day 9 months after the date of service of the permanent opt out notice.

(2) As soon as is reasonably practicable and in any event within the period of 28 days beginning with the date of receipt of a permanent opt out notice under paragraph 1(5), the Health Board shall—

(a) approve the opt out notice; or

(b) reject the opt out notice in accordance with sub-paragraph (3),

and shall notify the contractor of its decision as soon as possible, including reasons for its decision, where its decision is to reject the opt out notice.

(3) A Health Board may reject the opt out notice on the ground that the contractor is providing an additional service to patients registered with another contractor or enhanced services.

(4) A contractor may not withdraw an opt out notice once it has been approved by the Health Board in accordance with sub-paragraph (2)(a) without the Health Board’s agreement.

(5) If the Health Board approves the opt out notice under sub-paragraph (2)(a), it shall use its reasonable endeavours to make arrangements for the contractor’s registered patients to receive the additional service from an alternative provider from A day.

(6) The contractor’s duty to provide the additional service shall terminate on A day unless the Health Board serves a notice under sub-paragraph (7) (extending A day to B day or C day).

(7) If the Health Board is not successful in finding an alternative provider to take on the provision of the additional service from A day, then it shall notify the contractor in writing of this fact no later than one month before A day, and—

(a) in a case where A day is 3 months after service of the opt out notice, the contractor shall continue to provide the additional service until B day unless at least one month before B day the contractor receives a notice in writing from the Health Board under sub-paragraph (8) that despite using its reasonable endeavours, it has failed to find an alternative provider to take on the provision of the additional service from B day;

(b) in a case where A day is 6 months after the service of the opt out notice, the contractor shall continue to provide the additional service until C day unless at least one month before C day it receives a notice from the Health Board under sub-paragraph (11) that it has made an application to the under sub-paragraph (11) seeking its approval to a decision to refuse a permanent opt out or to delay the commencement of a permanent opt out until after C day.

(8) Where in accordance with sub-paragraph (7)(a) the permanent opt out is to commence on B day and the Health Board, despite using its reasonable endeavours has failed to find an alternative provider to take on the provision of the additional service from that day, it shall notify the contractor in writing of this fact at least one month before B day, in which case the contractor shall continue to provide the additional service until C day unless at least one month before C day it receives a notice from the Health Board under sub-paragraph (11) that it has applied to the assessment panel under sub-paragraph (10) seeking the approval of the assessment panel to a decision to refuse a permanent opt out or to delay the commencement of a permanent opt out until after C day.

(9) As soon as is reasonably practicable and in any event within 7 days of the Health Board serving a notice under sub-paragraph (8), the Health Board shall enter into discussions with the contractor concerning the support that the Health Board may give to the contractor or other changes which the Health Board or the contractor may make in relation to the provision of the additional service until C day.

(10) A Health Board may, if it considers that there are exceptional circumstances, make an application to the assessment panel for approval of a decision to—
(a) refuse a permanent opt out; or
(b) postpone the commencement of a permanent opt out until after C day.

(11) As soon as practicable after making an application under sub-paragraph (10) to the assessment panel, the Health Board shall notify the contractor in writing that it has made such an application.

(12) The Health Board must ensure that the assessment panel is appointed as soon as is practicable to consider and determine whether the Board should be permitted to refuse a permanent opt out.

(13) The Health Board shall provide the assessment panel with such information as the assessment panel may reasonably require to enable it to reach a determination.

(14) The members of the assessment panel shall be–
(a) the Chief Executive of the Health Board of which the assessment panel is a committee or sub-committee;
(b) a person representative of the contractor’s patients; and
(c) a person representative of the area medical committee.

(15) On receiving an application under sub-paragraph (10) for approval of a decision to refuse a permanent opt out, the assessment panel shall–
(a) approve the Health Board’s application;
(b) reject the Health Board’s application, but nonetheless recommend a different date for the commencement of the permanent opt out which may be later than C day; or
(c) reject the Health Board’s application.

(16) On receiving an application under sub-paragraph (10) for approval of a decision to postpone the commencement of a permanent opt out until after C day the assessment panel shall–
(a) approve the Health Board’s application;
(b) reject the Health Board’s application, but nonetheless recommend–
(i) that the permanent opt out commence on an earlier date to that proposed by the Health Board in its application, or
(ii) that the permanent opt out be refused; or
(c) reject the Health Board’s application.

(17) The assessment panel shall notify the Health Board and the contractor in writing of its decision under sub-paragraph (15) or (16) as soon as is practicable, including reasons for its decision.

(18) Where the assessment panel–
(a) approves a decision to refuse an opt out under sub-paragraph (15)(a); or
(b) recommends that a permanent opt out be refused under sub-paragraph (16)(b)(ii),
the Health Board shall notify the contractor in writing that the contractor may not opt out of the additional service.

(19) Where a Health Board notifies a contractor under sub-paragraph (18), the contractor may not serve a preliminary opt out notice in respect of that additional service for a period of 12 months beginning with the date of service of the Health Board’s notice under sub-paragraph (18) unless there has been a change in the circumstances of the contractor in relation to its ability to deliver services under the contract.

(20) Where the assessment panel–
(a) recommends a different date for the commencement of the permanent opt out under sub-paragraph (15)(b);
(b) approves a Health Board’s application to postpone a permanent opt out under sub-paragraph (16)(a); or
(c) recommends an earlier date to that proposed by the Health Board in its application under sub-paragraph (16)(b)(i),
the Health Board shall in accordance with the decision of the assessment panel notify the contractor in writing of its decision and the notice shall specify the date of the commencement of the permanent opt out and the permanent opt out shall commence from that date.

(21) Where the assessment panel rejects the Health Board’s application under sub-paragraph (15)(c) or (16)(c), the Health Board shall notify the contractor in writing that there shall be a permanent opt out, and the permanent opt out shall commence on C day or 28 days after the date of service of the Health Board’s notice, whichever is the later.

(22) If the assessment panel has not reached a decision on the Health Board’s application under sub-paragraph (10) before C day, the contractor’s obligation to provide the additional service shall continue until a notice is served on the contractor by the Health Board under sub-paragraph (20) or (21).

(23) Nothing in sub-paragraphs (2) to (22) above shall prevent the contractor and the Health Board from agreeing a different date for the termination of the contractor’s duty under the contract to provide the additional service and accordingly, varying the contract.

(24) The permanent opt out takes effect at 08.00 on the relevant day unless–

(a) the day is a Saturday, Sunday, Christmas Day, Easter or a Bank Holiday, in which case the opt out shall take effect on the next working day at 08.00; or

(b) the Health Board and the contractor agree a different day or time.

Out of hour opt outs

4.—(1) This paragraph applies where a contractor wishes to serve or serves an out of hours opt out notice after 30th September 2004.

(2) A contractor which wishes to terminate the contractor’s obligation to provide out of hours services which was included in the contract pursuant to regulation 20 shall notify the relevant Health Board in writing to that effect (“an out of hours opt out notice”).

(3) An out of hours opt out notice shall specify the date from which the contractor would like the opt out to take effect, which must be at least 3 or 6 months after the date of service of the out of hours opt out notice.

(4) As soon as is reasonably practicable and in any event within 28 days of receiving the out of hours opt out notice, the Health Board shall approve the notice and specify in accordance with sub-paragraph the date on which the out of hour opt out is to commence (“OOH day”) and the Health Board shall notify the contractor of its decision as soon as possible, including reasons for its decision.

(5) The date specified in sub-paragraph (4) shall be the date specified in the out of hours opt out notice.

(6) A contractor may not withdraw an out of hours opt out notice once it has been approved by the Health Board under sub-paragraph (4), without the Health Board’s agreement.

(7) Following receipt of the out of hours opt out notice, the Health Board must use its reasonable endeavours to make arrangements for the contractor’s registered patients to receive the out of hours services from an alternative provider from OOH day.

(8) Sub-paragraphs (6) to (24) of paragraph 3 shall apply to an out of hours opt out as they apply to a permanent opt out and as if the reference to “A day” was a reference to OOH day.

Out of hours opt out where opt out notice is served before 1st October 2004

5.—(1) This paragraph shall apply where a contractor wishes to serve or serves an out of hours opt out notice before 1st October 2004.

(2) In this paragraph–

“OOH day” is the day specified by the Health Board for the commencement of the out of hours opt out in its decision under sub-paragraph (5);
“OOHB day” is the day six months after the date of service of the permanent opt out notice; and

“OOHC day” is the day specified by the Health Board in its decision under sub-paragraph (11) or (13) (which must be nine months after the date of service of the permanent opt out notice or before 2nd January 2005).

(3) A contractor which wishes to terminate his obligation to provide out of hours services shall notify the relevant Health Board in writing to that effect (“an out of hours opt out notice”).

(4) An out of hours opt out notice shall specify the date before which the contractor would like the opt out to take effect, which must be–

(a) at least three months after the date of service of the opt out notice; and

(b) 1st January 2005 or any other date before 1st January 2005.

(5) As soon as is reasonably practicable and in any event within 28 days of receiving the out of hours opt out notice, the Health Board shall approve the notice and specify in accordance with sub-paragraphs (6) and (7) the date on which the out of hours opt out is to commence (“OOH day”) and the Health Board shall notify the contractor in writing of its decision as soon as possible, including reasons for its decision.

(6) Subject to sub-paragraph (7), OOH day shall be–

(a) the date specified in the out of hours opt out notice; or

(b) 1st January 2005 or any other date before 1st January 2005.

(7) A Health Board may not specify under sub-paragraph (5) a date earlier than the date specified in the out of hours opt out notice.

(8) A contractor may not withdraw an out of hours opt out notice once it has been approved by a Health Board under sub-paragraph (5) without the Health Board’s agreement.

(9) Following receipt of the out of hours opt out notice, the Health Board must use its reasonable endeavours to make arrangements for the contractor’s registered patients to receive the out of hours services from an alternative provider from OOH day.

(10) The contractor’s duty to provide the out of hours services shall terminate on OOH day unless the Health Board–

(a) serves a notice under sub-paragraph (11)(a) (extending OOH day to OOHB day or OOHC day); or

(b) makes an application under sub-paragraph (14) (seeking the approval of the assessment panel to a decision to refuse an opt out or to delay the taking of effect of an opt out until after OOH day or OOHC day.

(11) If the Health Board is not successful in finding an alternative provider to take on the provision of the out hours services from OOH day, then it shall notify the contractor in writing of this fact no later than one month before OOH day; and–

(a) in a case where OOH day is three months after service of the opt out notice, the contractor shall continue to provide the out of hours services until OOHB day unless at least one month before OOHB day the contractor receives a notice in writing from the Health Board under sub-paragraph (12) that despite using its reasonable endeavours, the Board has failed to find an alternative provider to take on the provision of the out of hours services from OOHB day;

(b) in a case where OOH day is after the day three months after the service of the opt out notice, the contractor shall continue to provide the out of hours services until OOHC day (which shall be specified by the Health Board in accordance with sub-paragraph (12) and included in its notice to the contractor under this sub-paragraph) unless at least one month before OOHC day the contractor receives a notice from the Health Board under sub-paragraph (15) that it has made an application to the assessment panel under sub-paragraph (14) seeking the panel’s approval to a decision to refuse an opt out or to delay the commencement of the opt out until after OOHC day.
(12) OOHC day shall be any day before 2nd January 2005 or the day nine months after the service of the out of hours opt out notice.

(13) Where in accordance with sub-paragraph (11)(a) the out of hours opt out is to commence on OOHB day and the Health Board, despite using its reasonable endeavours has failed to find an alternative provider to take on the provision of the out of hours services from that day, it shall notify the contractor in writing of this fact at least one month before OOHB day, in which case the contractor shall continue to provide the additional service until OOHC day (which shall be specified by the Health Board in accordance with sub-paragraph (12) and included in its notice to the contractor under this sub-paragraph) unless at least one month before OOHC day the contractor receives a notice from the Health Board under sub-paragraph (15) that it has applied to the assessment panel under sub-paragraph (14) seeking the approval of the assessment panel to a decision to refuse an opt out or to postpone the commencement of an opt out until after OOHC day.

(14) The Health Board may, if it considers there are exceptional circumstances, make an application to the assessment panel for approval of a decision to –

(a) refuse an opt out; or

(b) postpone the commencement of an opt out until after OOHC day or OOH day.

(15) As soon as practicable after making an application under sub-paragraph (14) to the assessment panel, the Health Board shall notify the contractor in writing that it has made such an application.

(16) Sub-paragraphs (12) to (24) of paragraph 3 shall apply to an out of hours opt out as they apply to a permanent opt out and as if the reference to “C day” was a reference to OOHC day or OOH day where OOH day is 1st January 2005.

Informing patients of opt outs

6.—(1) Prior to any opt out taking effect, the Health Board and the contractor shall discuss how to inform patients of the proposed opt out.

(2) The contractor shall, if requested by the Health Board inform the contractor’s registered patients of an opt out and the arrangements made for them to receive the additional service or out of hours services by–

(a) placing a notice in the practice’s waiting room; or

(b) including the information in the practice leaflet.

(3) In this paragraph “opt out” means an out of hours opt out, a permanent opt out or a temporary opt out.
# SCHEDULE 3

LIST OF PRESCRIBED MEDICAL CERTIFICATES

<table>
<thead>
<tr>
<th>Description of medical certificate</th>
<th>Short title of enactment under or for the purpose of which certificate required</th>
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</table>
| 1. To support a claim or to obtain payment either personally or by proxy; to prove incapacity to work or for self-support for the purposes of an award by the Secretary of State; or to enable proxy to draw pensions etc. | Naval and Marine Pay and Pensions Act 1865(a)  
Air Force (Constitution) Act 1917(b)  
Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(c)  
Personal Injuries (Emergency Provisions) Act 1939(d)  
Pensions (Mercantile Marine) Act 1942(e)  
Polish Resettlement Act 1947(f)  
Social Security Administration Act 1992(g)  
Social Security Contributions and Benefits Act 1992(h)  
Social Security Act 1998(i) |
| 2. To establish pregnancy for the purpose of obtaining welfare foods. | Section 13 of the Social Security Act 1988(j) |
| 3. To secure registration of still-birth. | Section 21 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965(k) |
| 4. To enable payment to be made to an institution or other person in case of mental disorder of persons entitled to payment from public funds. | Section 142 of the Mental Health Act 1983(l) |
| 5. To establish unfitness for jury service. | Criminal Procedure (Scotland) Act 1995(m)  
Court of Session Act 1988(n) |

(a) 1865 c.73.  
(b) 1917 c.51.  
(c) 1939 c.83.  
(d) 1939 c.82  
(e) 1942 c.26.  
(f) 1947 c.19.  
(g) 1992 c.5.  
(h) 1992 c.4.  
(j) 1998 c.7.  
(k) 1965 c.49.  
(l) 1983 c.20.  
(m) 1995 c.46  
(n) 1988 c.36
6. To support late application for reinstatement in civil employment or notification of non-availability to take up employment owing to sickness. Reserve Forces (Safeguarding of Employment) Act 1985(a).

7. To enable a person to be registered as an absent voter on grounds of physical incapacity. Representation of the People Act 1983(b)

8. To support applications for certificates conferring exemption from charges in respect of drugs, medicines and appliances. National Health Service (Scotland) Act 1978(c)

9. To support a claim by or on behalf of a severely mentally impaired person for exemption from liability to pay the Council Tax or eligibility for a discount in respect of the amount of Council Tax payable. Local Government Finance Act 1992(d)

(a) 1985 c.17.
(b) 1983 c.2.
(c) 1978 c.29.
(d) 1992 c.14.
SCHEDULE 4

FEES AND CHARGES

The contractor may demand or accept, directly or indirectly, a fee or other remuneration--

(a) from any statutory body for services rendered for the purposes of that body’s statutory functions;

(b) from any body, employer or school for a routine medical examination of persons for whose welfare the body, employer or school is responsible, or an examination of such persons for the purpose of advising the body, employer or school of any administrative action they might take;

(c) for treatment which is not primary medical services or otherwise required to be provided under the contract and which is given:

(i) pursuant to the provisions of section 57 of the Act (accommodation and services for private patients), or

(ii) in accommodation provided by a care home service which is not providing services under the Act,

if, in either case, the person providing the treatment is serving on the staff of a hospital providing services under the Act as a specialist providing treatment of the kind the patient requires and if, within 7 days of giving the treatment, the contractor or the person providing the treatment supplies the Health Board, on a form provided by it for the purpose, with such information about the treatment as it may require;

(d) under section 158 of the Road Traffic Act 1988(a);

(e) when it treats a patient under regulation 34(3), in which case it shall be entitled to demand and accept a reasonable fee (recoverable in certain circumstances under regulation 34(4)) for any treatment given, if it gives the patient a receipt on a form supplied by the Health Board with whom it holds a contract;

(f) for attending and examining (but not otherwise treating) a patient--

(i) at his request at a police station in connection with proceedings which the police are minded to bring against him,

(ii) at the request of a commercial, educational or not-for profit organisation for the purpose of creating a medical report or certificate,

(iii) for the purpose of creating a medical report required in connection with an actual or potential claim for compensation against any person that the patient and his legal advisers believe may have been responsible for some harm that the patient has suffered;

(g) for treatment consisting of an immunisation for which no remuneration is payable by the Health Board and which is requested in connection with travel abroad;

(h) for prescribing or providing drugs or appliances (including a collection of such drugs and appliances in the form of a travel kit) which a patient requires to have in his possession solely in anticipation of the onset of an ailment or occurrence of an injury while he is outside the United Kingdom but for which he is not requiring treatment when the medicine is prescribed;

(i) for a medical examination--

(i) to enable a decision to be made whether or not it is inadvisable on medical grounds for a person to wear a seat belt, or

(ii) for the purpose of creating a report--

(a) 1988 c.52. Section 158 was amended by S.I. 1995/889, article 3.
(aa) relating to a road traffic accident or criminal assault, or
(bb) that offers an opinion as to whether a patient is fit to travel;

(j) where the person is not one to whom any of paragraphs (a), (b) or (c) of section 26(1) of the Act applies (including by reason of regulations under section 26(1E) of that Act), for testing the sight of that person;

(k) where it is a contractor which is authorised or required by a Health Board under the contract in accordance with paragraph 38 of Schedule 5 to provide drugs, medicines or appliances to a patient and provides for that patient, otherwise than under pharmaceutical services, any Scheduled drug;

(l) for prescribing or providing drugs for malaria chemoprophylaxis.
SCHEDULE 5

OTHER CONTRACTUAL TERMS

PART 1
PROVISION OF SERVICES

Premises

1. Subject to any plan which is included in the contract pursuant to regulation 28(3), premises used for the provision of services under the contract shall be–
   (a) suitable for the delivery of those services; and
   (b) sufficient to meet the reasonable needs of the contractor’s patients.

Attendance at practice premises

2.—(1) The contractor shall take steps to ensure that any patient who–
   (a) has not previously made an appointment; and
   (b) attends at the practice premises during the normal hours for essential services

   is provided with such services by an appropriate health professional during that surgery period except in the circumstances specified in sub-paragraph (2).

   (2) The circumstances referred to in sub-paragraph (1) are that–
      (a) it is more appropriate for the patient to be referred elsewhere for services under the Act; or
      (b) the patient is then offered an appointment to attend again within a time which is appropriate and reasonable having regard to all the circumstances and the patient’s health would not thereby be jeopardised.

Attendance outside practice premises

3.—(1) In the case of a patient whose medical condition is such that in the reasonable opinion of the contractor–
   (a) attendance on the patient is required; and
   (b) it would be inappropriate for the patient to attend at the practice premises

   the contractor shall provide services to that patient at whichever is appropriate of the places set out in sub-paragraph (2).

   (2) The places referred to in sub-paragraph (1) are–
      (a) the place recorded in the patient’s medical records as being the patient’s last home address;
      (b) such other place as the contractor has informed the patient and the Health Board is the place where the contractor has agreed to visit and treat the patient; or
      (c) some other place in the contractor’s practice area.

   (3) Nothing in this paragraph prevents the contractor from–
      (a) arranging for the referral of a patient without first seeing the patient, in a case where the medical condition of that patient makes that course of action appropriate; or
(b) visiting the patient in circumstances where this paragraph does not place the contractor under an obligation to do so.

Newly registered patients

4.—(1) Where a patient has been—

(a) accepted on a contractor’s list of patients under paragraph 10; or

(b) assigned to that list by the Health Board,

the contractor shall, in addition to and without prejudice to its other obligations in respect of that patient under the contract, invite the patient to participate in a consultation either at the contractor’s practice premises or, if the medical condition of the patient so warrants, at one of the places referred to in paragraph 3(2).

(2) An invitation under sub-paragraph (1) shall be issued within six months of the date of the acceptance of the patient on, or their assignment to, the contractor’s list.

(3) Where a patient (or, in the case of a patient who is a child, where appropriate, the child’s parent) agrees to participate in a consultation mentioned in sub-paragraph (1) the contractor shall, in the course of that consultation make such inquiries and undertake such examinations as appear to the contractor to be appropriate in all the circumstances.

Patients not seen within three years

5.—(1) Where a patient who—

(a) has attained the age of 16 years; and

(b) within the preceding three years has attended neither a consultation with, nor a clinic provided by, the contractor,

requests a consultation the contractor shall provide such a consultation in the course of which it shall make such inquiries and undertake such examinations as appear to it to be appropriate in all the circumstances.

Clinical reports

6. Where the contractor provides any clinical services to a patient who is not on its list of patients, it shall, unless the patient refuses consent, as soon as reasonably practicable, provide a clinical report relating to the consultation, and any treatment provided, to—

(a) the person with whom the patient is registered for the provision of essential services (or their equivalent); or

(b) if the person referred to in sub-paragraph (a) is unknown to it, the Health Board.

Storage of vaccines

7. The contractor shall—

(a) ensure that all vaccines are stored in accordance with the manufacturer’s instructions; and

(b) all refrigerators in which vaccines are stored have a maximum thermometer and that readings are taken on all working days.

Infection control

8. The contractor shall ensure that it has arrangements for infection control and decontamination.
PART 2
PATIENTS

List of patients

9. The Health Board shall prepare and keep up to date a list of the patients–
   (a) who have been accepted by the contractor for inclusion in its list of patients under paragraph 10 of this Schedule and who have not subsequently been removed from that list under paragraphs 14 to 22; and
   (b) who have been assigned to the contractor under paragraph 27 or 28 and whose assignment has not subsequently been rescinded.

Application for inclusion in a list of patients

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

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

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

(4) An application may be made (otherwise than by the applicant concerned or by a person authorised by the applicant concerned)—
   (a) on behalf of any child—
      (i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child,
      (ii) by a person duly authorised by a local authority, where the child is in the care of a local authority under the Children (Scotland) Act 1995, or
      (iii) by a person duly authorised by a voluntary organisation, where the child is in the care of a voluntary organisation under the provisions of that Act; or
   (b) on behalf of any adult person who is incapable of making such an application, or authorising such an application to be made on their behalf, by a relative or the primary carer of that person.

(5) A contractor which accepts an application for inclusion in its list of patients shall notify the Health Board in writing as soon as possible.

(6) On receipt of a notice under sub-paragraph (5), the Health Board shall–
   (a) include that person in the contractor’s list of patients from the date on which the notice is received; and
   (b) notify the applicant (or, in the case of a child or incapable adult, the person making the application on their behalf) of the acceptance.

Patient preference of practitioner

11.—(1) Where the contractor has accepted an application for inclusion in its list of patients, it shall–
   (a) notify the patient (or, in the case of a child or incapable adult, the person who made the application on their behalf) of the patient’s right to express a preference to receive
services from a particular performer or class of performer either generally or in relation to any particular condition; and

(b) record in writing any such preference expressed by or on behalf of the patient.

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

(a) has reasonable grounds for refusing to provide services to the patient; or

(b) does not routinely perform the service in question within the practice.

Refusal of applications for inclusion in the list of patients

12.—(1) The contractor shall only refuse an application made under paragraph 10 if it has reasonable grounds for doing so which do not relate to the applicant’s race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition.

(2) The reasonable grounds referred to in paragraph (1) shall include the ground that the applicant does not live in the contractor’s practice area.

(3) A contractor which refuses an application for inclusion in its list of patients shall, within 14 days of its decision notify the applicant (or, in the case of a child or incapable adult, the person making the application on their behalf) in writing of the refusal and the reason for it.

(4) The contractor shall keep a written record of refusals under this paragraph and of the reasons for them and shall make this record available to the Health Board on request.

Temporary residents

13.—(1) The contractor may accept a person as a temporary resident provided it is satisfied that the person is–

(a) temporarily resident away from the person’s normal place of residence and is not being provided with essential services (or their equivalent) under any other arrangement in the locality where the person is temporarily residing; or

(b) moving from place to place and not for the time being resident in any place.

(2) For the purposes of sub-paragraph (1), a person shall be regarded as temporarily resident in a place if, when the person arrives in that place, the person intends to stay there for more than 24 hours but not more than three months.

(3) A contractor which wishes to terminate its responsibility for a person accepted as a temporary resident before the end of–

(a) three months; or

(b) such shorter period for which it agreed to accept the person as a patient,

shall notify the person either orally or in writing and its responsibility for that patient shall cease 7 days after the date on which the notification was given.

(4) At the end of three months, or on such earlier date as its responsibility for the temporary resident has come to an end, the contractor shall notify the Health Board in writing of any person whom it accepted as a temporary resident.

Removal from the list at the request of the patient

14.—(1) The contractor shall notify the Health Board in writing of any request for removal from its list of patients received from a registered patient.

(2) Where the Health Board–

(a) receives notification from the contractor under sub-paragraph (1); or

(b) receives a request from the patient to be removed from the contractor’s list of patients it shall remove that person from the contractor’s list of patients.

(3) A removal in accordance with sub-paragraph (2) shall take effect–
(a) on the date on which the Health Board receives notification of the registration of the person with another provider of essential services (or their equivalent); or
(b) 14 days after the date on which the notification or request made under sub-paragraph (1) or (2) respectively is received by the Health Board, whichever is the sooner.

(4) The Health Board shall, as soon as practicable, notify in writing—

(a) subject to sub-paragraph (5), the patient; and
(b) the contractor

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

(5) In sub-paragraph (4) and in paragraphs 15(1)(b) and (8), 16(6) and (7), 18 and 21, a reference to a request received from or advice, information or notification required to be given to a patient shall include a request received from or advice, information or notification required to be given to—

(a) in the case of a patient who is a child, a parent or other person referred to in regulation 10(4)(a); or
(b) in the case of an adult patient who is incapable of making the relevant request or receiving the relevant advice, information or notification, a relative or the primary carer of the patient.

Removal from the list at the request of the contractor

15.—(1) Subject to paragraph 16, a contractor which has reasonable grounds for wishing a patient to be removed from its list of patients which do not relate to the applicant’s race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition shall—

(a) notify the Health Board in writing that it wishes to have the patient removed; and
(b) subject to paragraph 14(5) and to sub-paragraph (2), notify the patient of its specific reasons for requesting removal.

(2) Where—

(a) the circumstances of the removal are such that it is not appropriate for a more specific reason to be given; and
(b) in the reasonable opinion of the contractor, there has been an irrevocable breakdown in the relationship between the patient and the contractor,

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

(3) Before a contractor can request a removal in accordance with sub-paragraph (1), it shall issue a warning to the patient that the patient is at risk of removal unless—

(a) it is not reasonably practicable for the contractor to do so; or
(b) the contractor has reasonable grounds for believing that the issue of such a warning would—

(i) be harmful to the physical or mental health of the patient; or
(ii) put at risk the safety of other persons.

(4) The contractor shall record in writing—

(a) the date of any warning given in accordance with sub-paragraph (3); or
(b) the reason why no such warning was given.

(5) The contractor shall keep a written record of refusals under this paragraph which shall include—

(a) the reason for removal given to the patient;
(b) the circumstances of the removal; and
(c) in cases where sub-paragraph (2) applies, the grounds for a more specific reason not being appropriate
and shall make this record available to the Health Board on request.

(6) A removal requested in accordance with sub-paragraph (1) shall, subject to sub-paragraph (7) take effect from—

(a) the date on which the Health Board receives notification of the registration of the person with another provider of essential services (or their equivalent); or

(b) the eighth day after the Health Board receives the notice referred to in sub-paragraph (1)(a),

whichever is the sooner.

(7) Where, on the date on which the removal would take effect under sub-paragraph (6), the contractor is treating the patient at intervals of less than seven days, the contractor shall notify the Health Board in writing of the fact and the removal shall take effect—

(a) on the eighth day after the Trust receives notification from the contractor that the person no longer needs such treatment; or

(b) on the date on which the Health Board receives notification of the registration of the person with another provider of essential services (or their equivalent),

whichever is the sooner.

(8) The Health Board shall notify in writing—

(a) subject to paragraph 14(5), the patient; and

(b) the contractor

that the patient’s name has been or will be removed from the contractor’s list of patients on the date referred to in sub-paragraph (6) or (7).

Removal of violent patients from the list

16.—(1) A contractor which wishes a patient to be removed from its list of patients with immediate effect on the grounds that—

(a) the patient has committed an act of violence against any of the persons specified in sub-paragraph (2) or behaved in such a way that any such person has feared for that person’s own safety; and

(b) the contractor has reported the incident to the police or the Procurator Fiscal,

shall notify the Health Board in accordance with sub-paragraph (3).

(2) The persons referred to in sub-paragraph (1) are—

(a) a medical practitioner;

(b) in the case of a contract with a partnership, any partner in that partnership;

(c) in the case of a contract with a company, any legal and beneficial owner of shares in that company;

(d) any member of the contractor’s staff;

(e) any person engaged by the contractor to perform or assist in the performance of services under the contract; or

(f) any other person present on the practice premises or in the place where the attendance of the medical practitioner or other health care professional occurs.

(3) Notification under sub-paragraph (1) may be given by any means including telephone or fax but if not given in writing shall subsequently be confirmed in writing within seven days (and for this purpose a faxed notification or transmission by electronic means is not a written one).

(4) The Health Board shall acknowledge in writing receipt of a request from the contractor under sub-paragraph (1).
(5) A removal requested in accordance with sub-paragraph (1) shall take effect at the time that the contractor—

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

(b) sends or delivers the notification to the Health Board.

(6) Where, pursuant to this regulation, the contractor has notified the Health Board that it wishes to have a patient removed from the contractor’s list of patients with immediate effect, it shall, subject to paragraph 14(5), inform the patient concerned unless—

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

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

(i) be harmful to the physical or mental health of the patient; or

(ii) put at risk the safety of the contractor or other persons.

(7) Where the Health Board has removed a patient from the contractor’s list of patients in accordance with sub-paragraph (5) it shall, subject to paragraph 14(5), give written notice of the removal to that patient and include that notice in the patient’s medical records.

Removals from the list by the Health Board

17.—(1) The Health Board shall remove a patient from the contractor’s list of patients if—

(a) the patient has subsequently been registered with another provider of essential services (or their equivalent) in the area of the Health Board; or

(b) it has received notice from another Health Board, Primary Care Trust, Local Health Board, or a Health and Social Services Board that the patient has subsequently been registered with a provider of essential services (or their equivalent) outside the area of the Health Board.

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

(a) on the date on which the Health Board receives notification of the registration of the person with the new provider; or

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

(3) The Health Board shall notify the contractor in writing of persons removed from its list of patients under sub-paragraph (1).

18.—(1) Subject to sub-paragraph (2), where the Health Board is satisfied that a person on the contractor’s list of patients has moved and no longer resides in that contractor’s practice area, the Board shall, subject to paragraph 14(5)—

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

(b) advise the patient either to obtain the contractor’s agreement to the continued inclusion of the person on its list of patients or to apply for registration with another provider of essential services (or their equivalent); and

(c) inform the patient that if, after the expiration of 30 days from the date of the letter of advice mentioned in paragraph (b), the patient has not acted in accordance with the advice and informed the Board accordingly, the Health Board will remove the patient from the contractor’s list of patients.

(2) If, at the expiration of the period of 30 days referred to in sub-paragraph (1)(c), the Health Board has not been notified of the action taken, it shall remove the patient from the contractor’s list of patients and, subject to paragraph 14(5), inform the patient and the contractor accordingly.

19. Where the address of a patient who is on the contractor’s list of patients is no longer known to the Health Board, the Health Board shall—
(a) give to the contractor notice in writing that it intends, at the end of the period of six months commencing with the date of the notice, to remove the patient from the contractor’s list of patients; and
(b) at the end of that period, remove the patient from the contractor’s list of patients unless, within that period, the contractor satisfies the Health Board that it is still responsible for providing essential services for that patient.

20.—(1) The Health Board shall remove a patient from the contractor’s list of patients where it receives notification that that patient—
(a) intends to be away from the United Kingdom for a period of at least three months;
(b) is in Her Majesty’s Forces;
(c) has been absent from the United Kingdom for a period of more than three months; or
(d) has died.

(2) A removal in accordance with sub-paragraph (1) shall take effect—
(a) in the cases referred to in sub-paragraph (1)(a) and (b) from the date of the departure, or enlistment or the date on which the Health Board first receives notification of the departure, or enlistment whichever is the later; or
(b) in the cases referred to in sub-paragraph (1)(c) and (d) from the date on which the Health Board first receives notification of the absence or death.

(3) The Health Board shall notify the contractor in writing of patients removed from its list of patients under sub-paragraph (1).

21.—(1) The Health Board shall remove from the contractor’s list of patients a patient who has been accepted as a temporary resident by another contractor or other provider of essential services (or their equivalent) where it is satisfied, after due inquiry—
(a) that the person’s stay in the place of temporary residence has exceeded three months; and
(b) that the patient has not returned to the patient’s normal place of residence or any other place within the contractor’s practice area.

(2) The Health Board shall notify in writing of a removal under sub-paragraph (1)—
(a) the contractor; and
(b) subject to paragraph 14(5), where practicable, the patient.

(3) A notification to the patient under sub-paragraph (2)(b) shall inform the patient of—
(a) the patient’s entitlement to make arrangements for the provision to the patient of essential services (or their equivalent), including by the contractor by which the patient has been treated as a temporary resident; and
(b) the name and address of the Health Board in whose area the patient is resident.

22.—(1) Where the contractor provides essential services under the contract to pupils at or staff of a school, the Health Board shall remove from the contractor’s list of patients any such patients who do not appear on particulars of persons who are pupils at or staff of that school provided by that school.

(2) Where the Health Board has made a request to a school to provide the particulars mentioned in sub-paragraph (1) and has not received them, it shall consult the contractor as to whether it should remove from its list of patients any persons appearing on that list as pupils at, or staff of, that school.

(3) The Health Board shall notify the contractor in writing of patients removed from its list of patients under sub-paragraph (1).

Termination of responsibility for patients not registered with the contractor

23.—(1) Where a contractor—
(a) has received an application for the provision of clinical services other than essential services—
   (i) from a person who is not included in its list of patients, or
   (ii) from a person who the contractor has not accepted as a temporary resident; or
   (iii) on behalf of a person mentioned in (i) or (ii) above, from one of the persons specified in paragraph 10(3); and
(b) has accepted that person as a patient for the provision of the service in question its responsibility for that patient may be terminated in one of the circumstances referred to in sub-paragraph (2).

(2) The circumstances referred to in sub-paragraph (1) are—
   (a) the patient informing the contractor that the patient no longer wishes the contractor to be responsible for provision of the service in question;
   (b) subject to sub-paragraph (4), the cases where the contractor has reasonable grounds for terminating the contractor’s responsibility which do not relate to the person’s race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition, the contractor informing the patient that it no longer wishes to be responsible for providing the patient with the service in question; or
   (c) it coming to the notice of the contractor that the patient—
      (i) has been accepted elsewhere for the provision of the service in question;
      (ii) no longer resides in the area for which the contractor has agreed to provide the service; or
      (iii) is no longer included in the list of patients of the other contractor to whose registered patients the contractor to provide the service in question.

(3) A contractor which wishes to terminate its responsibility for a patient under sub-paragraph (2)(b) shall notify the patient of the termination and the reason for it.

(4) The contractor shall keep a written record of terminations under this paragraph and of the reasons for them and shall make this record available to the Health Board on request.

(5) A termination under sub-paragraph (3)(b) shall take effect—
   (a) from the date on which the notice is given where the grounds for termination are those specified in paragraph 16(1); or
   (b) in all other cases, 14 days from the date on which the notice is given.

Closure of lists of patients

24.—(1) A contractor which wishes to close its list of patients shall notify the Health Board in writing to that effect.

(2) As soon as is practicable and normally within a period of 7 days beginning with the date of receipt of the notification referred to in sub-paragraph (1), the Health Board shall enter into discussions with the contractor concerning the support which the Health Board may give the contractor, or other changes which the Health Board or the contractor may make, which would enable the contractor to keep its list of patients open.

(3) In the discussions referred to in sub-paragraph (2) both parties shall use reasonable endeavours to achieve the aim of keeping the contractor’s list of patients open.

(4) The discussions mentioned in sub-paragraph (2) shall be completed within a period of 28 days beginning with the date of the Health Board’s receipt of the notification referred to in sub-paragraph (1), or within such longer period as the parties may agree.

(5) If, following the discussions mentioned in sub-paragraph (2), the Health Board and the contractor reach agreement that the contractor’s list of patients should remain open, the Health Board shall send full details of the agreement in writing to the contractor.
(6) The Health Board and the contractor shall comply with the terms of an agreement reached as mentioned in sub-paragraph (5).

(7) If, following the discussions mentioned in sub-paragraph (2)—

(a) the Health Board and the contractor reach agreement that the contractor’s list of patients should close; or

(b) the Health Board and the contractor fail to reach agreement and the contractor still wishes to close the contractor’s list of patients,

the contractor shall send a closure notice to the Health Board.

(8) A closure notice shall be submitted in the form specified in Schedule 6, and shall include the following details which (in a case falling within sub-paragraph (7)(a)) have been agreed between the parties or (in a case falling within sub-paragraph (7)(b)) are proposed by the contractor—

(a) the period of time (which may not exceed 12 months) for which the contractor’s list of patients will be closed;

(b) the current number of the contractor’s registered patients;

(c) the number of registered patients (lower than the current number of such patients, and expressed either in absolute terms or as a percentage of the number of such patients specified pursuant to paragraph (b)) which, if that number were reached, would trigger the re-opening of the contractor’s list of patients;

(d) the number of registered patients (expressed either in absolute terms or as a percentage of the number of such patients specified pursuant to paragraph (b)) which, if that number were reached, would trigger the re-closure of the contractor’s list of patients; and

(e) any withdrawal or reduction in provision of any additional or enhanced services which had previously been provided under the contract.

(9) The Health Board shall forthwith acknowledge receipt of the closure notice in writing to the contractor.

(10) Before the Health Board reaches a decision as to whether to approve or reject the closure notice under sub-paragraph (12), the Health Board and the contractor may enter into further discussions concerning the details of the closure notice as specified in sub-paragraph (8), with a view to reaching agreement; and, in particular, if the parties are unable to reach agreement regarding the period of time for which the contractor’s list of patients will be closed, that period shall be 12 months.

(11) A contractor may not withdraw a closure notice for a period of three months beginning with the date on which the Health Board has received the notice, unless the Health Board has agreed otherwise.

(12) Within a period of 14 days beginning with the date of receipt of the closure notice, the Health Board shall—

(a) approve the closure notice; or

(b) reject the closure notice,

and shall notify the contractor of its decision in writing as soon as possible.

(13) Approval of the closure notice under sub-paragraph (12)(a) includes approval of the details specified in accordance with sub-paragraph (8) (or, where those details are revised following discussions under sub-paragraph (10), approval of those details as so revised).

Approval of closure notice by the Health Board

25.—(1) If the Health Board approves the closure notice in accordance with paragraph 24(12)(a), the contractor shall close its list of patients—

(a) with effect from a date agreed between the Health Board and the contractor; or
(b) if no such agreement has been reached, with effect from the date on which the contractor receives notification of the Health Board’s decision to approve the closure notice.

(2) Subject to sub-paragraph (3), the contractor’s list of patients shall remain closed for the period specified in the closure notice in accordance with paragraph 24(8)(a) (or, where a period of 12 months has been fixed in accordance with paragraph 24(10), for that period).

(3) The contractor’s list of patients shall re-open before the expiry of the period mentioned in sub-paragraph (2) if–

(a) (subject to sub-paragraph (4)) the number of the contractor’s registered patients falls to the number specified in the closure notice in accordance with paragraph 24(8)(c);

(b) the Health Board and the contractor agree that the list of patients should re-open.

(4) The contractor’s list of patients may re-open in accordance with sub-paragraph (3)(a) only once during the period of list closure specified in sub-paragraph (2) unless, in exceptional circumstances, the Health Board and the contractor have agreed otherwise.

(5) If the contractor’s list of patients has re-opened pursuant to sub-paragraph (3)(a), it shall nevertheless close again if the number of the contractor’s registered patients rises to the number specified in the closure notice in accordance with paragraph 24(8)(d); but this may happen only once during the period of list closure specified in sub-paragraph (2) unless, in exceptional circumstances, the Health Board and the contractor have agreed otherwise, following consultation with the area medical committee.

(6) The Health Board shall notify the contractor in writing shortly before the expiry of the period of list closure specified in sub-paragraph (2), confirming the date on which the contractor’s list of patients shall re-open.

(7) Where the details specified in the closure notice in accordance with paragraph 24(8) have been revised following discussions under paragraph 24(10), references in this paragraph to details specified in the closure notice are references to those details as so revised.

Rejection of closure notice by the Health Board

26.—(1) This regulation applies where the Health Board rejects the closure notice in accordance with paragraph 24(12)(b).

(2) The contractor and the Health Board may not refer the matter for determination in accordance with the NHS dispute resolution procedure (or, where applicable, commence court proceedings) until the assessment panel has given its determination in accordance with the following sub-paragraphs.

(3) The Health Board must ensure that the assessment panel is appointed as soon as is practicable to consider and determine whether the contractor should be permitted to close its list of patients, and if so, the terms on which the contractor should be permitted to do so.

(4) The Health Board shall provide the assessment panel with such information as the assessment panel may reasonably require to enable the panel to reach a determination.

(5) The members of the assessment panel shall be–

(a) the Chief Executive of the Health Board of which the assessment panel is a committee or sub-committee;

(b) a person representative of the contractor’s patients; and

(c) a person representative of the area medical committee.

(6) At least one member of the assessment panel shall visit the contractor before reaching a determination under sub-paragraph (7).

(7) Within the period of 28 days beginning with the date on which the Health Board rejected the closure notice, the assessment panel shall–

(a) approve the list closure; or

(b) reject the list closure.
and shall notify the Health Board and the contractor of its determination in writing as soon as possible.

(8) Where the assessment panel determines in accordance with sub-paragraph (7)(a) that the contractor’s list of patients should close, it shall specify—

(a) a date from which the closure shall take effect, which must be within a period of 7 days beginning with the date of the assessment panel’s determination; and

(b) those details specified in paragraph 24(8).

(9) Where the assessment panel determines in accordance with sub-paragraph (7)(b) that the contractor’s list of patients may not close, that list shall remain open, and the Health Board and the contractor shall enter into discussions with a view to ensuring that the contractor receives support from the Health Board which will enable the contractor to continue to provide services safely and effectively.

(10) Where the assessment panel determines in accordance with sub-paragraph (7)(b) that the contractor’s list of patients may not close, the contractor may not submit a further closure notice as described in paragraph 24 until—

(a) the expiry of a period of three months beginning with the date of the assessment panel’s determination; or

(b) (if applicable) the final determination of the NHS dispute resolution procedure (or any court proceedings), whichever is the later.

Assignment of patients to lists: open lists

27.—(1) A Health Board may assign a new patient to a contractor whose list of patients is open.

(2) In this paragraph and in paragraphs 28 to 30, a “new” patient means a person who—

(a) is resident (whether or not temporarily) within the area of the Health Board;

(b) is not registered with any other provider of essential services (or their equivalent) whose premises are within that area; and

(c) wishes to be included in the list of patients of a contractor whose practice premises are within that area.

Assignment of patients to lists: closed lists

28.—(1) A Health Board may not assign a patient to a contractor which has closed its list of patients except in the circumstances specified in sub-paragraph (2).

(2) A Health Board may assign a new patient to a contractor whose practice premises are within the Health Board’s area and which has closed its list of patients, if—

(a) most or all of the providers of essential services (or their equivalent) whose practice premises are within the Health Board’s area have closed their lists of patients;

(b) the assessment panel has determined under paragraph 29(7) that patients may be assigned to the contractor in question, and that determination has not been overturned either by a determination of the Scottish Ministers or the adjudicator under paragraph 30(13) or (where applicable) by a court; and

(c) the Health Board has entered into discussions with the contractor in question regarding the assignment of a patient if such discussions are required under paragraph 31.

Assignments to closed lists: determinations of the assessment panel

29.—(1) This paragraph applies where most or all of the providers of essential services (or their equivalent) whose practice premises are within the area of a Health Board have closed their lists of patients.
(2) If the Health Board wishes to assign new patients to contractors which have closed their lists of patients, it must prepare a proposal to be considered by the assessment panel, and the proposal must include details of—

(a) those contractors to which the Health Board wishes to assign patients; and
(b) the terms on which the Health Board wishes to assign patients to those contractors.

(3) The Health Board must ensure that the assessment panel is appointed to consider and determine its proposal made under sub-paragraph (2), and the composition of the assessment panel shall be as described in paragraph 26(5).

(4) The Health Board shall notify—

(a) contractors whose practice premises are within the Health Board’s area which—
   (i) have closed their list of patients, and
   (ii) may, in the opinion of the Health Board, be affected by the determination of the assessment panel; and
(b) the area medical committee,

that it has referred the matter to the assessment panel.

(5) In reaching its determination, the assessment panel shall have regard to relevant factors including—

(a) whether the Health Board has attempted to secure the provision of essential services (or their equivalent) for new patients other than by means of their assignment to contractors with closed lists of patients; and
(b) the workload of those contractors likely to be affected by any decision to assign such patients to their list of patients.

(6) The assessment panel shall reach a determination within the period of 28 days beginning with the date on which the panel was appointed.

(7) The assessment panel shall determine whether the Health Board may assign patients to contractors which have closed their lists of patients; and if it determines that the Health Board may make such assignments, it shall also determine—

(a) those contractors to which patients may be assigned; and
(b) the terms on which patients may be assigned to those contractors.

(8) The assessment panel may determine that the Health Board may assign patients to contractors other than those contractors specified by the Health Board in its proposal under sub-paragraph (2)(a), as long as the contractors were notified under sub-paragraph (4)(b).

(9) The assessment panel’s determination shall include its comments on the matters specified in sub-paragraph (5), and shall be notified in writing to those contractors which were notified under sub-paragraph (4)(b).

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

30.—(1) Where an assessment panel makes a determination under paragraph 29(7) that the Health Board may assign new patients to contractors which have closed their lists of patients, any contractor specified in the determination in accordance with paragraph 29(7)(a) may refer the matter in dispute to the Scottish Ministers for determination.

(2) Where a matter in dispute is referred to the Scottish Ministers in accordance with sub-paragraph (1), it shall be determined in accordance with the procedure specified in the following sub-paragraphs.

(3) Within the period of 7 days beginning with the date of the determination by the assessment panel in accordance with paragraph 29(7), the contractor shall send to the Scottish Ministers a written request for dispute resolution which shall include or be accompanied by—

(a) the names and addresses of the parties to the dispute;
(b) a copy of the contract; and
(c) a brief statement describing the nature and circumstances of the dispute.

(4) In the case of a contract which is not an NHS contract, the Scottish Ministers shall appoint a panel of 3 members as the adjudicator.

(5) Within the period of 7 days beginning with the date of the adjudicator’s appointment to consider and determine the dispute, the adjudicator shall–

(a) give to the parties notice in writing of the adjudicator’s appointment; and
(b) include with the notice a written request to the parties to make, in writing, within a specified period any representations which they may wish to make about the dispute.

(6) The adjudicator shall give, with the notice given under sub-paragraph (5), to the party other than the one which referred the matter to dispute resolution a copy of any document by which the dispute was referred to dispute resolution.

(7) The adjudicator shall, upon receiving any representations from a party, give a copy of them to the other party, and shall in each case request (in writing) a party to whom a copy of the representations is given, to make within a specified period any written observations which that party wishes to make on those representations.

(8) For the purpose of assisting the adjudicator in the adjudicator’s consideration of the matter, the adjudicator may–

(a) invite representatives of the parties to appear before the adjudicator to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which the adjudicator wishes them to give special consideration; or
(b) consult other persons whose expertise the adjudicator considers will assist the adjudicator in the adjudicator’s consideration of the dispute.

(9) Where the adjudicator consults another person under sub-paragraph (8)(b), the adjudicator shall notify the parties accordingly and, where the adjudicator considers that the interests of any party might be substantially affected by the result of the consultation, the adjudicator shall give to the parties such opportunity as the adjudicator considers reasonable in the circumstances to make observations on those results.

(10) In considering the dispute, the adjudicator shall consider–

(a) any written representations made in response to a request under sub-paragraph (5)(b), but only if they are made within the specified period;
(b) any written observations made in response to a request under sub-paragraph (7), but only if they are made within the specified period;
(c) any oral representations made in response to an invitation under sub-paragraph (8)(a);
(d) the results of any consultation under sub-paragraph (8)(b); and
(e) any observations made in accordance with an opportunity given under sub-paragraph (9).

(11) In this paragraph, “specified period” means such period as the adjudicator shall specify in the request, being not less than one, nor more than two, weeks beginning with the date on which the notice referred to is given, but the adjudicator may, if the period for determination of the dispute has been extended in accordance with sub-paragraph (16), extend any such period (even after it has expired) and, where it does so, a reference in this paragraph to the specified period is to the period as so extended.

(12) Subject to the other provisions of this regulation and to any agreement by the parties, the adjudicator shall have wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.

(13) Subject to sub-paragraph (15), within the period of 21 days beginning with the date on which the matter was referred to the Scottish Ministers, the adjudicator shall determine whether the Health Board may assign patients to contractors which have closed their lists of patients; and if the
The adjudicator determines that the Health Board may make such assignments, the adjudicator shall also determine—

(a) those contractors to which patients may be assigned; and

(b) the terms on which patients may be assigned to those contractors.

(14) The adjudicator may not determine that patients may be assigned to a contractor which was not specified in the determination of the assessment panel under paragraph 26(7)(a).

(15) The period of 21 days referred to in sub-paragraph (13) may be extended (even after it has expired) by a further specified number of days if an agreement to that effect is reached by—

(a) the adjudicator;

(b) the Health Board; and

(c) the contractor which referred the matter to dispute resolution.

(16) The adjudicator shall record the adjudicator’s determination, and the reasons for it, in writing and shall give notice of the determination (including the record of the reasons) to the parties.

**Assignments to closed lists: assignments of patients by a Health Board**

31.—(1) Before the Health Board may assign a patient to a contractor which has closed its list of patients, it shall enter into discussions with that contractor regarding additional support that the Health Board can offer the contractor, and the Health Board shall use its best endeavours to provide appropriate support.

(2) In the discussions referred to in sub-paragraph (1), both parties shall use reasonable endeavours to reach agreement.

(3) The requirement in sub-paragraph (1) to enter into discussions applies only to the first assignment of a patient to a particular contractor, and not to any subsequent assignments of patients to that contractor.
PART 3
PRESCRIBING AND DISPENSING

Prescribing

32. The contractor shall ensure that any prescription form for drugs or appliances issued by a prescriber complies as appropriate with the requirements in paragraphs 33 to 35.

33.—(1) A prescriber shall order any drugs or appliances which are needed for the treatment of any patient who is receiving treatment under the contract by issuing to that patient a prescription form and such a prescription form shall not be used in any other circumstances.

(2) In issuing any such prescription form the prescriber shall sign the prescription form in ink with the prescriber’s initials, or forenames, and surname in the prescriber’s own handwriting and not by means of a stamp and shall so sign only after particulars of the order have been inserted in the prescription form, and:

(a) the prescription form shall not refer to any previous prescription form; and

(b) a separate prescription form shall be used for each patient.

(3) Where a prescriber orders the drug buprenorphine or a drug specified in Schedule 2 to the Misuse of Drugs Regulations 2001 (controlled drugs to which regulations 14, 15, 16, 18, 19, 20, 21, 23, 26 and 27 of those Regulations apply) for supply by instalments for treating addiction to any drug specified in that Schedule, the prescriber shall:

(a) use only the prescription form provided specially for the purposes of supply by instalments;

(b) specify the number of instalments to be dispensed and the interval between each instalment; and

(c) order only such quantity of the drug as will provide treatment for a period not exceeding 14 days.

(4) The prescription form provided specially for the purpose of supply by instalments shall not be used for any purpose other than ordering drugs in accordance with sub-paragraph (4).

(5) In a case of urgency a prescriber may request a chemist to dispense a drug before a prescription form is issued, only if:

(a) that drug is not a Scheduled drug;

(b) that drug is not a controlled drug within the meaning of the Misuse of Drugs Act 1971, other than a drug which is for the time being specified in Schedules 4 or 5 to the Misuse of Drugs Regulations 2001; and

(c) the prescriber undertakes to furnish the chemist, within 72 hours, with a prescription form or repeatable prescription completed in accordance with sub-paragraph (3).

(6) In a case of urgency a prescriber may request a chemist to dispense an appliance before a prescription form is issued only if–

(a) that appliance does not contain a Scheduled drug or a controlled drug within the meaning of the Misuse of Drugs Act 1971, other than a drug which is for the time being specified in Schedule 5 to the Misuse of Drugs Regulations 2001;

(b) in the case of a restricted availability appliance, the patient is a person, or it is for a purpose, specified in the Drug Tariff; and

(c) the prescriber undertakes to furnish the chemist, within 72 hours, with a prescription form completed in accordance with sub-paragraph (3).
Restrictions on prescribing by medical practitioners

34.—(1) In the course of treating a patient to whom a medical practitioner is providing treatment under the contract, the medical practitioner shall not order on a prescription form a drug, medicine or other substance specified in any directions given by the Scottish Ministers under section 17N(6) of the Act as being drugs, medicines or other substances which may not be ordered for patients in the provision of medical services under the contract but may prescribe such a drug or other substance for that patient in the course of that treatment under a private arrangement.

(2) In the course of treating a patient to whom a medical practitioner is providing treatment under the contract, the medical practitioner shall not order on a prescription form a drug, medicine or other substance specified in any directions given by the Scottish Ministers under section 17N(6) of the Act as being a drug which can only be ordered for specified patients and specified purposes unless:

(a) that patient is a person of the specified description;
(b) that drug is prescribed for that patient only for the specified purpose; and
(c) the practitioner endorses the form with the reference SLS,

but may prescribe such a drug for that patient in the course of that treatment under a private arrangement.

(3) In the course of treating a patient to whom a medical practitioner is providing treatment under the contract, the medical practitioner shall not order on a prescription form a restricted availability appliance unless–

(a) the patient is a person, or it is for a purpose, specified in the Drug Tariff; and
(b) the practitioner endorses the face of the form with the reference SLS,

but may prescribe such an appliance for that patient in the course of that treatment under a private arrangement.

Restrictions on prescribing by supplementary prescribers

35.—(1) Where the contractor employs or engages a supplementary prescriber and that person’s functions include prescribing, the contractor shall have arrangements in place to secure that that person will only–

(a) give a prescription for a prescription only medicine;
(b) administer a prescription only medicine for parenteral administration; or
(c) give directions for the administration of a prescription only medicine for parenteral administration,

as a supplementary prescriber under the conditions set out in sub-paragraph (2).

(2) The conditions referred to in sub-paragraph (1) are that–

(a) the supplementary prescriber satisfies the applicable conditions set out in article 3B(3) of the POM Order (prescribing and administration by supplementary prescribers), unless those conditions do not apply by virtue of any of the exemptions set out in the subsequent provisions of that Order;
(b) the medicine is not a controlled drug within the meaning of the Misuse of Drugs Act 1971;
(c) the drug, medicine or other substance is not specified in any directions given by the Scottish Ministers under section 17N(6) of the Act as being a drug, medicine or other substance which may not be ordered for patients in the provision of medical services under the contract;
(d) the drug, medicine or other substance is not specified in any directions given by the Scottish Ministers under section 17N(6) of the Act as being a drug, medicine or other substance which can only be ordered for specified patients and specified purposes unless–

(i) the patient is a person of the specified description,
(ii) the medicine is prescribed for that patient only for the specified purposes, and
(iii) if the supplementary prescriber is giving a prescription, the supplementary prescriber
endorses the face of the form with the reference SLS.

(3) Where the contractor employs or engages a supplementary prescriber and that person's
functions include prescribing, the contractor shall have arrangements in place to secure that that
person will only give a prescription for--
(a) an appliance; or
(b) a medicine which is not a prescription only medicine,
as a supplementary prescriber under the conditions set out in sub-paragraph (4).

(4) The conditions referred to in sub-paragraph (3) are that--
(a) the supplementary prescriber acts in accordance with a clinical management plan
which is in effect at the time the supplementary prescriber acts and which contains the
following particulars--
(i) the name of the patient to whom the plan relates,
(ii) the illness or conditions which may be treated by the supplementary prescriber,
(iii) the date on which the plan is to take effect, and when it is to be reviewed by the
medical practitioner or dentist who is a party to the plan,
(iv) reference to the class or description of medicines or types of appliances which may
be prescribed or administered under the plan,
(v) any restrictions or limitations as to the strength or dose of any medicine which may
be prescribed or administered under the plan, and any period of administration or use
of any medicine or appliance which may be prescribed or administered under the
plan,
(vi) relevant warnings about known sensitivities of the patient to, or known difficulties of
the patient with, particular medicines or appliances,
(vii) the arrangements for notification of--
(aa) suspected or known adverse reactions to any medicine which may be
prescribed or administered under the plan, and suspected or known adverse
reactions to any other medicine taken at the same time as any medicine
prescribed or administered under the plan,
(bb) incidents occurring with the appliance which might lead, might have led or
has led to the death or serious deterioration of state of health of the patient, and
(viii) the circumstances in which the supplementary prescriber should refer to, or seek the
advice of, the medical practitioner or dentist who is a party to the plan;
(b) the supplementary prescriber has access to the health records of the patient to whom
the plan relates which are used by any medical practitioner or dentist who is a party to
the plan;
(c) if it is a prescription for a medicine, the medicine is not a controlled drug within the
meaning of the Misuse of Drugs Act 1971;
(d) if it is a prescription for a drug, medicine or other substance, that drug, medicine or
other substance is not specified in any directions given by the Scottish Ministers under
section 17N(6) of the Act(a) as being a drug, medicine or other substance which may
not be ordered for patients in the provision of medical services under the contract;
(e) if it is a prescription for a drug, medicine or other substance, that drug, medicine or
other substance is not specified in any directions given by the Scottish Ministers under
section 17N(6) of the Act as being a drug, medicine or other substance which can only
be ordered for specified patients and specified purposes unless--

(a) insert details of current directions when available.
(i) the patient is a person of the specified description,
(ii) the medicine is prescribed for that patient only for the specified purposes, and
(iii) when giving the prescription, the supplementary prescriber endorses the face of the
form with the reference SLS;

(f) if it is a prescription for a medicine—
   (i) the medicine is the subject of a product licence, a marketing authorisation or a
       homeopathic certificate of registration granted by the licensing authority or the
       European Commission, or
   (ii) the use of the medicine is for the purposes of a clinical trial which has been
       authorised by the licensing authority for the purposes of the Medicines for Human
Use (Clinical Trials) Regulations 2003(a),

(g) if it is a prescription for an appliance, the appliance is listed in the Drug Tariff; and

(h) if it is a prescription for a restricted availability appliance—
   (i) the patient is a person of a description mentioned in the entry in the Drug Tariff in
       respect of that appliance,
   (ii) the appliance is prescribed only for the purposes specified in respect of that person in
       that entry, and
   (iii) when giving the prescription, the supplementary prescriber endorses the face of the
       form with the reference SLS.

(5) In sub-paragraph (4)(a), “clinical management plan” means a plan (which may be amended
from time to time) relating to the treatment of an individual patient agreed by—
   (a) the patient to whom the plan relates;
   (b) the medical practitioner or dentist who is a party to the plan; and
   (c) any supplementary prescriber who is to prescribe, give directions for administration or
       administer under the plan.

36. For the purposes of paragraphs 32 to 35 in their application to a contractor whose contract
includes the provision of contraceptive services, drugs includes contraceptive substances and
appliances includes contraceptive appliances.

Excessive prescribing

37. The contractor shall not prescribe drugs and appliances whose cost, in relation to any
patient, is, by reason of the character of the drug or appliance in question or the quantity in which
it was so ordered in excess of that which was reasonably necessary for the proper treatment of that
patient.

Provision of dispensing services

38.—(1) A contractor may secure the provision of dispensing services to its registered patients
only if it is authorised or required to do so by the Health Board in accordance with the following
provisions of this paragraph.
   (2) Where the Health Board, is satisfied, after consultation with the area pharmaceutical
committee that a person, by reason of—
   (a) distance;
   (b) inadequacy of means of communication; or
   (c) other exceptional circumstances,
will have serious difficulty in obtaining from a chemist any drugs or appliances, other than
scheduled drugs, required for that person’s treatment, the Health Board shall require or authorise

(a) S.I. 2003/
the contractor with whom the person is a registered patient to supply such drugs and appliances to that person until further notice.

(3) Notwithstanding anything contained in sub-paragraph (2)–

(a) a contractor shall not be required to undertake the supply of drugs and appliances under sub-paragraph (2) if the contractor satisfies the Health Board that the contractor is not in the habit of dispensing drugs for the contractor’s patients;

(b) a contractor shall be entitled to receive reasonable notice from the Health Board that the contractor is required to undertake the supply of drugs and appliances under sub-paragraph (2) or that such supply is to be discontinued.

PART 4
PERSONS WHO PERFORM SERVICES

Qualifications of performers

39.—(1) Subject to sub-paragraph (2), no medical practitioner shall perform medical services under the contract unless the practitioner is–

(a) included in the primary medical services performers’ list for the Health Board where the service is to be performed;

(b) not suspended from that list or from the Medical Register; and

(c) not subject to interim suspension under section 41A of the Medical Act 1983(a).

(2) Sub-paragraph (1) shall not apply in the case of–

(a) a medical practitioner employed by a Health Board, a Primary Care Trust, an NHS trust, an NHS foundation trust, or a Health and Social Services Trust who is providing services other than primary medical services at the practice premises;

(b) a person who is provisionally registered under section 15, 15A or 21 of the Medical Act 1983(b) acting in the course of the person’s employment in a resident medical capacity in an approved medical practice; or

(c) a GP Registrar during the first two months of the GP Registrar’s training period.

40. No health care professional other than a medical practitioner shall perform clinical services under the contract unless the professional is appropriately registered with the professional’s relevant professional body and the professional’s registration has not been suspended.

41. Where the registration of a health care professional or, in the case of a medical practitioner, the practitioner’s inclusion in a list, is subject to conditions, the contractor shall ensure compliance with those conditions insofar as they are relevant to the contract.

42.—(1) No health care professional shall perform any clinical services unless the contractor is satisfied that the professional has such clinical experience and training as are necessary to enable the professional properly to perform such services.

(2) In satisfying itself, as to the requirements in sub-paragraph (1) the contractor shall have regard in particular to–

(a) any post-graduate qualification held by the health care professional; and

(b) any training undertaken by the professional and any clinical experience gained by the professional.

(a) 1983 c.54. Section 41A was inserted by S.I. 2000/1803.

(b) 1983 c. 54. Section 15 was amended by the National Health Service (Primary Care) Act 1997 (c.46) (“the 1997 Act”), Schedule 1, Part 1, paragraph 61(9); section 15A was inserted by S.I. 2000/3041; section 21 was amended by the 1997 Act, Schedule 1, Part 1, paragraph 61(5) and by S.I. 1996/1591 and 2002/3135.
Conditions for employment and engagement

43.—(1) Subject to sub-paragraphs (2) and (3), a contractor shall not employ or engage a medical practitioner unless—

(a) that practitioner has provided it with the name and address of the Health Boards on whose primary medical services' performers lists the practitioner appears;

(b) the contractor has checked that the practitioner meets the requirements in paragraph 42 (qualifications of performers);

(2) Where the employment or engagement of a medical practitioner is urgently needed and it is not possible for the contractor to check the matters referred to in paragraph 39 (qualifications of performers) in accordance with sub-paragraph (1)(b) before employing or engaging the practitioner, the practitioner may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

(3) Where the prospective employee is a GP Registrar, the requirements set out in sub-paragraph (1) shall apply with the modifications that—

(a) the name and address provided under sub-paragraph (1) may be the name and address of the Health Boards on whose primary medical services performers' lists the GP Registrar has applied for inclusion; and

(b) confirmation that the GP Registrar’s name appears on those lists shall not be required until the end of the first two months of the GP Registrar’s training period.

44.—(1) A contractor shall not employ or engage a health care professional other than a medical practitioner unless the contractor has checked that the professional meets the requirements in paragraph 40.

(2) Where the employment or engagement of a health care professional is urgently needed and it is not possible to check the matters referred to in paragraph 40 in accordance with sub-paragraph (1) before employing or engaging the practitioner, the professional may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

45.—(1) The contractor shall not employ or engage a health care professional to perform medical services under the contract unless—

(a) that person has provided two clinical references, relating to two recent posts (which may include any current post) as a health care professional which lasted for three months without a significant break, or where this is not possible, a full explanation and alternative referees; and

(b) the contractor has checked and is satisfied with the references.

(2) Where the employment or engagement of a medical practitioner is urgently needed and it is not possible to obtain and check the references in accordance with sub-paragraph (1)(b) before employing or engaging the practitioner, the practitioner may be employed or engaged on a temporary basis for a single period of up to 14 days whilst the practitioner’s references are checked and considered, and for an additional single period of a further 7 days if the contractor believes the person supplying those references is ill, on holiday or otherwise temporarily unavailable.

(3) Where the contractor employs or engages the same person on more than one occasion within a period of three months, it may rely on the references provided on the first occasion, provided that those references are not more than twelve months old.

46.—(1) Before employing or engaging any person to assist the contractor in the provision of services under the contract, the contractor shall take reasonable care to satisfy itself that the person in question is both suitably qualified and competent to discharge the duties for which the person is to be employed or engaged.

(2) The duty imposed by sub-paragraph (1) is in addition to the duties imposed by paragraphs 43 to 45.
(3) When considering the competence and suitability of any person for the purpose of sub-
paragraph (1), the contractor shall have regard, in particular, to–
(a) that person’s academic and vocational qualifications;
(b) the person’s education and training; and
(c) the person’s previous employment or work experience.

Training

47. The contractor shall ensure that any health care professional who is–
(a) performing clinical services under the contract; or
(b) employed or engaged to assist in the performance of such services
has in place arrangements for the purpose of maintaining and updating the professional’s skills
and knowledge in relation to the services which the professional is performing or assisting in
performing.

48. The contractor shall afford to each employee reasonable opportunities to undertake
appropriate training with a view to maintaining that employee’s competence.

Terms and conditions

49. The contractor shall only offer employment to a medical practitioner on terms and
conditions which are no less favourable than those contained in the “Model terms and conditions
of service for a salaried general practitioner employed by a GMS practice” published by the
British Medical Association and the NHS Confederation as item 1.2 of the supplementary
documents to the new GMS contract 2003 or in any document which it has been notified in
writing by the Health Board has replaced that document.

Arrangements for GP registrars

50.—(1) The contractor shall only employ a GP Registrar for the purpose of being trained by a
GP Trainer with the agreement of the Scottish Ministers and subject to the conditions in sub-
paragraph (2).

(2) The conditions referred to in sub-paragraph (1) are that the contractor shall not, by reason
only of having employed or engaged a GP Registrar, reduce the total number of hours for which
other medical practitioners perform primary medical services under the contract or for which other
staff assist them in the performance of those services.

(3) A contractor which employs a GP Registrar shall–
(a) offer the GP Registrar terms of employment in accordance with the rates and subject to
the conditions contained in any directions to Health Boards concerning the grants, fees
travelling and other allowances payable to GP Registrars; and
(b) take into account any guidance issued by the Scottish Ministers in relation to the GP
Registrar Scheme.

Independent nurse prescribers and supplementary prescribers

51.—(1) Where–
(a) a contractor employs or engages a person who is an independent nurse prescriber or a
supplementary prescriber whose functions will include prescribing in its practice; or
(b) the functions of a person who is an independent nurse prescriber or a supplementary
prescriber whom it already employs or has already engaged are extended to include
prescribing,
it shall notify the Health Board in writing within the period of seven days beginning with the date
on which the event occurred.
(2) Where—

(a) the contractor ceases to employ or engage a person who is an independent nurse prescriber or a supplementary prescriber whose functions included prescribing in the contractor’s practice;

(b) the functions of a person who is an independent nurse prescriber or a supplementary prescriber whom the contractor employs or engages in its practice are changed so that they no longer include prescribing in its practice; or

(c) the contractor becomes aware that a person who is an independent nurse prescriber or a supplementary prescriber whom the contractor employs or engages has been removed or suspended from the relevant register,

it shall notify the Health Board in writing by the end of the second day after the day when the event occurred.

(3) The contractor shall provide the following information when it notifies the Health Board in accordance with sub-paragraph (1)—

(a) the person’s full name;

(b) the person’s professional qualifications;

(c) the person’s identifying number which appears in the relevant register;

(d) the date on which the person’s entry in the relevant register was annotated to the effect that the person was qualified to order drugs, medicines and appliances for patients;

(e) the date—

(i) on which the person was employed or engaged, if the person’s functions include prescribing in its practice, or

(ii) on which one of the person’s functions became to prescribe in its practice.

(4) The contractor shall provide the following information when it notifies the Health Board in accordance with sub-paragraph (2)—

(a) the person’s full name;

(b) the person’s professional qualifications;

(c) the person’s identifying number which appears in the relevant register;

(d) the date—

(i) the person ceased to be employed or engaged in its practice,

(ii) the person’s functions changed so as no longer to include prescribing, or

(iii) on which the person was removed or suspended from the relevant register.

Signing of documents

52.—(1) In addition to any other requirements relating to such documents whether in these regulations or otherwise, the contractor shall ensure that the documents specified in paragraph (2) include—

(a) the clinical profession of the health care professional who signed the document; and

(b) the name of the contractor on whose behalf it is signed.

(2) The documents referred to in sub-paragraph (1) are—

(a) certificates issued in accordance with regulation 31 (certificates), unless regulations relating to particular certificates provide otherwise;

(b) prescription forms and repeatable prescription; and

(c) any other clinical documents.
Level of skill

53. The contractor shall carry out its obligations under the contract with reasonable skill and care.

Appraisal and assessment

54.—(1) The contractor shall ensure that any medical practitioner performing services under the contract—
   (a) participates in the appraisal system provided by the Health Board; and
   (b) co-operates with any assessment by or on behalf of the Health Board, of services performed by that practitioner under the contract.

(2) The Health Board shall provide an appraisal system for the purposes of sub-paragraph (1) (a) after consultation with the area medical committee and such other persons as appear to it to be appropriate.

Sub-contracting

55.—(1) Subject to sub-paragraph (2) and paragraph 56 (sub-contracting out of hours service), the contractor shall not sub-contract any of its rights or duties under the contract in relation to clinical matters unless—
   (a) it has taken reasonable steps to satisfy itself that—
      (i) it is reasonable in all the circumstances; and
      (ii) that person is qualified and competent to provide the service; and
   (b) it has notified the Health Board of its intention to sub-contract as soon as reasonably practicable before the date on which the proposed sub-contract is intended to come into force.

(2) Sub-paragraph (1) shall not apply to a contract for services with a health care professional for the provision by that person of clinical services.

(3) The notification referred to in sub-paragraph (1)(b) shall include—
   (a) the name and address of the proposed sub-contractor;
   (b) the duration of the proposed sub-contract;
   (c) the services to be covered; and
   (d) the address of any premises to be used for the provision of services.

(4) Following receipt of a notice in accordance with sub-paragraph (1)(b), the Health Board may request such further information relating to the proposed sub-contract as appears to it to be reasonable and the contractor shall supply such information promptly.

(5) The contractor shall not proceed with the sub-contract or, if it is already taken effect, shall take appropriate steps to terminate it, where, within 28 days of receipt of the notice referred to in sub-paragraph (1)(b), the Health Board has served notice of objection to the sub-contract on the grounds that—
   (a) the sub-contract would—
      (i) put at serious risk the safety of the contractor’s patients, or
      (ii) put the Board at risk of material financial loss; or
   (b) the sub-contractor would be unable to meet the contractor’s obligations under the contract.

(6) Where the Health Board objects to a proposed sub-contract in accordance with sub-paragraph (5), it shall include with the notice of objection a statement in writing of the reasons for its objection.

(7) Sub-paragraphs (1) and (3) to (6) shall also apply in relation to any renewal or material variation of a sub-contract in relation to clinical matters.
(8) Where a Health Board does not object to a proposed sub-contract under paragraph (5), it shall be deemed to have consented to a variation of the contract which has the effect of adding to the list of practice premises any premises whose address was notified to it under sub-paragraph (3)(d).

Sub-contracting out of hours service

56.—(1) Subject to sub-paragraph (2) and paragraph 62, a contractor shall not sub-contract all or part of the contractor’s duty to provide out of hours services other than on a short-term occasional basis, to any of the persons specified in sub-paragraph (2), without the written approval of the Health Board.

(2) The persons referred to in sub-paragraph (1) are—

(a) a person who holds a contract which includes out of hours services;
(b) a section 17C provider who provides services to the provider’s patients during all or part of the out of hours period;
(c) a medical practitioner who is acting as a locum and is not employed by the contractor; or
(d) a group of medical practitioners, whether in partnership or not, who provide out of hours services for each other under informal rota arrangements.

(3) An application for such approval shall be made by the contractor in writing to the Health Board and shall state—

(a) the name and address of the proposed sub-contractor;
(b) the address of any premises used for the provision of services;
(c) the hours and periods during which the duty is to be transferred;
(d) the services to be covered by the arrangement; and
(e) how it is proposed that the sub-contractor will meet the contractor’s obligations under the contract in respect of the services covered by the arrangement.

(4) Within 7 days of receipt of an application under sub-paragraph (3), a Health Board may request such further information relating to the proposed arrangements as seem to it to be reasonable.

(5) Within 28 days of receipt of an application which meets the requirements specified in sub-paragraph (2), the Health Board shall—

(a) approve the application;
(b) approve the application with conditions; or
(c) refuse the application.

(6) The Health Board shall approve the application (with or without conditions) if it is satisfied that the proposed arrangement will, in respect of the services to be covered, enable the contractor to meet satisfactorily its obligations under the contract.

(7) The Health Board shall inform the contractor by notice in writing of its decision on the application and, where it refuses an application, it shall include in the notice a statement of the reasons for its refusal.

(8) Where a Health Board approves a sub-contract under this paragraph it shall be deemed to have consented to a variation of the contract which has the effect of adding to the list of practice premises any premises whose address was notified to it under sub-paragraph (3)(b).

(9) Sub-paragraphs (1) and (3) to (8) shall also apply in relation to any renewal or material variation of a sub-contract in relation to out of hours services.

(10) A contract with a sub-contractor must prohibit the sub-contractor from sub-contracting the out of ours services it has agreed with the contractor to provide.

57.—(1) Without prejudice to any other remedies which it may have under the contract, where a Health Board has approved an application made under paragraph 56(3) it shall, subject to paragraph 58, be entitled to serve notice on the contractor withdrawing or varying that approval
from a date specified in the notice if it is no longer satisfied that the proposed arrangement will enable the contractor to meet satisfactorily its obligations under the contract.

(2) The date specified in the notice shall be such as appears reasonable in all the circumstances to the Health Board.

(3) The notice referred to in sub-paragraph (1) shall take effect on whichever is the later of—
   (a) the date specified in the notice; or
   (b) the date on which any dispute relating to the notice is finally determined.

58.—(1) Without prejudice to any other remedies which it may have under the contract, where a Health Board has approved an application made under paragraph 56(3) it shall be entitled to serve notice on the contractor withdrawing or varying that approval with immediate effect if—
   (a) it is no longer satisfied that the proposed arrangement will enable the contractor to meet satisfactorily its obligations under the contract; and
   (b) it is satisfied that immediate withdrawal or variation is necessary to protect the safety of the contractor’s patients.

(2) An immediate withdrawal of approval under sub-paragraph (1) shall take effect on the date on which the notice referred to in that sub-paragraph is received by the contractor.

Temporary arrangements for transfer of obligations and liabilities in relation to certain out of hours services

59. [ PART 5

RECORDS, INFORMATION, NOTIFICATIONS AND RIGHTS OF ENTRY

Patient records

60.—(1) In this paragraph, “computerised records” means records created by way of entries on a computer.

(2) The contractor shall keep adequate records of its attendance on and treatment of its patients and shall do so—
   (a) on forms supplied to it for the purpose by the Health Board; or
   (b) with the written consent of the Health Board, by way of computerised records, or in a combination of those two ways.

(3) The contractor shall include in the records referred to in sub-paragraph (1) clinical reports sent in accordance with paragraph 6 of this Schedule or from any other health care professional who has provided clinical services to a person on its list of patients.

(4) The consent of the Health Board required by sub-paragraph (2)(b) shall not be withheld or withdrawn provided the Health Board is satisfied, and continues to be satisfied, that—
   (a) the computer system upon which the contractor proposes to keep the records has been accredited by the Scottish Ministers or another person on their behalf as suitable for that purpose;
   (b) the security measures and the audit function incorporated into the computer system as accredited in accordance with paragraph (a) have been enabled; and
   (c) the contractor is aware of, and has signed an undertaking that it will have regard to—

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(i) any guidelines issued by the Scottish Ministers and notified to the contractor by the Health Board;

(ii) any document amending any guidelines referred to in (i) above, which has been notified to the contractor by the Health Board; and

(iii) any guidelines issued by the Health Board and notified to the contractor, concerning good practice in the keeping of electronic patient records.

(5) Where the contractor keeps computerised records it shall, as soon as possible following a request from the Health Board, allow the Board to access the information recorded on the contractor’s computer system by means of the audit function referred to in sub-paragraph (4)(b).

(6) The contractor shall send the complete records relating to a patient to the Health Board—

(a) as soon as possible, at the request of the Health Board; or

(b) where a person on its list dies, before the end of the period of 14 days beginning with the date on which it was informed by the Health Board of the death, or (in any other case) before the end of the period of one month beginning with the date on which the contractor learned of the death.

(7) To the extent that a patient’s records are computerised records, the contractor complies with sub-paragraph (5) if it sends to the Health Board a copy of those records—

(a) in written form; or

(b) in any other form, if they have the written consent of the Health Board to do so.

(8) The consent of the Health Board to the transmission of information other than in written form for the purposes of sub-paragraph (7)(b) shall not be withheld or withdrawn provided it is satisfied, and continues to be satisfied, with the following matters—

(a) the contractor’s proposals as to how the record will be transmitted;

(b) the contractor’s proposals as to the format of the transmitted record;

(c) how the contractor will ensure that the record received by the Health Board is identical to that transmitted; and

(d) how a written copy of the record can be produced by the Health Board.

(9) A contractor which keeps computerised records shall not disable, or attempt to disable, either the security measures or the audit function referred to in sub-paragraph (4)(b).

61.—(1) The contractor must provide access to its patient records on request to any person with whom the Health Board has made arrangements for the provision of the information preparation scheme referred to in the GMS Statement of Financial Entitlements.

(2) The contractor shall not be obliged to grant access to a person referred to in sub-paragraph (1) unless that person produces, on request, written evidence that that person is authorised by the Health Board to act on its behalf.

Confidentiality of personal data

62. The contractor shall nominate a person with responsibility for practices and procedures relating to the confidentiality of personal data held by it.

Practice leaflet

63. The contractor shall—

(a) compile a document (in this paragraph called a practice leaflet) which shall include the information specified in Schedule 7;

(b) review its practice leaflet at least once in every period of 12 months and make any amendments necessary to maintain its accuracy; and

(c) make available a copy of the leaflet, and any subsequent updates, to its patients and prospective patients.
Provision of information

64.—(1) Subject to sub-paragraph (4), the contractor shall produce to the Health Board or allow the Board to access, on request—

(a) any information which is reasonably required by the Board for the purposes of or in connection with the contract; and

(b) any other information reasonably required in connection with the Health Board’s duty to provide primary medical services.

(2) The information referred to in sub-paragraph (1)(b) may include information required for the purposes of workforce planning.

(3) Information provided under sub-paragraph (1) shall be in the form requested by the Health Board.

(4) Information provided under sub-paragraph (1) shall not include information which—

(a) is confidential and relates to a living individual, unless at least one of the conditions specified in sub-paragraph (5) applies; or

(b) is prohibited from disclosure by or under any enactment or any ruling of a court of competent jurisdiction or is protected by the common law, unless sub-paragraph (6) applies.

(5) The conditions referred to in sub-paragraph (4)(a) are—

(a) the information is disclosed in a form from which the identity of the individual cannot be ascertained, taking account of other information which is in the possession of or likely to come into the possession of, the person to whom the information is to be disclosed;

(b) the individual consents explicitly to the information being disclosed;

(c) in a case where the Health Board is investigating the provision or quality of clinical care—

(i) it is not practicable to disclose the information in a form from which the identity of the individual cannot be ascertained taking account of other information which is in the possession of or likely to come into the possession of, the person to whom the information is to be disclosed;

(ii) the Board considers that there is a serious risk to the health and safety of patients arising out of the matters which are the subject of the investigation; and

(iii) having regard to that risk and the urgency of the exercise of those functions, the Board considers that the information should be disclosed to it in the public interest without the consent of the individual.

(d) in a case where the Health Board is taking steps to satisfy itself that the terms of the contract have been complied with or that payments made under the contract are accurate—

(i) it is not practicable to disclose the information in a form in which the identity of the individual cannot be ascertained; and

(ii) the Board considers that it is in the public interest that the information should be disclosed to it without the consent of the individual.

(6) This sub-paragraph applies where—

(a) the prohibition on the disclosure of information arises because the information is capable of identifying an individual; and

(b) the information is or can be disclosed in a form in which the identity of the individual cannot be ascertained taking account of other information which is in the possession of or likely to come into the possession of, the person to whom the information is to be disclosed.
(7) In a case where the information falls within sub-paragraph (4)(a) or (6)(b), the Board may require the contractor to put the information in a form from which the identity of the individual concerned cannot be identified, in order that the information may be disclosed.

Inquiries about prescriptions and referrals

65.—(1) The contractor shall, subject to sub-paragraphs (2) and (3), sufficiently answer any inquiries whether oral or in writing from the Health Board concerning—

(a) any prescription form issued by it or by a prescriber employed or engaged by it;
(b) the considerations by reference to which it or prescribers employed or engaged by it issue such forms;
(c) the referral by or on behalf of the contractor of any patient to any other services provided under the Act; or
(d) the considerations by which the contractor makes such referrals or provides for them to be made on its behalf.

(2) An inquiry referred to in sub-paragraph (1) may only be made for the purpose either of obtaining information to assist the Health Board to discharge its functions or of assisting the contractor in the discharge of its obligations under the contract.

(3) The contractor shall not be obliged to answer any inquiry referred to in sub-paragraph (1) unless it is made—

(a) in the case of sub-paragraph (1)(a) or (b), by an appropriately qualified health care professional;
(b) in the case of sub-paragraph (1)(c) or (d), by an appropriately qualified medical practitioner,

appointed by the Health Board to assist the Board in the exercise of its functions under this paragraph and the professional or practitioner produces, on request, written evidence that the professional or practitioner is authorised by the Health Board to make such an inquiry on its behalf.

Reports to a medical officer

66.—(1) The contractor shall, if it is satisfied that the patient consents—

(a) supply in writing to a medical officer within such reasonable period as that officer, or an officer of the Department for Work and Pensions on that officer’s behalf and at that officer’s direction, may specify, such clinical information as the medical officer considers relevant about a patient to whom the contractor or a person acting on the contractor’s behalf has issued or has refused to issue a medical certificate; and
(b) answer any inquiries by a medical officer, or by an officer of the Department for Work and Pensions on that officer’s behalf and at that officer’s direction, about a prescription form or medical certificate issued by the contractor or on the contractor’s behalf or about any statement which the contractor or a person acting on the contractor’s behalf has made in a report.

(2) For the purpose of satisfying the contractor that the patient has consented as required by paragraph (1), the contractor may (unless it has reason to believe the patient does not consent) rely on an assurance in writing from the medical officer, or any officer of the Department for Work and Pensions, that that officer holds the patient’s written consent.

Annual return and review

67.—(1) The contractor shall submit an annual return relating to the contract to the Health Board which shall be in the same format for all persons who hold contracts with that Board.

(2) Following receipt of the return referred to in sub-paragraph (1), the Health Board shall arrange with the contractor an annual review of its performance in relation to the contract.
(3) The contractor or the Health Board may, if it so requests, have a representative of the area medical committee present at the annual review.

(4) The Health Board shall prepare a draft record of the review referred to in sub-paragraph (2) for comment by the contractor and, having regard to such comments, shall produce a final written record of the review.

(5) A copy of the final record referred to in sub-paragraph (4) shall be sent to the contractor.

Notifications to the Health Board

68.—(1) In addition to any requirements of notification elsewhere in the regulations, the contractor shall notify the Health Board in writing, as soon as reasonably practicable, of—

(a) any serious incident that in the reasonable opinion of the contractor affects or is likely to affect the contractor’s performance of its obligations under the contract;

(b) any circumstances which give rise to the Health Board’s right to terminate the contract under paragraph 90(2) or (3);

(c) any appointments system which it proposes to operate and the proposed discontinuance of any such system; and

(d) any change of which it is aware in the address of a registered patient.

69. The contractor shall, unless it is impracticable for it to do so, notify the Health Board in writing within 28 days of any occurrence requiring a change in the information about it published by the Health Board in accordance with regulations made under section 2C(3) of the Act.

Notice provisions specific to a contract with a company limited by shares

70.—(1) A contractor which is a company limited by shares shall give notice to the Health Board forthwith when—

(a) any share in the contractor is transmitted or transferred (whether legally or beneficially) to another person on a date after the contract has come into force;

(b) it passes a resolution or a court of competent jurisdiction makes an order that the contractor be wound up;

(c) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the contractor;

(d) circumstances arise which would enable the court to make a winding up order in respect of the contractor; or

(e) the contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

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

(a) is a medical practitioner, or that the new shareholder or, as the case may be, personal representative satisfies the conditions specified in section 17L(2)(c)(i) to (viii) of the Act; and

(b) meets the further conditions imposed on shareholders by virtue of regulations 4(3) and 5.

Notice provisions specific to a contract with persons practising in partnership

71.—(1) A contractor which is a partnership shall give notice to the Health Board forthwith—

(a) when a partner leaves or informs the other members of the partnership that the partner intends to leave the partnership, and the date upon which the partner left or will leave the partnership;

(b) when a new partner joins the partnership.

(a) Section 2C was inserted into the Act by the Primary Medical Services (Scotland) Act 2004 asp xx, section 1(2).
(2) A notice under sub-paragraph (1)(b) shall—
(a) state the date that the new partner joined the partnership;
(b) confirm that the new partner is a medical practitioner, or that the partner satisfies the conditions specified in 17L(2)(c)(i) to (viii) of the Act;
(c) confirm that the new partner meets the conditions imposed by regulations 4(2) and 5; and
(d) state whether the new partner is a general or a limited partner.

Notification of deaths

72.—(1) The contractor shall report, in writing, to the Health Board, the death on the contractor’s practice premises of any patient no later than the end of the first working day after the date on which the death occurred.
(2) The report shall include—
(a) the patient’s full name;
(b) the patient’s National Health Service number where known;
(c) the date and place of death;
(d) a brief description of the circumstances, as known, surrounding the death;
(e) the name of any medical practitioner or other person treating the patient whilst on the practice premises; and
(f) the name, where known, of any other person who was present at the time of the death.
(3) The contractor shall send a copy of the report referred to in sub-paragraph (1) to any other Health Board in whose area the deceased was resident at the time of the patient’s death.

Notifications to patients following variation of the contract

73. Where the contract is varied in accordance with Part 8 of this Schedule and, as a result of that variation—
(a) there is to be a change in the range of services provided to the contractor’s registered patients; or
(b) patients who are on the contractor’s list of patients are to be removed from that list;
the Health Board shall notify those patients in writing of the variation and its effect and inform them of the steps they can take to obtain elsewhere the services in question or, as the case may be, register elsewhere for the provision of essential services(or their equivalent).

Rights of entry

74.—(1) Subject to the conditions in sub-paragraph (2), the contractor shall allow persons authorised in writing by the Health Board to enter and inspect the practice premises at any reasonable time.
(2) The conditions referred to in sub-paragraph (1) are that—
(a) reasonable notice of the intended entry has been given;
(b) written evidence of the authority of the person seeking entry is produced to the contractor on request; and
(c) entry is not made to any premises or part of the premises used as residential accommodation without the consent of the resident.
(3) Representatives of the Health Board carrying out an inspection under sub-paragraph (1) shall, unless the contractor otherwise requests, be accompanied by a member of the area medical committee.
PART 6
COMPLAINTS

Complaints procedure

75.—(1) The contractor shall establish and operate a complaints procedure to deal with any complaints in relation to any matter reasonably connected with the provision of services under the contract.

(2) The contractor shall take reasonable steps to ensure that patients are aware of—

(a) the complaints procedure, and

(b) the role of the Health Board and other bodies in relation to complaints about services under the contract.

(3) The contractor shall take reasonable steps to ensure that all patients are able to make use of the complaints procedure.

76. A complaint may be made by or, with the patient’s consent, on behalf of a patient, or former patient, who is receiving or has received services under the contract, or—

(a) where the patient is a child—

(i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child,

(ii) by a person duly authorised by a local authority, where the child is in the care of a local authority under the Children (Scotland) Act 1995(a); or

(iii) by a person duly authorised by a voluntary organisation by which the child is being accommodated under the provisions of that Act;

(b) where the patient is incapable of making a complaint, by a relative or other adult person who has an interest in the patient’s welfare.

77. Where a patient has died a complaint may be made by a relative or other adult person who had an interest in the patient’s welfare or, where the patient falls within paragraph 76(a)(ii) or (iii), by the authority or voluntary organisation.

78.—(1) Subject to sub-paragraph (2), the period for making a complaint is—

(a) six months from the date on which the matter which is the subject of the complaint occurred; or

(b) six months from the date on which the matter which is the subject of the complaint comes to the complainant’s notice provided that the complaint is made no later than 12 months after the date on which the matter which is the subject of the complaint occurred.

(2) Where a complaint is not made during the period specified in sub-paragraph (1), it shall be referred to the person referred to in paragraph 79(2)(a) and if the person is of the opinion that—

(a) having regard to all the circumstances of the case, it would have been unreasonable for the complainant to make the complaint within that period; and

(b) notwithstanding the time that has elapsed since the date on which the matter which is the subject matter of the complaint occurred, it is still possible to investigate the complaint properly,

the complaint shall be treated as if it had been received during the period specified in sub-paragraph (1).

(a) 1995.c.36.
79.—(1) A complaints procedure shall also comply with the requirements set out in sub-
paragraphs (2) to (6)–

(2) The contractor must nominate–

(a) a person (who need not be connected with the practice and who, in the case of an
individual, may be specified by the person’s job title) to be responsible for the
operation of the complaints procedure and the investigation of complaints; and

(b) a partner, or senior person associated with the practice, to be responsible for the
effective management of the complaints procedure and for ensuring that action is taken
in the light of the outcome of any investigation.

(3) All complaints must be–

(a) either made or recorded in writing;

(b) acknowledged in writing within the period of three working days beginning with the
day on which the complaint was made or, where that is not possible, as soon as
reasonably practicable; and

(c) properly investigated.

(4) Within the period of 10 working days beginning with the day on which the complaint was
received by the person specified under sub-paragraph (2)(a) or, where that is not possible, as soon as
reasonably practicable, the complainant must be given a written summary of the investigation and
its conclusions.

(5) Where the investigation of the complaint requires consideration of the patient’s medical
records, the person specified under sub-paragraph (2)(a) must inform the patient or person acting on
the patient’s behalf if the investigation will involve disclosure of information contained in those
records to a person other than the contractor or an employee of the contractor.

(6) The contractor must keep a record of all complaints and copies of all correspondence relating
to complaints, but such records must be kept separate from patients’ medical records.

Co-operation with investigations

80.—(1) The contractor shall co-operate with–

(a) any investigation of a complaint in relation to any matter reasonably connected with
the provision(s) services under the contract undertaken by–

(i) the Health Board; and

(ii) the Scottish Public Services Ombudsman;

(b) any investigation of a complaint by a local authority which relates to a patient or
former patient of the contractor.

(2) The co-operation required by sub-paragraph (1) includes–

(a) answering questions reasonably put to the contractor by the Health Board;

(b) providing any information relating to the complaint reasonably required by the Health
Board; and

(c) attending any meeting to consider the complaint (if held at a reasonably accessible
place and at a reasonable hour, and due notice has been given) if the contractor’s
presence at the meeting is reasonably required by the Health Board.

81. The contractor shall provide to the Health Board, at such intervals as required, such
information in relation to the number, subject matter and handling of complaints as is reasonably
required by the Board.
PART 7
DISPUTE RESOLUTION

Local resolution of contract disputes

82.—(1) Subject to sub-paragraph (2), in the case of any dispute arising out of or in connection with the contract, the contractor and the Health Board must make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings).

(2) Either the contractor or the Health Board may, if it wishes to do so, invite the area medical committee to participate in discussions which take place pursuant to sub-paragraph (1).

(3) In the case of a dispute which falls to be dealt with under the procedure specified in paragraph 30 (assignments to closed lists: NHS dispute resolution procedure relating to determinations of the assessment panel), sub-paragraph (1) does not apply where it is not practicable for the parties to attempt local resolution before the expiry of the period specified in paragraph 30(3).

Dispute resolution: non-NHS contracts

83.—(1) In the case of a contract which is not an NHS contract, any dispute arising out of or in connection with the contract, except matters dealt with under the complaints procedure pursuant to Part 6 of this Schedule, may be referred for consideration and determination to the Scottish Ministers, if—

(a) the Health Board so wishes and the contractor has agreed in writing; or
(b) the contractor so wishes (even if the Health Board does not agree).

(2) In the case of a dispute referred to the Scottish Ministers under sub-paragraph (1)—

(a) the procedure to be followed is the NHS dispute resolution procedure; and
(b) the parties agree to be bound by any determination made by the adjudicator.

NHS dispute resolution procedure

84.—(1) Subject to sub-paragraph (2), the procedure specified in the following sub-paragraphs and paragraph 85 (determination of disputes) applies in the case of any dispute arising out of or in connection with the contract which is referred to the Scottish Ministers—

(a) (where the contract is an NHS contract) in accordance with section 17A(4) of the Act; or
(b) (where the contract is not an NHS contract) in accordance with paragraph 83(1).

(2) The procedure specified in this paragraph and paragraph 85 does not apply where a contractor refers a matter for determination in accordance with paragraph 30(1) of this Schedule (assignments to closed lists: NHS dispute resolution procedure relating to determinations of the assessment panel), and in such a case the procedure specified in that paragraph shall apply instead.

(3) Any party wishing to refer a dispute to the Scottish Ministers shall send to them a written request for dispute resolution which shall include or be accompanied by—

(a) the names and addresses of the parties to the dispute;
(b) a copy of the contract; and
(c) a brief statement describing the nature and circumstances of the dispute.

(4) In the case of a contract which is not an NHS contract, the Scottish Ministers shall appoint a panel of three members as the adjudicator.

(5) Within the period of 7 days beginning with the date of the adjudicator’s appointment to consider and determine a matter in dispute, the adjudicator shall—
(a) give to the parties notice in writing of the adjudicator’s appointment; and

(b) include with the notice a written request to the parties to make, in writing, within a specified period any representations which they may wish to make about the matter in dispute.

(6) The adjudicator shall give, with the notice given under sub-paragraph (5), to the party other than the one which referred the matter in dispute to dispute resolution a copy of any document by which the matter was referred to dispute resolution.

(7) The adjudicator shall, upon receiving any representations from a party, give a copy of them to the other party and shall in each case request (in writing) a party to whom a copy of the representations is given to make within a specified period any written observations which it wishes to make on those representations.

(8) For the purpose of assisting it in its consideration of the matter, the adjudicator may–

(a) invite representatives of the parties to appear before the adjudicator to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which it wishes them to give special consideration; or

(b) consult other persons whose expertise the adjudicator considers will assist the adjudicator in the adjudicator’s consideration of the matter.

(9) Where the adjudicator consults another person under sub-paragraph (8)(b), the adjudicator shall notify the parties accordingly in writing and, where the adjudicator considers that the interests of any party might be substantially affected by the result of the consultation, the adjudicator shall give to the parties such opportunity as it considers reasonable in the circumstances to make observations on those results.

(10) In considering the matter, the adjudicator shall consider–

(a) any written representations made in response to a request under sub-paragraph (5)(b), but only if they are made within the specified period;

(b) any written observations made in response to a request under sub-paragraph (7), but only if they are made within the specified period;

(c) any oral representations made in response to an invitation under sub-paragraph (8)(a);

(d) the results of any consultation under sub-paragraph (8)(b); and

(e) any observations made in accordance with an opportunity given under sub-paragraph (9).

(11) In this paragraph, “specified period” means such period as the adjudicator shall specify in the request, being not less than 2, nor more than 4, weeks beginning with the date on which the notice referred to is given, but the adjudicator may, if the adjudicator considers that there is good reason for doing so, extend any such period (even after it has expired) and, where it does so, a reference in this paragraph to the specified period is to the period as so extended.

(12) Subject to the other provisions of this paragraph and paragraph 85 (determination of dispute) and to any agreement by the parties, the adjudicator shall have wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.

Determination of dispute

85.—(1) The adjudicator shall record the adjudicator’s determination, and the reasons for it, in writing and shall give notice of the determination (including the record of the reasons) to the parties and to the Scottish Ministers.

(2) In the case of a contract referred for determination in accordance with paragraph 83(1), section 17A(8) and (9) of the Act shall apply as that section applies in the case of a contract referred for determination in accordance with section 17A(4) of that Act.
Variation of a contract: general

86.—(1) Subject to Schedule 2 (opt outs of additional and out of hours services), and this Part, no amendment or variation shall have effect unless it is in writing and signed by or on behalf of the Health Board and the contractor.

(2) In addition to the specific provision made in paragraph 93 the Health Board may vary the contract without the contractor’s consent where it—

(a) is reasonably satisfied that it is necessary to vary the contract so as to comply with the Act, any regulations made pursuant to that Act, or any direction given by the Scottish Ministers 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 sub-paragraph (b) is served on the contractor.

Termination by agreement

87. The Health Board and the contractor may agree in writing to terminate the contract, 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 contract should be terminated.

Termination by the contractor

88.—(1) A contractor may terminate the contract by serving notice in writing on the Health Board at any time.

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

89.—(1) The contractor may give notice in writing (“late payment notice”) to the Health Board of its intention to terminate the contract if the Board failed to make any payments due to the contractor promptly and in accordance with a term of the contract that has the effect specified in regulation 33 (finance).

(2) A late payment notice shall specify the payments that the contractor believes the Health Board has failed to make promptly and in accordance with a term of the contract that has the effect specified in regulation 33 (finance).

(3) The contractor may, by a further written notice, terminate the contract 28 days after having served a late payment notice if the Health Board has still failed to make the payments specified in that notice at the end of that period of time.

(4) Paragraph 88 and sub-paragraphs (1), (2) and (3) are without prejudice to any other rights to terminate the contract that the contractor may have.

Termination by the Health Board: general provisions

90.—(1) The Health Board may only terminate the contract in accordance with the provisions in this Part.
(2) The Health Board may serve notice in writing on the contractor terminating the contract forthwith if the contractor is—
(a) an individual medical practitioner, and the medical practitioner no longer satisfies the condition specified in regulation 4(1);
(b) two or more persons practising in partnership, and the condition specified in regulation 4(2)(a) is no longer satisfied; or
(c) a company limited by shares, and the condition specified in regulation 4(3)(a) is no longer satisfied.

(3) The Health Board may serve notice in writing on the contractor terminating the contract forthwith, or from such date as may be specified in the notice if—
(a) in the case of a contract with a medical practitioner, that medical practitioner;
(b) in the case of a contract with a partnership, any individual or the partnership; and
(c) in the case of a contract with a company limited by shares—
   (i) the company,
   (ii) any person legally and beneficially owning a share in the company, or
   (iii) any director or secretary of the company,
falls within sub-paragraph (4) during the existence of the contract.

(4) A person falls within this sub-paragraph if—
(a) the person does not satisfy the conditions prescribed in section 17L(2)(c) or (3)(b) of the Act;
(b) the person has been or is the subject of a national disqualification;
(c) the person 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;
(d) 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 contract pursuant to this sub-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 and has been sentenced to a term of imprisonment of over six months;
(h) subject to sub-paragraph (6), the person has been convicted elsewhere of an offence which would if committed in Scotland constitute a criminal offence, 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 to the Criminal Procedure (Scotland) Act 1995;
(j) the person has—
   (i) had sequestration of the person’s estate awarded been adjudged bankrupt unless (in either case) the person has been discharged or the bankruptcy order has been annulled;
   (ii) 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,
   (iii) an administrator, administrative receiver or receiver appointed in respect of it,
   (iv) an administration order made in respect of it under Part II of the Insolvency Act 1986, or
(v) been wound up under Part IV of the Insolvency Act 1986.

(k) that person is a partnership and—

(i) a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator, or

(ii) an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership;

(l) the person has been—

(i) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(a) (powers of the Court of Session to deal with management of charities), 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 Commissioners 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 a disqualification order under the Company Directors Disqualification Act 1986(b), the Companies (Northern Ireland) Order 1986(c) or to an order made under section 429(2)(b) of the Insolvency Act 1986(d) (failure to pay under county court administration order).

(5) A Health Board shall not terminate the contract pursuant to sub-paragraph (4)(d)—

(a) until a period of at least three months has elapsed since the date of the dismissal of the person concerned; or

(b) if, during the period 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 contract 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 shall not terminate the contract pursuant to sub-paragraph (4)(h) where the Health Board is satisfied that the conviction does not make the person unsuitable to be—

(a) a contractor;

(b) a partner, in the case of a partnership;

(c) in the case of a contract with a company limited by shares—

(i) a person legally and beneficially holding a share in the company; or

(ii) a director or secretary of the company.

as the case may be.

(7) In this paragraph, “health service body” has the meaning given to it by section 17A(2) of the Act.

(8) The Health Board may serve notice in writing on the contractor terminating the contract forthwith or with effect from such date as may be specified in the notice if—

(a) the Health Board considers that the contractor has breached the contract and as a result of that breach, the safety of the contractor’s patients is at serious risk if the contract is not terminated; or

(b) the contractor’s financial situation is such that the Health Board considers that the Health Board is at risk of material financial loss.

(a) 1990 c.40.
(c) S.I.1986/1032 (N.1.6).
(d) 1986 c.45.
Termination by the Health Board: remedial notices and breach notices

91.—(1) Where a contractor has breached the contract other than as specified in paragraph 105 and the breach is capable of remedy, the Health Board shall, before taking any action it is otherwise entitled to take by virtue of the contract, 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 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 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 a Health Board is satisfied that the contractor has not taken the required steps to remedy the breach by the end of the notice period, the Health Board may terminate the contract with effect from such date as the Health Board may specify in a further notice to the contractor.

(5) Where a contractor has breached the contract other than as specified in paragraph 90 and the breach is not capable of remedy, the Health Board 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 contract resulting in either a remedial notice or a further breach notice,
the Health Board may serve notice on the contractor terminating the contract with effect from such date as may be specified in that notice.

(7) The Health Board shall not exercise its right to terminate the contract under sub-paragraph (6) unless it is satisfied that the cumulative effect of the breaches that resulted in the remedial or breach notices being served is such that the Health Board considers that to allow the contract to continue would be prejudicial to the efficiency of the services to be provided under the contract.

(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, the Health Board may withhold or deduct monies which would otherwise be payable under the contract in respect of that obligation which is the subject of the default.

Termination by the Health Board: additional provisions specific to contracts with a partnership and companies limited by shares

92.—(1) Where the contractor is a company limited by shares, if the Health Board becomes aware that the contractor is carrying on any business which the Health Board considers to be detrimental to the contractor’s performance of its obligations under the contract—
   (a) the Health Board shall be entitled to give notice to the contractor requiring that it 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 the Health Board that it has ceased carrying on that business by the end of the notice period, the Health Board may, by a further written notice, terminate the contract forthwith or from such date as may be specified in the notice.

(2) Where the contractor is a partnership, the Health Board shall be entitled to terminate the contract by notice in writing on such date as may be specified in that notice where one or more partners have left the practice during the existence of the contract if in its reasonable opinion, the
Health Board considers that the change in membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Health Board to perform its obligations under the contract.

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

**Contract sanctions**

93.—(1) In this paragraph and paragraph 94, “contract sanction” means—
(a) termination of specified obligations under the contract;
(b) suspension of specified obligations under the contract for a period of up to six months; or
(c) withholding or deducting monies otherwise payable under the contract.

(2) Subject to sub-paragraph (4), where the Health Board is entitled to terminate the contract pursuant to paragraph 90(3) or (9) or paragraph 91, it may instead impose any of the contract sanctions if the Health Board is reasonably satisfied that the contract sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the Health Board’s entitlement to terminate the contract.

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

(4) If the Health Board decides to impose a contract sanction, it must notify the contractor of the contract 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) The Health Board shall not impose the contract sanction until at least 28 days after it has served notice on the contractor 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 contractor’s patients; or
(b) protect itself from material financial loss.

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

**Contract sanctions and the dispute resolution procedure**

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

(2) If the contractor refers the dispute relating to the contract sanction to the NHS dispute resolution procedure within 28 days beginning on the date on which the Health Board served notice on the contractor in accordance with paragraph 93(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 shall not impose the contract sanction unless—
(a) there has been a determination of the dispute pursuant to paragraph 85 (determination of dispute) and that determination permits the Health Board to impose the contract 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), the Health Board shall be entitled to impose the contract sanction forthwith.

(4) If the Health Board is satisfied that it is necessary to impose the contract 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,
the Health Board shall be entitled to impose the contract sanction forthwith, pending the outcome of the NHS dispute resolution procedure.

Termination and the dispute resolution procedure

95.—(1) Where the Health Board is entitled to serve written notice on the contractor terminating the contract pursuant to paragraph 90(3) or 91(6), the Health Board shall, in the notice served on the contractor pursuant to those provisions, specify a date on which the contract terminates that it not less than 28 days after the date on which the Health Board has served that notice on the contractor 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 contractor’s patients; or
      (b) protect itself from material financial loss.
   (3) In a case falling with sub-paragraph (1) where the exception in sub-paragraph (2) does not apply, where the contractor invokes the NHS dispute resolution procedure 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 contract 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 contract shall only terminate if and when—
      (a) there has been a determination of the dispute pursuant to paragraph 85 (determination of dispute) and that determination permits the Health Board to terminate the contract; or
      (b) the contractor ceases to pursue the NHS dispute resolution procedure, whichever is the sooner.
   (5) If the Health Board is satisfied that it is necessary to impose the contract sanction before the NHS dispute resolution procedure is concluded in order to—
      (c) protect the safety of the contractor’s patients; or
      (d) protect itself from material financial loss,
sub-paragraphs (3) and (4) shall not apply and the Health Board shall be entitled to confirm by written notice to be served on the contractor, that the contract will nevertheless terminate at the end of the period of the notice it served pursuant to paragraph 90(3) or 91(6).

Consultation with the area medical committee

96. Whenever the Health Board is considering—
   (a) terminating the contract pursuant to paragraph 90(3) or (9), 91(6) or 92; or
   (b) imposing a contract sanction,
it shall, whenever it is reasonably practicable to do so, consult the area medical committee before it terminates the contract or imposes a contract sanction.
Consequences of termination

97. A contract shall make suitable provision for arrangements on termination of a contract, including the consequences (whether financially or otherwise) of the contract ending, subject to any specific requirements in these Regulations.

PART 9
MISCELLANEOUS

Clinical governance

98.—(1) The contractor shall nominate a person who will have responsibility for ensuring that the practice has in place a system of clinical governance.

(2) The person nominated under sub-paragraph (1) shall be a person who performs services under the contract.

(3) In this paragraph “system of clinical governance” means a framework through which the contractor is accountable for continuously improving the quality of the its services and safeguarding high standards of care.

Insurance

99.—(1) The contractor shall at all times hold adequate insurance against liability arising from negligent performance of clinical services under the contract.

(2) The contractor shall not sub-contract its obligations to provide clinical services under the contract unless it has satisfied itself that the sub-contractor holds adequate insurance against liability arising from negligent performance of such services.

(3) In this paragraph—

(a) “insurance” means a contract of insurance or other arrangement made for the purpose of indemnifying the contractor; and

(b) a person shall be regarded as holding insurance if the insurance is held by an employee of that person in connection with clinical services which that employee provides under the contract or, as the case may be, sub-contract.

100. The contractor shall at all times hold adequate public liability insurance in relation to liabilities to third parties arising under or in connection with the contract which are not covered by the insurance referred to in paragraph 99(1).

Compliance with legislation and guidance

101. The contractor shall—

(a) comply with all relevant legislation; and

(b) have regard to all relevant guidance issued by the Health Board and the Scottish Ministers.

Third party rights

102. The contract shall not create any right enforceable by any person not a party to it.
SCHEDULE 6  Schedule 5, paragraph 24(8)

CLOSURE NOTICE

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<tr>
<th>Application for List Closure</th>
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<tr>
<td>From: Name of Contractor</td>
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<td>Date:</td>
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In accordance with paragraph 24 of Schedule 5 to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004, on behalf of the above named contractor I/we wish to make a formal application for our list to be closed to new patients and assignments, as follows:

(1) Length of period of closure *(which may not exceed 12 months and, in the absence of any agreement, shall be 12 months)*

(2) Date from which closure will take effect

(3) Date from which closure will cease to have effect

(4) Current number of registered patients

(5) Reduction in terms of either percentage of the number indicated in (4) above or an actual number of patients which would trigger a re-opening (or suspension of list closure) of the list*

(6) Increase in terms of either percentage of the number indicated in (4) above or actual number of patients which would trigger a re-closure (or lifting of the suspension of list closure) of the list*

(7) Any withdrawal or reduction of additional or enhanced services

* Please note that list re-opening and re-closure in these circumstances can occur only once during any period of list closure unless agreed between practices and the Health Board in exceptional circumstances – details as follows:

Signed………………………………………………………………………………………………

For [Name of contractor]

[ ]
SCHEDULE 7

INFORMATION TO BE INCLUDED IN PRACTICE LEAFLETS

A practice leaflet shall include—

1. The name of the contractor.

2. In the case of a contract with a partnership—
   (a) whether or not it is a limited partnership; and
   (b) the names of all the partners and, in the case of a limited partnership, their status as a general or limited partner.

3. In the case of a contract with a company—
   (a) the names of the directors, the company secretary and the shareholders of that company; and
   (b) the address of the company’s registered office.

4. The full name of each person performing services under the contract.

5. In the case of each health care professional performing services under the contract the professional’s professional qualifications.

6. Whether the contractor undertakes the teaching or training of health care professionals or persons intending to become health care professionals.

7. The contractor’s practice area, by reference to a sketch diagram, plan or postcode.

8. The address of each of the practice premises.

9. The contractor’s telephone and fax number and the address of the contractor’s website (if any).

10. Whether the practice premises have suitable access for all disabled patients and, if not, the alternative arrangements for providing services to such patients.

11. How to register as a patient.

12. The right of patients to express a preference of practitioner in accordance with paragraph 11 of Schedule 5 and the means of expressing such a preference.

13. The services available under the contract.

14. The opening hours of the practice premises and the method of obtaining access to services throughout the core hours.

15. The criteria for home visits and the method of obtaining such a visit.

16. The arrangements for services in the out of hours period (whether or not provided by the contractor) and how the patient may contact such services.

17. The telephone number of NHS 24 and details of the NHS 24 website.

18. If the contractor is a dispensing contractor the arrangements for dispensing prescriptions.

19. How patients may make a complaint or comment on the provision of service.

20. The rights and responsibilities of the patient, including keeping appointments.

21. The action that may be taken where a patient is violent or abusive to the contractor or the contractor’s staff or other persons on the practice premises.

22. Details of who has access to patient information (including information from which the identity of the individual can be ascertained) and the patient’s rights in relation to disclosure of such information.
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations set out, for Scotland, the framework for general medical services contracts under section 17J of the National Health Service (Scotland) Act 1978 (“the Act”).

Part 2 of the Regulations prescribes the conditions which, in accordance with section 17L(1) of the Act, must be met before the Health Board may enter into a general medical services contract with a medical practitioner, a partnership or a company limited by shares.

Part 3 of the Regulations prescribes the procedure for pre-contract dispute resolution, in accordance with section 17O(1) of the Act.

Part 4 of the Regulations sets out the procedures, in accordance with section 17O(2) of the Act, by which the contractor may obtain health service body status.

Part 5 of (and Schedules 1 to 5) the Regulations prescribe the terms which, in accordance with sections 17K and 17N of the Act, must be included in a general medical services contract (in addition to those contained in the Act). It includes, in regulation 16, a description of the primary medical services which must be provided to the contractor’s patients under general medical services contracts pursuant to section 17K of the Act.

The prescribed terms include terms relating to—

(a) the type and duration of the contract (regulations 11 to 15);

(b) the services to be provided (regulations 16 to 26, 28 to 30 and Schedule 1), the manner in which they are to be provided (Part 1 of Schedule 5) and the procedures for opting out of additional and out of hours services (regulation 27 and Schedule 2);

(c) the issuing of medical certificates (regulation 31 and Schedule 3);

(d) finance, fees and charges (regulations 32 to 35 and Schedule 4);

(e) patient registration and removal, lists closures and assignments (Schedule 5, Part 2 and Schedule 6);

(f) prescribing and dispensing (Schedule 5, Part 3);

(g) the conditions to be met by those who perform services or are employed or engaged by the contractor (Schedule 5, Part 4);

(h) patient records, the provision of information and rights of entry (Schedule 5, Part 5 and Schedule 7);

(i) complaints (Schedule 5, Part 6);

(j) procedures for the adjudication of disputes (Schedule 5, Part 7); and

(k) procedures for the variation of terms of contracts and the circumstances in which, and the manner in which, contracts may be terminated (Schedule 5, Part 8).