

SCHEDULE 5

OTHER CONTRACTUAL TERMS

PART 2

Patients

List of patients

- 14.** 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 15 and who have not subsequently been removed from that list under paragraphs 19 to 27; and
 - (b) who have been assigned to the contractor under paragraph 32 or 33 and whose assignment has not subsequently been rescinded.

Application for inclusion in a list of patients

15.—(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—
- (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(1); or
 - (iii) by a person duly authorised by a voluntary organisation, by which the child is being accommodated under the provisions of that Act; or
 - (b) on behalf of any adult who is incapable of making such an application, or authorising such an application to be made on their behalf, by the primary carer of that person or by the person authorised under the Adults with Incapacity (Scotland) Act 2000(2) to act on the patient's behalf.

(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-

(1) 1995 c. 36.
(2) 2000 asp 4

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- (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.

Temporary residents

16.—(1) The contractor may, if its list of patients is open, 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.

Refusal of application for inclusion in the list of patients or for acceptance as a temporary resident

17.—(1) The contractor shall only refuse an application made under paragraph 15 or 16 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, in the case of applications made under paragraph 15, include the ground that the applicant does not live in the contractor's practice area.

(3) A contractor which refuses an application made under paragraph 15 or 16 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 of applications made under paragraph 15 and of the reasons for them and shall make this record available to the Health Board on request.

Patient preference of practitioner

18.—(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 reasonable 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.

Removal from the list at the request of the patient

19.—(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 received 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) 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 this paragraph and in paragraphs 20(1)(b) and (10), 21(6) and (7), 23 and 26, 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 paragraph 15(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

20.—(1) Subject to paragraph 21, 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 sub-paragraph (2), notify the patient of its specific reasons for requesting removal.
- (2) Where, in the reasonable opinion of the contractor—
- (a) the circumstances of the removal are such that it is not appropriate for a more specific reason to be given; and

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- (b) 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) Except in the circumstances described in sub-paragraph (4), a contractor may only request a removal under sub-paragraph (1) if, within the period of twelve months prior to the date of its request to the Health Board, it has warned the patient that the patient is at risk of removal and explained to him the reasons for this.

(4) The circumstances referred to in sub-paragraph (3) are that—

- (a) the reason for the removal relates to a change of address;
- (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 the persons specified in sub-paragraph (5); or
- (c) it is, in the opinion of the contractor, not otherwise reasonably practicable for a warning to be given.

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

- (a) in the case of a contract with an individual medical practitioner, that practitioner;
- (b) in the case of a contract with a partnership, a partner in that partnership;
- (c) in the case of a contract with a company, a legal and beneficial owner of shares in that company;
- (d) a member of the contractor's staff;
- (e) a person engaged by the contractor to perform or assist in the performance of services under the contract; or
- (f) any other person present—
 - (i) on the practice premises, or
 - (ii) in the place where services are being provided to the patient under the contract.

(6) The contractor shall record in writing—

- (a) the date of any warning given in accordance with sub-paragraph (3) and the reasons for giving such a warning as explained to the patient; or
- (b) the reason why no such warning was given.

(7) The contractor shall keep a written record of removals 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.

(8) A removal requested in accordance with sub-paragraph (1) shall, subject to sub-paragraph (9) 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.

(9) Where, on the date on which the removal would take effect under sub-paragraph (8), the contractor is treating the patient at intervals of less than 7 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 Health Board 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.

(10) The Health Board shall notify in writing—

- (a) 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 (8) or (9).

Removal from the list of patients who are violent

21.—(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) in the case of a contract with an individual medical practitioner, that practitioner;
- (b) in the case of a contract with a partnership, a partner in that partnership;
- (c) in the case of a contract with a company, a legal and beneficial owner of shares in that company;
- (d) a member of the contractor's staff;
- (e) a person engaged by the contractor to perform or assist in the performance of services under the contract; or
- (f) any other person present—
 - (i) on the practice premises or
 - (ii) in the place where services were provided to the patient under the contract.

(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 7 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

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

(6) Where, pursuant to this paragraph, 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 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 one or more of the persons specified in sub-paragraph (2).

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

(8) Where a patient is removed from the contractor's list of patients in accordance with this paragraph, the contractor shall record in the patient's medical records that the patient has been removed under this paragraph and the circumstances leading to the patient's removal.

Removals from the list of patients registered elsewhere

22.—(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 patients removed from its list of patients under sub-paragraph (1).

Removals from the list of patients who have moved

23.—(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—

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

(b) advise the patient in writing 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 inform the patient and the contractor accordingly.

Removals from the list of patients who have moved

24. 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 to that patient.

Removals from the list of patients absent from the United Kingdom etc.

25.—(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).

Removals from the list of patients accepted elsewhere as temporary residents

26.—(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) 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

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- (b) the name and address of the Health Board in whose area the patient is resident.

Removals from the list of pupils etc. of a school

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

28.—(1) Where a contractor—

- (a) has received an application for the provision of medical services other than essential services—
 - (i) from a person who is not included in its list of patients, or
 - (ii) from a person whom 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 15(4); and

(b) has accepted that person as a patient for the provision of the service in question, its responsibility for that patient shall 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 informs the contractor that the patient no longer wishes it to be responsible for provision of the service in question;
- (b) in cases where the contractor has reasonable grounds for terminating its responsibility which do not relate to the person's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition, the contractor informs the patient that it no longer wishes to be responsible for providing the patient with the service in question; or
- (c) it comes to the notice of the contractor that the patient—
 - (i) no longer resides in the area for which the contractor has agreed to provide the service in question; or
 - (ii) is no longer included in the list of patients of another contractor to whose registered patients the contractor has agreed to provide that service.

(3) A contractor which wishes to terminate its responsibility for a patient under sub-paragraph (2) 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 (2)(b) shall take effect—

- (a) from the date on which the notice is given where the grounds for termination are those specified in paragraph 21(1); or

- (b) in all other cases, 14 days from the date on which the notice is given.

Closure of lists of patients

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

(2) Within a period of 7 days beginning with the date of receipt of the notification referred to in sub-paragraph (1), or, if that is not reasonably practicable, as soon as is practicable thereafter, 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 7, 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 twelve 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

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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 twelve 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 in writing.

(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

30.—(1) If the Health Board approves the closure notice in accordance with paragraph 29(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 29(8)(a) (or, where a period of twelve months has been fixed in accordance with paragraph 29(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) the number of the contractor's registered patients falls to the number specified in the closure notice in accordance with paragraph 29(8)(c); or
- (b) the Health Board and the contractor agree that the list of patients should re-open.

(4) If the contractor's list of patients has re-opened pursuant to sub-paragraph (3)(a), it shall nevertheless close again if, during the period specified in the closure notice in accordance with paragraph 29(8)(a) (or, where the period of twelve months specified in paragraph 29(10) applies, during that period) the number of the contractor's registered patients rises to the number specified in the closure notice in accordance with paragraph 29(8)(d).

(5) Except in cases where the contractor's list of patients is already open pursuant to sub-paragraph (3), the Health Board shall notify the contractor in writing between 7 and 14 days before the expiry of the period of closure specified in sub-paragraph (2), confirming the date on which the contractor's list of patients will re-open.

(6) Where the details specified in the closure notice in accordance with paragraph 29(8) have been revised following discussions under paragraph 29(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

31.—(1) This regulation applies where the Health Board rejects the closure notice in accordance with paragraph 29(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 an assessment panel is appointed by another Health Board 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 and shall include in such information any written observations received from the contractor.

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

(6) 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.

(7) Where the assessment panel determines in accordance with sub-paragraph (6)(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 29(8).

(8) Where the assessment panel rejects the list closure in accordance with sub-paragraph (6)(b), 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.

(9) Where the assessment panel rejects the list closure in accordance with sub-paragraph (6)(b), the contractor may not submit a further closure notice as described in paragraph 29 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 unless there has been a change in the circumstances of the contractor which affects its ability to deliver services under the contract.

(10) Any decision or determination by the assessment panel for the purposes of this paragraph may be reached by a majority.

Assignment of patients to lists: open lists

32.—(1) A Health Board may, subject to paragraph 34, assign a new patient to a contractor whose list of patients is open.

- (2) In this paragraph and in paragraphs 33 and 35 to 37, a “new” patient means a person who—
 - (a) is resident (whether or not temporarily) within the area of the Health Board;
 - (b) has been refused inclusion in a list of patients of, or has not been accepted as a temporary resident by, a contractor whose premises are within such an area; and

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- (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

33.—(1) A Health Board may not assign a new 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, subject to paragraph 34, 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 35(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 the NHS dispute resolution procedure as modified by paragraph 36(3) 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 37.

Factors relevant to assignments

34. In making an assignment to a contractor under paragraph 32 or 33, the Health Board shall have regard to—

- (a) the wishes and circumstances of the patient to be assigned;
- (b) the distance between the patient's place of residence and the contractor's practice premises;
- (c) whether, during the six months ending on the date on which the application for assignment is received by the Health Board, the patient's name has been removed from the list of patients of any contractor in the area of the Health Board under paragraph 20 or its equivalent provision in relation to a section 17C provider in the area of the Health Board;
- (d) whether the patient's name has been removed from the list of patients of any contractor in the area of the Health Board under paragraph 21 or its equivalent provision in relation to a section 17C provider in the area of the Health Board and, if so, whether the contractor has appropriate facilities to deal with such a patient;
- (e) such other matters as the Health Board considers to be relevant.

Assignments to closed lists: determinations of the assessment panel

35.—(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 those contractors to which the Health Board wishes to assign patients.

(3) The Health Board must ensure that an assessment panel is appointed by another Health Board to consider and determine its proposal made under sub-paragraph (2).

(4) The Health Board shall notify in writing—

- (a) contractors or section 17C providers 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 (if any) for the area of the Health Board, 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 those contractors to which patients may be assigned.
- (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), as long as the contractors were notified under sub-paragraph(4)(a).
- (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)(a).
- (10) Any decision or determination by the assessment panel for the purposes of this paragraph may be reached by a majority.

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

- 36.**—(1) Where an assessment panel makes a determination under paragraph 35(7) that the Health Board may assign new patients to contractors which have closed their lists of patients, any contractor specified in that determination may refer the matter to the Scottish Ministers to review the determination of the assessment panel.
- (2) Where more than one contractor specified in the determination in accordance with paragraph 35(7) wishes to refer the matter for dispute resolution, those contractors may, if they all agree, refer the matter jointly, and in that case the Scottish Ministers shall review the matter in relation to those contractors together.
- (3) Where a matter is referred to the Scottish Ministers under sub-paragraph (1) or (2), it shall be determined in accordance with the NHS dispute resolution procedure as modified as follows—
- (a) in paragraph 91(3), for “a dispute as mentioned in sub-paragraph (1)” substitute “the matter as mentioned in paragraph 36(1)”;
 - (b) for paragraph 91(4) substitute—
 - “(4) The contractor (or contractors) wishing to refer the matter as mentioned in paragraph 36(1) must send the request to the Scottish Ministers within the period of 7 days beginning with the date of the determination by the assessment panel in accordance with paragraph 35(7).”;
 - (c) for paragraph 91(13) substitute—

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“(13) In this paragraph, “specified period” means such period as the Scottish Ministers shall specify in the request sent under sub-paragraphs (6) or (8), being not less than one, nor more than two, weeks beginning with the date on which the request is given, but the adjudicator may, if the period for determination of the dispute has been extended in accordance with sub-paragraph (19), extend any such period (even after it has expired) and, where it the adjudicator does so, a reference in this paragraph to the specified period is to the period as so extended.”

(d) after paragraph 91(15), there shall be inserted the following sub-paragraphs—

“(16) Subject to sub-paragraph (19), 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 adjudicator determines that the Health Board may make such assignments, the adjudicator shall also determine those contractors to which patients may be assigned.

(17) 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 35(7).

(18) In the case of a matter referred jointly by contractors in accordance with paragraph 36(2), the adjudicator may determine that patients may be assigned to one, some or all of the contractors which referred the matter.

(19) The period of 21 days referred to in sub-paragraph (15) 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 (or contractors) which referred the matter to dispute resolution.”;
- and

(e) paragraph 92(2) shall not apply.

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

37.—(1) Before the Health Board may assign a new patient to a contractor, it shall, subject to sub-paragraph (3), 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—

- (a) to the first assignment of a patient to a particular contractor; and
- (b) to any subsequent assignment to that contractor to the extent that it is reasonable and appropriate having regard to the numbers of patients who have been or may be assigned to it and the period of time since the last discussions under sub-paragraph (1) took place.