

SCHEDULE 2

Regulation14(2)

Contract Terms

General provisions

- 1.—(1) The contractor must comply with all relevant legislation, including—
 - (a) the provisions of these Regulations; and
 - (b) regulation 3 of the Patients' Forums (Functions) Regulations 2003(1) in so far as it relates to the entry and inspection of premises from where local pharmaceutical services are provided.
- (2) The contractor must comply with the relevant provisions of the Drug Tariff.
- (3) The contractor must have regard to all relevant guidance issued by—
 - (a) the Primary Care Trust;
 - (b) the relevant Strategic Health Authority; or
 - (c) the Secretary of State.
- (4) To the extent that the provisions of the terms required by this Schedule impose a requirement on a contractor in respect of an activity which could only, or would normally, be undertaken by a natural person—
 - (a) if the contractor is a registered pharmacist—
 - (i) that registered pharmacist must comply with the requirement, or
 - (ii) if he employs or engages a registered pharmacist in connection with the provision of local pharmaceutical services under his LPS scheme, the contractor must either comply with that requirement or secure compliance with that requirement by the registered pharmacist he employs or engages; and
 - (b) if the contractor is not a natural person, that contractor must secure compliance with that requirement by the registered pharmacists it employs or engages,and references in this Schedule to a contractor shall be construed accordingly.

Restrictions in an LPS scheme on supply

- 2.—(1) Where an LPS scheme is limited to the provision of specified drugs or appliances, the contractor must not provide other drugs or appliances at the premises from which he has undertaken to provide LPS services under that scheme.
- (2) An LPS scheme must contain the following terms, where applicable—
 - (a) where the local pharmaceutical services to be provided include the supply of appliances—
 - (i) the only appliances which may be supplied are listed appliances, and
 - (ii) those appliances must be supplied in accordance with the provisions of the Notes, and the List of Technical Specifications, which appear at the beginning of Part IX of the Drug Tariff, which apply at the time of supply; and
 - (b) where the local pharmaceutical services to be provided include the supply of chemical reagents, the only chemical reagents which may be supplied are those listed from time to time in Part IXR of the Drug Tariff.
- (3) Where an LPS scheme is limited to the provision of services—

(1) [S.I. 2003/124](#); regulation 3 has been amended by [S.I. 2004/540](#), [696](#) and [865](#).

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- (a) to a specified class of persons (for example persons who require the provision of local pharmaceutical services for the treatment of a specified disease or condition); or
- (b) to persons residing in a particular place (for example persons in a specified residential home),

the contractor must not provide local pharmaceutical services to persons other than those so specified.

Dispensing

3.—(1) Subject to any provisions of an LPS scheme included pursuant to paragraph 2 and the following provisions of this Schedule, where—

- (a) any person presents a non-electronic prescription form which contains—
 - (i) an order for a drug, not being a Scheduled drug, or for an appliance, not being a restricted availability appliance, signed by a prescriber,
 - (ii) an order for a drug specified in Schedule 2 to the Prescription of Drugs Regulations, signed by a prescriber and including the reference “SLS”, or
 - (iii) an order for restricted availability appliance, signed by a prescriber and including the reference “SLS”; or
- (b) the contractor receives from the ETP service an electronic prescription form which contains an order of a kind specified in paragraph (a)(i) to (iii), and—
 - (i) any person requests the provision of a drug in accordance with that prescription, or
 - (ii) the contractor has previously arranged with the patient that it will dispense that prescription on receipt,

a contractor must, with reasonable promptness, provide the drugs so ordered, and such of the appliances so ordered as it supplies in the normal course of its business.

(2) Where an LPS scheme includes the provision of repeat dispensing services, subject to any provisions of the LPS scheme included pursuant to paragraph 2 and the following provisions of this Schedule—

- (a) any person presents a non-electronic repeatable prescription which contains—
 - (i) an order for a drug, not being a Scheduled drug or a controlled drug within the meaning of the Misuse of Drugs Act 1971⁽²⁾, other than a drug which is for the time being specified in Schedule 4 or 5 to the Misuse of Drugs Regulations 2001⁽³⁾, signed by a repeatable prescriber,
 - (ii) an order for a drug specified in Schedule 2 to the Prescription of Drugs Regulations, not being 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 4 or 5 to the Misuse of Drugs Regulations 2001, signed by a repeatable prescriber and including the reference “SLS”,
 - (iii) an order for an appliance, not being a restricted availability appliance, signed by a repeatable prescriber, or
 - (iv) an order for a restricted availability appliance, signed by a repeatable prescriber, and including the reference “SLS”,

and also presents an associated batch issue; or

⁽²⁾ 1971 c. 38; see section 2(1) of that Act, which defines “controlled drug” for the purposes of that Act.

⁽³⁾ S.I. 2001/3998. Schedule 4 has been amended by S.I. 2003/1432.

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- (b) the contractor receives from the ETP service an electronic repeatable prescription which contains an order of a kind specified in sub-paragraph (a)(i) to (iv) and—
- (i) any person requests the provision of a drug or an appliance in accordance with that repeatable prescription, or
 - (ii) the contractor has previously arranged with the patient that it will dispense that repeatable prescription on receipt,
- a contractor must, with reasonable promptness, provide the drugs so ordered, and such of the appliances so ordered as it supplies in the normal course of its business.
- (3) A contractor must not provide under an electronic prescription form 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 4 or 5 to the Misuse of Drugs Regulations 2001.
- (4) For the purposes of this paragraph, a non-electronic repeatable prescription for drugs or appliances must be taken to be presented even if the person who wishes to obtain the drug or appliance does not present that prescription, where—
- (a) the contractor has that prescription in his possession; and
 - (b) that person presents, or the contractor has in its possession, an associated batch issue.
- (5) Where a contractor has made arrangements, as part of an LPS scheme, with a Primary Care Trust for the provision of an Independent Prescribing Service, and a pharmacist independent prescriber is authorised or required both to prescribe and to dispense a drug or appliance to a person under those arrangements, the pharmacist independent prescriber shall—
- (a) do so in accordance with paragraphs 5 and 7 (as applicable);
 - (b) in connection with doing so, act in accordance with paragraphs 8 and 9;
 - (c) record the order on a prescription form;
 - (d) provide the drug or appliance in a suitable container;
 - (e) only provide a drug specified in Schedule 2 to the Prescription of Drugs Regulations where the conditions specified in paragraph 42(2) of Schedule 6 to the GMS Contracts Regulations are satisfied; and
 - (f) only provide a restricted availability appliance if the patient is a person, or it is for a purpose, specified in the Drug Tariff,

but a contractor must not provide drugs or appliances ordered by a pharmacist independent prescriber under his LPS scheme unless it has made such arrangements.

- (6) The contractor must only provide drugs and appliances ordered on a prescription form or a repeatable prescription, or by it or on its behalf by a pharmacist independent prescriber, in circumstances where the supervising pharmacist (whether or not he is the contractor) is not someone—
- (a) who is suspended from a primary care list;
 - (b) who is subject to a national disqualification; or
 - (c) who—
 - (i) has been disqualified under section 46(4)(2)(b) of the Act (or under any corresponding provision in Scotland or Northern Ireland) from inclusion in the pharmaceutical list of a Primary Care Trust (or Local Health Board, Health Board or Health and Social Services Board), and

(4) Section 46 was repealed by the 2001 Act, Schedule 5, paragraph 5, and Schedule 6, Part 1.

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- (ii) is the subject of a declaration under section 46(2)(c) of the Act (or any corresponding provision in Scotland or Northern Ireland) that he is not fit to be engaged in any capacity in the provision of pharmaceutical services.

Urgent supply without a prescription

4. Where, in case of urgency, a prescriber personally known to a contractor requests it to provide a drug, a contractor may provide that drug (where it would otherwise be able to provide that drug in accordance with the LPS scheme) before receiving a prescription form or repeatable prescription, provided that—

- (a) the drug is not a Scheduled drug;
- (b) the 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 Schedule 4 or 5 to the Misuse of Drugs Regulations 2001; and
- (c) the prescriber undertakes to—
 - (i) give the contractor a non-electronic prescription form or non-electronic repeatable prescription in respect of the drug within 72 hours, or
 - (ii) transmit to the ETP service within 72 hours an electronic prescription.

Preliminary matters before providing ordered drugs or appliances

5.—(1) If a person specified in paragraph (2) asks the contractor to do so—

- (a) the contractor shall give an estimate of the time when the drugs or appliances will be ready; and
- (b) if they are not ready by then, the contractor shall give a revised estimate of the time when they will be ready (and so on).

(2) A person referred to in paragraph (1) is a person—

- (a) presenting a non-electronic prescription form or non-electronic repeatable prescription; or
- (b) requesting the provision of drugs or appliances in accordance with an electronic prescription form or a repeatable prescription.

(3) Before providing any drugs or appliances in accordance with a prescription form or a repeatable prescription, a contractor must ask any person who makes a declaration that the person named on the prescription form or the repeatable prescription does not have to pay the charges specified in regulation 3(1) or (1A) of the Charges Regulations by virtue of either—

- (a) entitlement to exemption under regulation 7(1) of the Charges Regulations; or
- (b) entitlement to remission of charges under regulation 5 of the Remission of Charges Regulations,

to produce satisfactory evidence of such entitlement, unless the declaration is in respect of entitlement to exemption by virtue of sub-paragraph (a), (c), (d), (e), (f) or (g) of regulation 7(1) of the Charges Regulations or in respect of entitlement to remission by virtue of regulation 5(1)(e) or (2) of the Remission of Charges Regulations, and at the time of the declaration the contractor already has such evidence available to him.

(4) If, in the case of a non-electronic prescription form or non-electronic repeatable prescription, no satisfactory evidence, as required by sub-paragraph (3), is produced, the contractor must endorse the form on which the declaration is made to that effect.

(5) In the case of an electronic prescription, the contractor must transmit to the ETP service—

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- (a) in a case where exemption from or remission of charges is claimed for all or some of the items included in the prescription, a record of—
 - (i) the exemption category specified in regulation 7(1) of the Charges Regulations or the ground for remission under regulation 5 of the Remission of Charges Regulations which it is claimed applies to the case, and
 - (ii) whether or not satisfactory evidence was produced to it as required by sub-paragraph (3);
- (b) in any case where a charge is due, confirmation that the relevant charge was paid; and
- (c) in a case of a prescription for or including contraceptive substances, confirmation that no charge was payable in respect of those substances.

Providing ordered drugs or appliances

6.—(1) Where a contractor is presented with, or receives from the ETP service, a prescription form or a repeatable prescription, the contractor must only provide the drugs or appliances so ordered—

- (a) if the prescription form or repeatable prescription is duly signed and completed as described in paragraph 3(1) or (2); and
- (b) in accordance with the order on the prescription form or repeatable prescription,

subject to any regulations in force under the Weights and Measures Act 1985⁽⁵⁾ and the following provisions of this Schedule.

(2) If the order is for an appliance of a type requiring measuring and fitting by the contractor (for example a truss), the contractor shall make all necessary arrangements for—

- (a) measuring the person named on the prescription form or repeatable prescription for the appliance; and
- (b) fitting the appliance.

(3) If the order is for a drug or appliance included in the Drug Tariff, the British National Formulary (including any Appendix published as part of that Formulary), the Dental Practitioner's Formulary, the European Pharmacopoeia or the British Pharmaceutical Codex, the drug or appliance provided must comply with the relevant standard or formula specified therein.

(4) If the order—

- (a) is an order for a drug; but
- (b) is not an order for 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 4 or 5 to the Misuse of Drugs Regulations 2001,

and does not prescribe its quantity, strength or dosage, a contractor may provide the drug in such strength and dosage as in the exercise of its professional skill, knowledge and care it considers to be appropriate and, subject to sub-paragraph (5), in such quantity as it considers to be appropriate for a course of treatment for a period not exceeding 5 days.

(5) Where an order to which sub-paragraph (4) applies is for—

- (a) an oral contraceptive substance;
- (b) a drug, which is available for supply as part of local pharmaceutical services only together with one or more other drugs; or
- (c) an antibiotic in a liquid form for oral administration in respect of which pharmaceutical considerations require its provision in an unopened package,

(5) 1985 c. 72.

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which is not available for provision as part of local pharmaceutical services except in such packages that the minimum size available contains a quantity appropriate to a course of treatment for a period of more than 5 days, the contractor may provide the minimum size available package.

(6) Where any drug to which this sub-paragraph applies (that is, a drug that is not one to which the Misuse of Drugs Act 1971 applies, unless it is a drug for the time being specified in Schedule 5 to the Misuse of Drugs Regulations 2001), ordered by a prescriber on a prescription form or repeatable prescription, is available for provision by a contractor in a pack in a quantity which is different to the quantity which has been so ordered, and that drug is—

- (a) sterile;
- (b) effervescent or hygroscopic;
- (c) a liquid preparation for addition to bath water;
- (d) a coal tar preparation;
- (e) a viscous preparation; or
- (f) packed at the time of its manufacture in a calendar pack or special container,

the contractor must, subject to sub-paragraph (7), provide the drug in the pack whose quantity is nearest to the quantity which has been so ordered.

(7) A contractor must not provide, pursuant to sub-paragraph (6), a drug in a calendar pack where, in its opinion, it was the intention of the prescriber who ordered the drug that it should be provided only in the exact quantity ordered.

(8) In this paragraph—

- (a) “calendar pack” means a blister or strip pack showing the days of the week or month against each of the several units in the pack; and
- (b) “special container” means any container with an integral means of application or from which it is not practicable to dispense an exact quantity.

(9) Except as provided in sub-paragraph (10), a contractor must not provide a Scheduled drug in response to an order by name, formula or other description on a prescription form or repeatable prescription.

(10) Where a drug has an appropriate non-proprietary name and it is ordered on a prescription form or repeatable prescription either by that name or by its formula, a contractor may provide a drug which has the same specification notwithstanding that it is a Scheduled drug, provided that where a Scheduled drug is in a pack which consists of a drug in more than one strength, such provision does not involve the supply of part only of the pack.

(11) Where a drug which is ordered as specified in sub-paragraph (10) combines more than one drug, that sub-paragraph must apply only if the combination has an appropriate non-proprietary name, whether the individual drugs which it combines do so or not.

(12) A contractor must provide any drug which it is required to provide under paragraph 3 in a suitable container.

Refusal to provide drugs or appliances ordered

7.—(1) A contractor may refuse to provide the drugs or appliances ordered on a prescription form or repeatable prescription where—

- (a) the contractor reasonably believes that it is not a genuine order for the person named on the prescription form or the repeatable prescription (for example because he reasonably believes it has been stolen or forged);
- (b) it appears to the contractor that—

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- (i) there is an error on the prescription form or on the repeatable prescription or, in the case of a non-electronic repeatable prescription, its associated batch issue (including a clinical error made by the prescriber), or
 - (ii) in the circumstances, providing the drugs or appliances would be contrary to the contractor's clinical judgement;
 - (c) the contractor or other persons on the premises are subjected to or threatened with violence by the person presenting the prescription form or repeatable prescription or requesting the provision of drugs or appliances in accordance with an electronic prescription form or a repeatable prescription, or by any person accompanying that person; or
 - (d) the person presenting the prescription form or repeatable prescription or requesting the provision of drugs or appliances in accordance with an electronic prescription form or a repeatable prescription, or any other person accompanying that person, commits or threatens to commit a criminal offence.
- (2) A contractor must refuse to provide a drug ordered on a prescription form or repeatable prescription where the order is for a prescription only medicine which the prescriber was not entitled to prescribe.
- (3) A contractor must refuse to provide drugs or appliances ordered on a repeatable prescription where—
- (a) it has no record of that prescription;
 - (b) it does not, in the case of a non-electronic repeatable prescription, have any associated batch issue and it is not presented to him;
 - (c) it is not signed by a repeatable prescriber;
 - (d) to do so would not be in accordance with any intervals specified in the prescription;
 - (e) it would be the first time a drug or appliance had been provided pursuant to the prescription and the prescription was signed (whether electronically or otherwise) more than six months previously;
 - (f) the repeatable prescription was signed (whether electronically or otherwise) more than one year previously;
 - (g) the expiry date on the repeatable prescription has passed; or
 - (h) it has been informed by the repeatable prescriber that the prescription is no longer required.
- (4) Where a patient requests the supply of drugs or appliances ordered on a repeatable prescription (other than on the first occasion that he makes such a request), a contractor must only provide the drugs or appliances ordered if it is satisfied—
- (a) that the patient to whom the prescription relates—
 - (i) is taking or using, and is likely to continue to take or use, the drug or appliance appropriately, and
 - (ii) is not suffering from any side effects of the treatment which indicates the need or desirability of reviewing the patient's treatment;
 - (b) that the medication regimen of the patient to whom the prescription relates has not altered in a way which indicates the need or desirability of reviewing the patient's treatment; and
 - (c) there have been no changes to the health of the patient to whom the prescription relates which indicate the need or desirability of reviewing the patient's treatment.

Further activities to be carried out in connection with the provision of dispensing services

- 8.** In connection with the services provided under paragraphs 3 to 7, a contractor must—

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- (a) ensure that appropriate advice is given to patients about any drugs or appliances provided to them—
 - (i) to enable them to utilise the drugs or appliances appropriately, and
 - (ii) to meet the patient’s reasonable needs for general information about the drugs or appliances;
- (b) provide appropriate advice to patients to whom they provide drugs or appliances on—
 - (i) the safe keeping of the drugs or appliances, and
 - (ii) returning unwanted drugs or appliances to the pharmacy for safe destruction;
- (c) provide a patient with a written note of any drug or appliance which is owed, and inform the patient when it is expected that the drug or appliance will become available;
- (d) keep and maintain records—
 - (i) of drugs and appliances provided, in order to facilitate the continued care of the patient;
 - (ii) in appropriate cases, of advice given and any interventions or referrals made (including clinically significant interventions in cases involving repeatable prescriptions), and
 - (iii) of notes provided under sub-paragraph (c);
- (e) if it provides a drug or appliance under an electronic prescription, provide the patient, if he so requests, with a written record of the drugs or appliances ordered on that prescription and, in the case of an electronic repeatable prescription, of the number of occasions on which it can be dispensed; and
- (f) ensure that where a person is refused drugs or appliances pursuant to paragraphs 7(1)(b), (2), (3) or (4), the patient is referred back to the prescriber for further advice.

Additional requirements in relation to electronic prescribing

- 9.—(1) A contractor must, if requested to do so by any person—
- (a) explain to him the ETP service, whether or not it is a service which is available through its pharmacy; and
 - (b) where the ETP service is not available through its pharmacy, provide him with contact details of at least two pharmacies in his area through which the service is available, if these details are known to the contractor.
- (2) Where the ETP service is available through its pharmacy, the contractor must, if requested to do so by any person, enter in that person’s NHS Care Record—
- (a) where the person does not have a nominated dispensing contractor, the dispensing contractor chosen by that person; and
 - (b) where the person does have a nominated dispensing contractor—
 - (i) a replacement dispensing contractor, or
 - (ii) a further dispensing contractor,chosen by that person.
- (3) Paragraph (2)(b)(ii) does not apply if the number of nominated dispensing contractors for that person would thereby exceed the maximum number permitted by the ETP service.

Further activities in connection with the provision of dispensing services under a repeatable prescription and batch issues

- 10.** In connection with the services provided under paragraphs 3 to 7, a contractor must—
- (a) provide appropriate advice to patients to whom it provides drugs or appliances in accordance with a repeatable prescription, in particular on the importance of only requesting those items which they actually need;
 - (b) undertake appropriate training in respect of repeat dispensing, having regard to any recommendations in respect of such training set out in the Drug Tariff;
 - (c) if it takes possession of a non-electronic repeatable prescription or an associated batch issue, securely store that repeatable prescription or associated batch issue;
 - (d) maintain records of repeatable prescriptions in such a form as to provide a clear audit trail of supplies under the repeatable prescription (including dates and quantities supplied);
 - (e) destroy any surplus batch issues relating to drugs or appliances—
 - (i) which are not required, or
 - (ii) where a patient is refused the drugs or appliances pursuant to paragraph 7;
 - (f) where a patient is provided with drugs or appliances under a repeatable prescription, notify the prescriber of any clinically significant issues arising in connection with the prescription and keep a record of that notification; and
 - (g) notify the prescriber of any refusal to provide drugs or appliances pursuant to paragraph 7(2).

Information to be provided for the Primary Care Trust's lists

- 11.** A contractor must ensure that it provides to its Primary Care Trust, an up to date record of—
- (a) the services that it provides; and
 - (b) the days on which and times at which those services are provided.

Clinical governance

12. A contractor must participate, in the manner reasonably required by the Primary Care Trust, in an acceptable system of clinical governance.

13. In these Regulations “system of clinical governance” means a framework through which the contractor endeavours to improve continuously the quality of its services and safeguards high standards of care by creating an environment in which clinical excellence can flourish.

Professional Standards

14. A contractor must provide local pharmaceutical services and exercise any professional judgement in connection with the provision of such services in conformity with the standards generally accepted in the pharmaceutical profession.

Inducements etc.

15.—(1) A contractor or its staff must not give, promise or offer to any person any gift or reward (whether by way of a share of or dividend on the profits of the business or by way of discount or rebate or otherwise) as an inducement to or in consideration of his—

- (a) presenting an order for drugs or appliances on a non-electronic prescription form or non-electronic repeatable prescription; or

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(b) nominating the contractor as its dispensing contractor (or one of them) in his NHS Care Record.

(2) Promising, offering or providing an auxiliary aid in relation to the supply of drugs or a home delivery service is not a gift or reward for the purposes of sub-paragraph (1).

Duty to provide information about fitness to practise matters as they arise

16.—(1) Subject to paragraph 17, the contractor must within 7 days of its occurrence supply in writing information to the Primary Care Trust as to whether he (in the case of an individual who is a contractor), or in the case of a partnership, any partner in the partnership, or where the contractor is a body corporate, any of its directors, its chief executive, its company secretary or its superintendent pharmacist—

- (a) has any criminal convictions in the United Kingdom;
- (b) has accepted a police caution in the United Kingdom;
- (c) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction);
- (d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995⁽⁶⁾ (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992⁽⁷⁾ (penalty as alternative to prosecution);
- (e) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
- (f) has been charged with an offence and is currently the subject of any proceedings which might lead to a conviction, which have not yet been notified to the Primary Care Trust;
- (g) has been subject to any investigation into his professional conduct by any licensing or regulatory body, where the outcome was adverse;
- (h) is currently subject to any investigation into his professional conduct by any licensing or regulatory body;
- (i) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the National Health Service Counter Fraud and Security Management Service or NHS Business Services Authority in relation to fraud;
- (j) is the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any primary care list;
- (k) is, or has been where the outcome was adverse, subject to an investigation into his professional conduct in respect of any current or previous employment;
- (l) either—
 - (i) has been removed or contingently removed from, refused admission to, or conditionally included in, any primary care list kept by another Primary Care Trust or equivalent body, or
 - (ii) has been suspended from such a list, on fitness to practise grounds, and if so, why and the name of that Primary Care Trust or equivalent body; or
- (m) is the subject of a national disqualification,

⁽⁶⁾ 1995 c. 46.

⁽⁷⁾ 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

and if so, he must give details of any investigation or proceedings which are being or were undertaken or brought, including the nature of that investigation or proceedings, where and approximately when that investigation or those proceedings commenced, and any outcome.

(2) A person to whom sub-paragraph (1) applies must consent to a request being made by the Primary Care Trust to any employer or former employer or licensing or regulatory body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse.

Home Primary Care Trust of bodies corporate

17.—(1) Where a contractor is a body corporate with a registered office in England, the information to be provided under paragraph 16 may be provided instead to the relevant home Primary Care Trust, if the contractor also provides the relevant home Primary Care Trust with details of the other Primary Care Trusts—

- (a) with which it has entered or applied to enter into LPS arrangements or an LPS scheme; or
- (b) which has included it or to which it has applied to be included in a pharmaceutical list.

(2) For these purposes, the “relevant home Primary Care Trust” means the Primary Care Trust in which the registered office of the contractor is located.

Charges for drugs and refunds

18.—(1) Subject to regulations made under section 77 of the Act⁽⁸⁾ (charges for drugs, medicines or appliances, or pharmaceutical services), all drugs, containers and appliances provided under these terms of service must be provided free of charge.

(2) Where a contractor supplies a container in response to an order for drugs signed by a prescriber, other than equipment specified in the Drug Tariff as not returnable to the contractor, the container and equipment must remain the property of the contractor.

(3) Where any person who is entitled to a repayment of any charge paid under the Charges Regulations presents a contractor with a valid claim for the repayment within three months of the date on which the charge was paid, the contractor must make the repayment.

(4) For the purposes of sub-paragraph (3), a claim for repayment is only valid if duly made on form FP57 0405 or form FP57 0403⁽⁹⁾, available from the Primary Care Trust.

Remuneration, overpayments etc.

19.—(1) The Primary Care Trust must ensure that the LPS scheme requires it to remunerate the contractor promptly, in accordance with remuneration arrangements provided for in the scheme, but subject to the arrangements for reductions of and deductions from payments provided for in the scheme.

(2) Where an LPS scheme requires a fee, allowance or other item of remuneration to be made in accordance with the Drug Tariff and the Drug Tariff provides that the fee, allowance or other item of remuneration is to be determined by a Primary Care Trust, that fee, allowance or other item of remuneration must be determined by the Primary Care Trust.

(3) The Primary Care Trust must ensure that the LPS scheme—

- (a) allows it to recover any payment made to the contractor which should not have been made;

⁽⁸⁾ Section 77 has been amended by the 2003 Act, Schedule 11, paragraph 28.

⁽⁹⁾ These forms were originally issued by the Prescription Pricing Authority, which is now part of the NHS Business Services Authority.

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- (b) provides that any such recovery of an overpayment is without prejudice to any investigation of any alleged breach of the scheme; and
- (c) provides that the remuneration arrangements under the scheme, referred to in sub-paragraphs (1) and (2), are subject to any right the Primary Care Trust may have to set off against any amount payable to the contractor, any amount—
 - (i) owed by the contractor to it, or
 - (ii) which it is entitled to withhold under the terms of the scheme (including terms of the Drug Tariff applied by the scheme).

Local resolution of disputes

20. In the case of any dispute arising out of, or in connection with, the scheme, the contractor and the Primary Care Trust must make every reasonable effort to communicate and co-operate 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).

Dispute resolution: non-NHS contracts

21.—(1) In the case of a scheme which is not an NHS contract, any dispute arising out of or in connection with the scheme, except matters dealt with under the complaints procedure pursuant to this Schedule, may be referred for consideration and determination to the Secretary of State, if—

- (a) the Primary Care Trust so wishes and the contractor has agreed in writing; or
 - (b) the contractor so wishes (even if the Primary Care Trust does not agree).
- (2) In the case of a dispute referred to the Secretary of State under sub-paragraph (1)—
- (a) the procedure to be followed is the NHS dispute resolution procedure; and
 - (b) the parties must agree to be bound by any determination made by the adjudicator.

NHS dispute resolution procedure

22.—(1) The procedure specified in the following sub-paragraphs and paragraph 23 applies in the case of any dispute arising out of or in connection with the scheme which is referred to the Secretary of State—

- (a) in accordance with section 4(3) of the 1990 Act (where the scheme is an NHS contract); or
 - (b) in accordance with paragraph 21(1) (where the scheme is not an NHS contract).
- (2) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send to the Secretary of State a written request for dispute resolution which must include or be accompanied by—
- (a) the names and addresses of the parties to the dispute;
 - (b) a copy of the scheme; and
 - (c) a brief statement describing the nature and circumstances of the dispute.

(3) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send the request under sub-paragraph (2) within a period of three years beginning with the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute.

(4) Where the dispute relates to a scheme which is not an NHS contract, the Secretary of State may determine the matter herself or, if she considers it appropriate, appoint a person or persons to consider and determine it⁽¹⁰⁾.

(5) Before reaching a decision as to who should determine the dispute, either under sub-paragraph (4) or under section 4(5) of the 1990 Act, the Secretary of State must, within the period of seven days beginning with the date on which a matter was referred to her, send 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.

(6) The Secretary of State must 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 matter was referred to dispute resolution.

(7) The Secretary of State must give a copy of any representations received from a party to the other party and must 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) Following receipt of any representations from the parties or, if earlier, at the end of the period for making such representations specified in the request sent under sub-paragraph (5) or (7), the Secretary of State must, if she decides to appoint a person or persons to hear the dispute—

- (a) inform the parties in writing of the name of the person or persons whom she has appointed; and
- (b) pass to the person or persons so appointed any documents received from the parties pursuant to sub-paragraph (2), (5) or (7).

(9) For the purpose of assisting him in his consideration of the matter, the adjudicator may—

- (a) invite representatives of the parties to appear before him 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 he wishes them to give special consideration; or
- (b) consult other persons whose expertise he considers will assist him in his consideration of the matter.

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

(11) In considering the matter, the adjudicator must consider—

- (a) any written representations made in response to a request under sub-paragraph (5), 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 (9)(a);
- (d) the results of any consultation under sub-paragraph (9)(b); and
- (e) any observations made in accordance with an opportunity given under sub-paragraph (10).

(12) In this paragraph, “specified period” means such period as the Secretary of State must specify in the request, being not less than two, nor more than four weeks beginning with the date on which the notice referred to is given, but the Secretary of State may, if she considers that there is good

⁽¹⁰⁾ Where the dispute relates to a contract which is an NHS contract, section 4(5) of the 1990 Act applies.

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reason for doing so, extend any such period (even after it has expired) and, where she does so, a reference in this paragraph to the specified period is to the period as so extended.

(13) Subject to the other provisions of this paragraph and paragraph 23, the adjudicator must 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

23.—(1) The adjudicator must record his determination, and the reasons for it, in writing and must give notice of the determination (including a record of the reasons) to the parties.

(2) In the case of a scheme referred for determination in accordance with paragraph 21(1), subsection (8) of section 4 of the 1990 Act must apply as that subsection applies in the case of a scheme referred for determination in accordance with subsection (3) of section 4 of that Act.

Disputes: supplemental

24.—(1) In this Schedule, “any dispute arising out of, or in connection with, the scheme” includes any dispute arising out of, or in connection with, the termination of the scheme.

(2) Any term of the scheme that makes provision in respect of the requirements in paragraphs 20 to 23 must survive even where the scheme has terminated.

Complaints

25. A contractor must have in place arrangements for the handling and consideration of complaints about any matter connected with its provision of local pharmaceutical services which are essentially the same as those set out in Part II of the National Health Service (Complaints) Regulations 2004⁽¹¹⁾.

Variation of schemes

26.—(1) Subject to sub-paragraph (2), no amendment or variation to the LPS scheme shall have effect unless it is in writing and signed by or on behalf of the Primary Care Trust and the contractor.

(2) The Primary Care Trust may vary the scheme without the contractor’s consent where it—

- (a) is reasonably satisfied that it is necessary to vary the scheme so as to comply with the Act, any regulations made under that Act, or any direction given by the Secretary of State under 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 must be not less than 14 days after the date on which the notice under paragraph (b) is served on the contractor.

Termination by agreement

27. The Primary Care Trust and the contractor may agree in writing to terminate the scheme, and if the parties so agree, they must agree the date upon which that termination should take effect and any further terms upon which the scheme should be terminated.

(11) S.I. 2004/1768.

Termination by notice

28.—(1) Either the contractor or the Primary Care Trust may terminate the scheme by serving notice of not less than six months in writing to the other party.

(2) Where a notice is served pursuant to sub-paragraph (1), the scheme must terminate on the expiry of the notice period.

Termination by the Primary Care Trust on grounds of suitability etc.

29.—(1) The Primary Care Trust may serve notice in writing on the contractor terminating the scheme with immediate effect, or from such date as may be specified in the notice, if, in the case of a scheme entered into—

- (a) with an individual as a party, that individual;
- (b) with more than one individual (whether or not practising in partnership), any of those individuals; or
- (c) with a body corporate—
 - (i) the body corporate, or
 - (ii) any director, chief executive, superintendent or company secretary of the body corporate,

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

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

- (a) he is the subject of a national disqualification;
- (b) subject to sub-paragraph (3), he is disqualified or suspended (other than by an interim suspension order or direction pending an investigation) from practising by any licensing or regulatory body anywhere in the world;
- (c) he is removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 49F(2), (3) and (4) of the Act⁽¹²⁾ (disqualification of practitioners) respectively), unless his name has subsequently been included in such a list;
- (d) he has been convicted in the United Kingdom of—
 - (i) murder, or
 - (ii) a criminal offence other than murder, committed on or after 1st April 2006, and has been sentenced to a term of imprisonment of over six months,
- (e) subject to sub-paragraph (4), he has been convicted outside the United Kingdom of an offence—
 - (i) which would, if committed in England and Wales, constitute murder, or
 - (ii) committed on or after 1st April 2006, which would if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (f) he has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933⁽¹³⁾ (offences against children and young persons with respect to which special provisions of this Act apply) or Schedule 1 to the Criminal Procedure (Scotland)

⁽¹²⁾ Section 49F was inserted by section 25 of the 2001 Act and amended by the 2002 Act, Schedule 2, paragraph 21, and the 2003 Act, Schedule 14, Part 4.

⁽¹³⁾ 1933 c. 12; as amended by: the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 58(1), Schedule 10, paragraph 2; the Sexual Offences Act 2003 (c. 42) section 139 and Schedule 6, paragraph 7; the Criminal Justice Act 1988 (c. 33), section 170 and Schedule 15, paragraph 8 and Schedule 16, paragraph 16; and the Sexual Offences Act 1956 (c. 69), sections 48 and 51 and Schedules 3 and 4 – and as modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9.

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- Act 1995(14) (offences against children under the age of 17 years to which special provisions apply) committed on or after 1st April 2006;
- (g) he has been convicted of an offence under Part 2 of the Sexual Offences Act 2003(15) committed on or after 1st April 2006;
- (h) he has—
- (i) been adjudged bankrupt, or sequestration of his estate has been awarded, unless (in either case) he has been discharged or the bankruptcy order has been annulled,
 - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986(16), unless that order has ceased to have effect or has been annulled,
 - (iii) made a composition or arrangement with, or granted a trust deed for, his or its creditors unless he or it has been discharged in respect of it, or
 - (iv) been wound up under Part IV of the Insolvency Act 1986;
- (i) there is—
- (i) an administrator, administrative receiver or receiver appointed in respect of him, or
 - (ii) an administration order made in respect of him under Schedule B1 to the Insolvency Act 1986(17);
- (j) he has been—
- (i) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated, or
 - (ii) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(18) (powers of the Court of Session to deal with management of charities) from being concerned in the management or control of any body;
- (k) he is subject to a disqualification order under the Company Directors Disqualification Act 1986(19), the Companies (Northern Ireland) Order 1986(20) or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order);
- (l) he (in the case of an individual) has refused to comply with a request by the Primary Care Trust for him to be medically examined on the grounds that it is concerned that he is incapable of adequately providing services under the scheme; or
- (m) it comes to the attention of the Primary Care Trust that information provided to it pursuant to regulation 12 or 17, or in accordance with a term of the scheme required by paragraph 16, was, when given, untrue or inaccurate in a material respect.
- (3) A Primary Care Trust shall not terminate the scheme pursuant to sub-paragraph (2)(b) where it is satisfied that the disqualification or suspension imposed by a licensing or regulatory body outside the United Kingdom does not make the person unsuitable to be—
- (a) a contractor; or

(14) 1995 c. 46.

(15) 2003 c. 42.

(16) 1986 c. 45; Schedule 4A was inserted by the Enterprise Act 2002 (c. 40), section 257 and Schedule 3 .

(17) Schedule B1 was inserted by the Enterprise Act 2002, section 248 of and Schedule 16.

(18) 1990 c. 40.

(19) 1986 c. 46, as amended by the Insolvency Act 2000 (c. 39).

(20) S.I. 1986/1032 (N.I. 6).

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- (b) in the case of a scheme with a body corporate, a director, chief executive, superintendent or company secretary of the body corporate.
- (4) A Primary Care Trust shall not terminate the scheme pursuant to sub-paragraph (2)(e) where it is satisfied that the conviction does not make the person unsuitable to be—
 - (a) a contractor; or
 - (b) in the case of a scheme with a body corporate, a director, chief executive, superintendent or company secretary of a contractor.

Termination by the Primary Care Trust: patient safety and material financial loss

30. The Primary Care Trust may serve notice in writing on the contractor terminating the scheme with immediate effect or with effect from such date as may be specified in the notice if—

- (a) the contractor has breached the scheme and as a result of that breach, the safety of the contractor’s patients is at serious risk if the scheme is not terminated; or
- (b) the contractor’s financial situation is such that the Primary Care Trust considers that the Primary Care Trust is at risk of material financial loss.

Termination and the NHS dispute resolution procedure

31.—(1) Where the Primary Care Trust is entitled to serve written notice on the contractor terminating the scheme pursuant to paragraph 29 or 30, it must, in the notice served on the contractor pursuant to those provisions, specify a date on which the scheme terminates that is not less than 28 days after the date on which the Primary Care Trust has served that notice on the contractor, unless sub-paragraph (2) applies.

(2) This sub-paragraph applies if the Primary Care Trust 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 within sub-paragraph (1), where—
 - (a) the exceptions in sub-paragraph (2) do not apply;
 - (b) the contractor invokes the NHS dispute resolution procedure before the end of the period of notice referred to in sub-paragraph (1); and
 - (c) the contractor notifies the Primary Care Trust in writing that it has done so,

subject to paragraph (5), the scheme shall not terminate at the end of the notice period but instead shall only terminate in the circumstances specified in sub-paragraph (4).

- (4) Subject to paragraph (5), the scheme shall only terminate if and when—
 - (a) there has been a determination of the dispute pursuant to paragraph 23 and that determination permits the Primary Care Trust to terminate the scheme; or
 - (b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(5) If the Primary Care Trust is satisfied that it is necessary to terminate the scheme 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,

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sub-paragraphs (3) and (4) shall not apply and the Primary Care Trust shall be entitled to confirm, by written notice to be served on the contractor, that the scheme will nevertheless terminate at the end of the period of the notice it served pursuant to paragraph 29(1) or 30.

Third party rights

32. The scheme shall not create any right enforceable by any person not a party to it.