

# THE NATIONAL CODE OF PRACTICE FOR GP PREMISES





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# GLOSSARY OF TERMS

**Assignment** - the Scots law term for the transfer of rights and duties from one person to another. Where a tenant's interest in a lease is assigned by the tenant, Person A, to Person B, Person A transfers its interest under the lease to Person B. Person B becomes the tenant under the lease with the tenant's right to occupy the property and the tenant's obligations under the lease such as to pay rent and to comply with any maintenance requirements the lease imposes. Leases can only very rarely be assigned without the permission of the landlord. Normally the landlord must agree to Person B becoming the tenant. Usually the lease will contain a provision that this consent is 'not to be unreasonably withheld'. As Person B will become bound by the tenant's obligations, Person B must also accept the assignment.

**Break option** - a clause in a lease which allows either the tenant, the landlord or both to terminate the lease earlier than the agreed expiry date. A break clause can normally only be used at certain points during the lease after giving the requisite notice.

**Dilapidations** - if a tenant does not comply with the maintenance and/or repair obligations under the lease, the tenant is in breach of contract. The landlord could require the tenant to comply with the lease or carry out the relevant repairs and charge the tenant or in extreme cases terminate the lease. Usually the landlord chooses not to do so provided that the tenant pays the rent and any other sums due under the lease. However at the end of the lease, the landlord then almost always serves a notice on the tenant known as a schedule of dilapidations. This identifies how the tenant has breached its maintenance and/or repairing obligations under the lease and the remedial actions needed (with their estimated costs) to bring the premises back to the standard required by the lease. In most cases the landlord will claim from the tenant the money needed to restore the property to the condition it would have been in if the tenant had not breached the lease. Usually there is some negotiation between the landlord and tenant as to what the landlord can properly claim under the schedule of dilapidations. Specialist surveyors and lawyers can be involved to negotiate settlements for such claims.

**District Valuer Services** - the specialist property arm of the Valuation Office Agency (VOA). It provides independent valuation and professional property advice to bodies across the entire public sector, and where public money or public functions are involved.

**Existing Use Value (EUUV)** - the value of the property if it is going to continue being used for the same purpose it is currently used for.

**Health and Social Care Partnership, "HSCP"** - an Integration Authority established under the Public Bodies (Joint Working) Scotland Act 2014

**Market Value** - the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.

**Notional Rent** - a payment made by Health Boards to GP contractors who own and occupy their own premises.

**Premises Directions** - the Primary Medical Services (Premises Development Grants, Improvement Grants and Premises Costs) Directions. The current Premises Directions were issued in 2004. Revised Directions will be issued early in 2018.

**Schedule of conditions** - a record of the condition the building was in at a certain date, often when a tenant first takes possession of the building. It usually comprises narrative along with relevant photographs and drawings. The usual purpose of a schedule of condition, when annexed to a lease, is to modify or clarify the repairing obligations.

**Variation** - a change to a lease. A lease can only be varied with the consent of the parties to that lease.

# PART A - GP PREMISES OVERVIEW

## 1. INTRODUCTION

- 1.1. The Scottish Government recognises that there is pressure on the sustainability of general practice which is linked to liabilities arising from GP contractors' premises. Around two-thirds of GP premises are either owned by GPs or leased by them from third parties. GP contractors receive financial assistance from their Health Boards towards the cost of these premises. In recent years, there has been an increase in the number of GP contractors who have asked their Health Boards to help with liabilities connected to their premises.
- 1.2. In November 2016, the GP Premises Short-Life Working Group, composed of representatives of the Scottish Government, the BMA and Health Boards, recommended that the Scottish Government recognise and support a long-term shift to gradually move general practice towards a service model which does not entail GPs owning their practice premises.
- 1.3. The Short-Life Working Group also recommended that "the Scottish Government produce a national Code of Practice for GP premises on the actions to be taken by a Board where a contractor wishes the Board to acquire property or take on some or all of the contractor's responsibilities under an existing lease." This Code has been prepared in response to these two recommendations.
- 1.4. This Code of Practice sets out the Scottish Government's plan to facilitate the shift to a model which does not entail GPs providing their practice premises. The Code sets out:
  - how the Scottish Government and Health Boards will enable the transition over a 25 year period to a model where GP contractors no longer own their premises;
  - how the Scottish Government and Health Boards will support GPs who own their premises during the transition to the new model through the provision of interest-free secured loans; and
  - the actions that GP contractors who no longer wish to lease their premises from private landlords must take to allow Health Boards to take on that responsibility.
- 1.5. The balance of GP premises' ownership is likely to gradually shift from GPs to Health Boards of its own accord with or without positive intervention from the Scottish Government. This code is designed to facilitate this movement in a sustainable and affordable way.
- 1.6. The Scottish Government is creating a fund, the GP Premises Sustainability Fund, to support the measures outlined in this Code. The Scottish Government will commit £30 million of additional support with GP premises by the end of this Parliament through this Fund.
- 1.7. Revised Premises Directions will be issued by the Scottish Government following the vote by GPs on the new GMS contract in order to implement the measures set out in this Code.

## 2. ABOUT THIS CODE

### The structure of the Code

2.1. The Code is divided into three sections.

- Part A provides guidance on matters which apply to GP Premises generally.
- Part B provides guidance in relation to GP owned premises.
- Part C provides guidance in relation to premises which are leased by GP practices from private landlords.

### The preparation of the Code

2.2. This Code has been prepared with the assistance and agreement of representatives of the BMA's Scottish General Practitioner Committee, Health Boards, HSCPs and the Scottish Government.

## 3. PRINCIPLES

The following principles should inform the actions taken by HSCPs, Health Boards and GP practices in relation to GP premises.

### Principles for Health Boards and HSCPs to follow

A. Health Boards and HSCPs should:

- have regard to their statutory duty to provide or secure the provision of primary medical services in their area;
- have regard to the needs of the population in their areas;
- have regard to their budgets;
- consider whether assistance is an efficient and effective use of their resources;
- have regard to their HSCP's plans for primary care;
- share their plans with practices through the local consultative bodies; and
- have regard to the level of co-operation and information they receive from GP contractors.

### Principles for GP Contractors to follow

B. GP contractors should

- have regard to their contractual duties to ensure that their premises are suitable for the delivery of primary care services and sufficient to meet the reasonable needs of their patients;
- have regard to their statutory obligations regarding their premises;
- act in a transparent manner;
- provide all relevant information to their Health Boards and HSCPs in a timely manner;
- give sufficient notice to their HSCPs and Health Boards of a need for assistance; and
- fully co-operate with their Health Boards and HSCPs.

## 4. PLANNING

### Property Asset Management Strategies

- 4.1. All Health Boards already have to prepare a Property and Asset Management Strategy that seeks to match clinical and operational need with the physical infrastructure required to meet that need. Property and Asset Management Strategies have generally only covered premises which were owned or occupied by the Health Board and have not, in the past, included premises which were owned by GPs or leased by GPs from private landlords.
- 4.2. All Health Boards must now include GP owned premises and premises leased by GPs from private landlords in their Property and Asset Management Strategies. Health Boards, in conjunction with HSCPs, must take an active approach to the management of the whole of their GP estate. The sections below identify ways that should be done.

### Priorities for investment in primary care premises

- 4.3. HSCPs and Health Boards must work together to identify their priorities for investment in primary care premises. Their priorities for investment must support HSCPs' primary care improvement plans.
- 4.4. HSCPs must take into account the needs of their population, the need to sustain general practice and, working with Health Boards, address the need to provide fit for purpose premises for the provision of primary medical services when they identify their priorities for investment in primary care premises.
- 4.5. HSCPs, in conjunction with Health Boards, must consult their Area Medical Committees (in practice this is expected to be the GP Sub-Committee) when they identify their priorities for investment.

### The need for regular surveys

- 4.6. The Scottish Government is commissioning a survey of all GP premises, whether owned by Health Boards, GPs or third parties, so as to better understand the GP estate and to help plan for the future. The GP estate will need to be surveyed at regular intervals in future in line with existing obligations on Health Boards such as that of CEL 35(2010). Health Boards and GP contractors should co-operate with the survey being commissioned now and with future surveys.
- 4.7. GP contractors will continue to have the obligation under their contracts to allow persons authorised in writing by their Health Board to enter and inspect the practice premises at any reasonable time.<sup>1</sup> Such inspections are necessary to assist GPs to manage their premises and to allow Health Boards to manage the primary care estate better.

1 The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 ("GMS Regulations 2004"), Schedule 5, paragraph 81 & The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004 ("PMS Regulations 2004"), Schedule 1, paragraph 46.



- 4.8. Health Boards and HSCPs should use the information gathered by surveys of the GP estate to help inform their Property and Asset Management Strategies.

#### **Using the primary care estate better**

- 4.9. HSCPs and Health Boards should consider the potential benefits to GP sustainability of making space available in existing Health Centres for GP contractors which are not currently in publically owned facilities.
- 4.10. GP contractors who are offered the opportunity to relocate to existing Health Centres should consider the benefits to their long-term sustainability of doing so.
- 4.11. The HSCP, together with its Health Board, must consider how best to use any GP premises purchased or leased by the Health Board. Together with the GP contractor and their Area Medical Committee (in practice this is expected to be the GP Sub-Committee), they should consider whether it would be better if the GP contractor provided its services from another location and for the building vacated by the GP contractor to be used for another health or social care purpose. In such cases, the HSCP and Health Board must work together to find suitable alternative accommodation for the GP contractor.
- 4.12. The HSCP and Health Board should also consider whether the premises should be used for any other health and social care purposes in addition to GP services.

### **5. ASSISTANCE FROM HEALTH BOARDS: GENERAL CONSIDERATIONS**

- 5.1. There are a number of factors and requirements which apply whenever a GP practice wishes its Health Board to assist it with premises liabilities.

#### **The purpose of assistance from Health Boards**

- 5.2. The purpose of Health Boards providing assistance to GP contractors with their premises liabilities is to support HSCPs to sustain the practice and continue providing primary medical services.

#### **Time**

- 5.3. The most important factor in finding a solution which results in a successful outcome for the GP contractor, the HSCP, the Health Board and patients, is time. The more notice a GP contractor can give its HSCP and its Health Board of its need for assistance due to a premises-related liability, the more likely it is that a solution can be found which protects the GP contractor and ensures that primary medical services are continuously provided.

- 5.4. GP contractors should give as much notice as possible to their HSCP and Health Boards of their need for assistance, and provide whatever information is needed to support HSCPs and Health Boards in their efforts to provide that assistance.
- 5.5. GP contractors should recognise that HSCPs and Health Boards need time to make decisions on how to help those GP contractors who need assistance.

#### **Giving notice of termination of the GMS or PMS Contract**

- 5.6. If the GP contractor gives notice of the termination of its contract, the likelihood of a successful outcome to any premises issue for all parties is significantly reduced. Giving notice of termination arbitrarily constrains the length of time in which a solution can be found; six months for most practices, and only three months for practices with one partner. Giving notice of termination is not an application for the practice to become a "2C practice".? If the Health Board decides to continue the GP practice as a section 2C practice, it is under no obligation to employ the former partners or to provide support in relation to premises.
- 5.7. Giving notice of termination of the GMS or PMS contract makes it more likely that the Health Board will be forced to consider dispersing the patient list amongst neighbouring practices using the contractual assignment process.
- 5.8. The measures outlined in this Code are aimed at GP contractors who will continue to provide services under a GMS or PMS contract.

#### **Open-book policy**

- 5.9. GP contractors who request assistance with premises liabilities from their Health Boards will need to be prepared to adopt an open-book policy. They must provide all relevant information to the Health Board including (but not limited to):
- accounts;
  - partnership agreement (where applicable);
  - copy of the lease (where applicable);
  - details of their mortgage as requested by the Health Board (where applicable);
  - copy of the premises title deeds (where applicable);
  - copy of any standard security over the premises (where applicable); and
  - details of what has led to the request for assistance and what steps have been taken to solve those issues.

- 5.10. In turn, Health Boards will fully respect the confidentiality of the information provided and will use it for no other purpose than to identify how it should provide support and assistance.
- 5.11. While the parties are working together to find an appropriate solution to the premises issue, all parties should respect the confidentiality and sensitivity of the discussions taking place.

### Health Boards' approach to decision making

- 5.12. When Health Boards are making decisions on whether to provide assistance to GP contractors with their premises liabilities, the Health Boards should, amongst other things:
- take into account the needs of patients and existing statutory responsibilities;
  - work with the relevant HSCP to identify a solution that supports the appropriate provision of primary care services in that locality;
  - consult with their Area Medical Committee (in practice this is expected to be the GP Sub-Committee);
  - consider the effect of their decisions on neighbouring GP practices; and
  - set out clear reasons for their decisions.

## 6. STANDARDS

### GMS and PMS Contracts

- 6.1. All GP contractors have to ensure their premises are suitable for the delivery of the services they provide and that they are sufficient to meet the reasonable needs of their patients.<sup>3</sup>

### The Premises Directions

- 6.2. Any GP contractor who receives payments for recurring premises costs under the Premises Directions has to comply with the minimum standards set out in Schedule 1 of the Directions. Those standards include a requirement for GP contractors to maintain the premises, fittings and furniture in good repair.
- 6.3. Therefore, all GP contractors who receive assistance with rental costs, Notional Rent or borrowing cost payments have agreed to maintain their premises in good repair as a condition of that assistance.

### Standards imposed by the general law

- 6.4. There are a number of standards which are imposed on GP contractors by the general law as owners and as occupiers of buildings. GP contractors are also required by their GMS or PMS contracts to comply with all relevant legislation.
- 6.5. All Health Boards should provide advice to their GP contractors on the property related assessments that GP contractors have to carry out by law.

3 .....  
GMS Regulations 2004, Schedule 5, paragraph 1 & PMS Regulations 2004, Schedule 1, paragraph 5. These obligations will continue under the new contract regulations.

### Premises leased from private landlords

- 6.6. Most GP contractors who lease their premises privately will have an obligation in their lease to maintain the premises to a certain standard. Many commercial leases are Full Repairing and Insuring leases (FRI) – the tenant has to maintain both the interior and exterior of the building and also insure the building. Under other leases the tenant only has to maintain the interior of the building and pays (by way of a higher rent or service charge) for the landlord to maintain the exterior and to insure the building.
- 6.7. The standard to which tenants have to maintain their properties varies. Some leases may require the tenant to keep the property in “good repair”. Other leases may exclude “fair wear and tear” from the repairing obligation, so that the tenant has a lower standard to meet. Differences in repairing standards are usually reflected in the rent.
- 6.8. It is important that GP contractors understand what their repairing obligations are under their leases.
- 6.9. GP contractors in leased premises should ensure they maintain their premises to the standard required by their leases.

## 7. VALUATION

- 7.1. There are different ways to value premises used as GP surgeries. Existing Use Value is the value of the premises if they are to continue to be used for a GP surgery. The Existing Use Value can be calculated by taking the figure for the Notional Rent that the Health Board pays to the GP contractor and applying an appropriate multiplier. The multiplier will change depending on different factors such as location. Existing Use Value can equate to Market Value in many instances.
- 7.2. Another way to value GP premises is to Market Value. Premises which can be used as residential property will often have a higher Market Value than their Existing Use Value. Premises which can only be used for non-residential purposes may have a lower Market Value than their Existing Use Value. This would be the case if there were no market for commercial property in the area and a GP surgery were not going to continue in the building.
- 7.3. While there are other methods of valuing property, this Code refers to bases of Market Value and Existing Use Value only.

## 8. THE GP PREMISES SUSTAINABILITY FUND

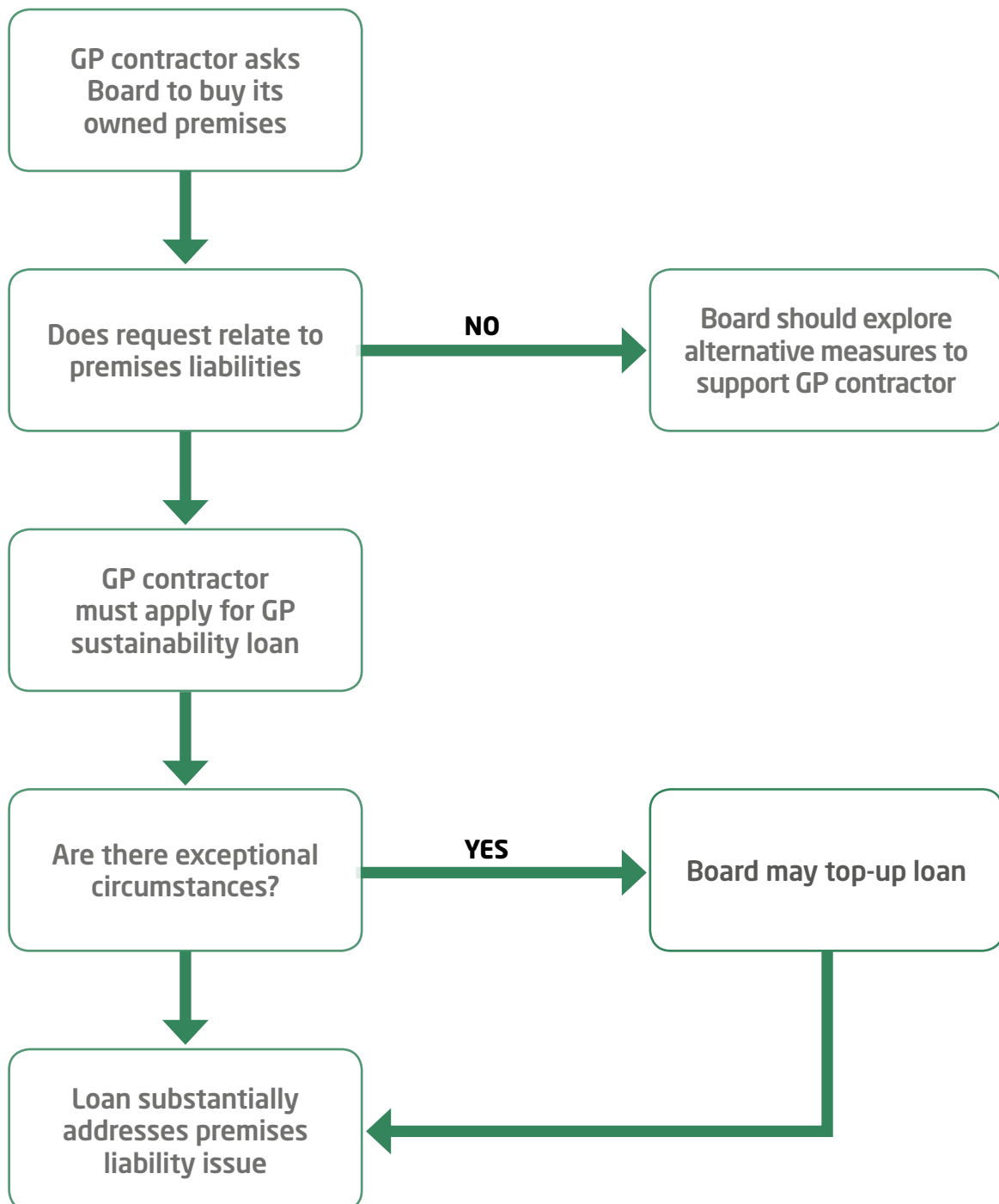
- 8.1. The Scottish Government is creating a GP Premises Sustainability Fund from 1 April 2018 to provide additional support to GP contractors who own or lease their premises. It will be used to fund GP Sustainability Loans and to ease the process of transferring responsibility for leasing premises from GPs to Health Boards.
- 8.2. The Fund will open to loan applications from 1 April 2018. A system of prioritisation will be put in place. It is likely that only priority applications will be considered in the first six months of the Fund. This will be reviewed on a quarterly basis.
- 8.3. All applications by GP contractors will be made to their Health Board in the first instance to be checked and prioritised before being passed to the Scottish Government. Funding will be awarded on a quarterly basis.
- 8.4. Further guidance on the application process, the system of prioritisation, and the criteria for making awards will be published in the first quarter of 2018.

# PART B: GP OWNED PREMISES

## 9. GP OWNED PREMISES - STRATEGY

- 9.1. The Scottish Government is committed to supporting the gradual shift towards a model where GPs are not presumed to own their premises. This part of the Code sets out the Scottish Government's plan to achieve this shift in a sustainable and affordable way.
- 9.2. The first priority is to ensure the sustainability of general practice by mitigating the effect of premises issues. This will be done by providing GP Sustainability Loans. During the period 2018 to 2023, all GP contractors who own their premises will be eligible to receive a GP Sustainability Loan out of the GP Premises Sustainability Fund. These loans will help support general practice as a whole. They will allow partners to release capital without destabilising their practice, reduce the up-front cost of becoming a GP partner, and make general practice more financially rewarding. The loans will encourage GPs to become partners in practices which own their premises.
- 9.3. The Scottish Government envisages that once the first cycle of GP Sustainability Loans is complete (2023), a further five year cycle will begin to further reduce the risk to GP practices which own their premises. The Scottish Government intends that these five year cycles of investment will continue until the transition to the new model where GPs no longer own their premises is complete (by 2043). The Scottish Government anticipates that Health Boards will complete the purchase of the GP owned estate from 2038 onwards. GP contractors should not expect their Health Board to buy their premises before then.
- 9.4. In order to achieve the change in the model of GP premises ownership, Health Boards must as part of their strategy for primary care (in addition to providing GP Sustainability Loans) over the next 25 years either:
- purchase existing GP owned premises in a planned manner; or
  - provide alternative premises to allow GPs to sell their existing premises where that is in the best interests of patients and provide GPs with financial assistance with relocation.
- 9.5. This Code sets out two further measures to allow Health Boards to do this. Firstly, it will be a condition of a GP Sustainability Loan that the Health Board can purchase the GP premises at an appropriate value (except where that is not enough to clear the GP contractor's other secured debts).
- 9.6. GP Sustainability Loans will create a financial incentive for GP contractors to remain in their existing premises even where it is no longer appropriate for them to do so. As a result, Health Boards will have a new power to withdraw (where it is appropriate to do so) Notional Rent and borrowing cost payments from a GP contractor owner-occupier who chooses not to re-locate to suitable alternative premises provided by the Health Board. The Area Medical Committee (in practice this is expected to be the GP Sub-Committee) must be involved in this decision and the alternative premises must be suitable for the provision of primary medical services. Health Boards must ensure that a GP contractor is given sufficient financial guarantees where the GP contractor is asked to move. These guarantees are set out in more detail in section 14.

- 9.7. Taken together, the measures outlined in this Part of the Code will stabilise general practice, make it more financially rewarding to be a GP partner and will enable the transition, over a 25 year period, to a model where GPs are no longer presumed to own their premises.



## 10. GP SUSTAINABILITY LOANS

### Introduction

10.1. From April 2018 to March 2023, all GP contractors who own their premises can receive a GP Sustainability Loan from their Health Board.

### GP Sustainability Loans - Key points

- All GP contractors who own their premises will be eligible for an interest-free loan including those in negative equity.
- The loans will be for an amount of up to 20% of the Existing-Use Value of the premises and they will be secured against the premises.
- Loans will be funded from the GP Premises Sustainability Fund.
- Health Boards will have the power to top-up the amount of the loans where they decide that there are exceptional circumstances.
- The loans will be repayable if the premises are sold or are no longer used by the GP contractor for the provision of primary medical services under a contract with a Health Board.
- The loan will have no effect on Notional Rent or borrowing cost payments. There will be no abatements due to a loan.
- A system for prioritising applications will be put in place to ensure that assistance is given first to those who need it most.

### Purpose of GP Sustainability Loans

10.2. GP Sustainability Loans will increase the stability of general practice and increase the incentive of being a partner in a practice which owns its premises.

10.3. The retirement of a partner in a practice which has significant capital invested in its premises can have a destabilising effect on the practice and affect its sustainability. A GP Sustainability Loan would significantly reduce any destabilising effect the retirement of a partner may have. It would also reduce the up-front cost to new partners of joining the practice.



**EXAMPLE 1**

The partnership has five partners and its premises are valued at £500,000. The partnership has no secured debts and it receives Notional Rent payments. Notional Rent is greater than the premises-related costs but it is expensive for new partners to join. Difficulties recruiting new partners threaten the sustainability of the practice.

An existing partner wishes to retire. The partnership receives an interest-free secured loan of £100,000 from its Health Board and uses it to pay-off the retiring partner.

The net value of the partnership's assets is now £400,000. It is less expensive to recruit new partners as the value of the partnership's assets is less. Notional Rent is still greater than premises-related costs.

	CURRENT POSITION			FUTURE POSITION		
	CONTINUING PARTNERS	RETIRING PARTNERS	TOTAL	CONTINUING PARTNERS	HEALTH BOARD	TOTAL
<b>Example 1 (£000)</b>						
<b>Assets:</b>						
Property	400	100	500	500		500
Debtors			0		100	100
Cash			0		-100	-100
<b>Total Assets</b>	<b>400</b>	<b>100</b>	<b>500</b>	<b>500</b>	<b>0</b>	<b>500</b>
<b>Liabilities:</b>						
Bank Creditor			0			0
Health Board Creditor			0	-100		-100
<b>Total Liabilities</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-100</b>	<b>0</b>	<b>-100</b>
<b>Net Assets/(Liabilities)</b>	<b>400</b>	<b>100</b>	<b>500</b>	<b>400</b>	<b>0</b>	<b>400</b>
<b>Partnership Equity</b>	<b>400</b>	<b>100</b>	<b>500</b>	<b>400</b>	<b>0</b>	<b>400</b>

- 10.4. GP practices with premises which are in negative equity can struggle to both recruit new partners and to repay their loans. A GP Sustainability Loan would reduce the amount of the regular repayments those practices have to make and give them a much better chance to eliminate their negative equity. They will also increase the attractiveness to GPs of becoming partners in the practice as GP Sustainability Loans are only repayable if the premises are sold or are no longer used for providing primary medical services under a contract with the Health Board.

## EXAMPLE 2

The partnership has five partners and its premises are valued at £500,000. The partnership has secured debts of £600,000. The net value of the partnership's assets is -£100,000. An incoming partner will not have to contribute capital to buy into the partnership but negative equity puts potential partners off joining the practice. Notional Rent may not be enough to cover the partnership's borrowing costs.

The partnership receives an interest-free secured loan of £100,000 from its Health Board which reduces its existing mortgage to £500,000. The partnership agrees to make capital repayments on its pre-existing debt.

The net value of the partnership's assets is still -£100,000. However, it only has to make repayments on £500,000 of its debts. Notional Rent is now more likely to cover the loan repayments.

Potential new partners can be reassured that the £100,000 loan to the Health Board will only have to be repaid if the premises are sold or no longer used by the GP contractor for providing medical services. There is now a much better prospect of the partnership eliminating its negative equity and attracting new partners to carry on the practice.

	CURRENT POSITION			FUTURE POSITION		
	CONTINUING PARTNERS	RETIRING PARTNERS	TOTAL	CONTINUING PARTNERS	HEALTH BOARD	TOTAL
<b>Example 2 (£000)</b>						
<b>Assets:</b>						
Property	500		500	500		500
Debtors			0		100	100
Cash			0		-100	-100
<b>Total Assets</b>	<b>500</b>	<b>0</b>	<b>500</b>	<b>500</b>	<b>0</b>	<b>500</b>
<b>Liabilities:</b>						
Bank Creditor	-600		-600	-500		-500
Health Board Creditor			0	-100		-100
<b>Total Liabilities</b>	<b>-600</b>	<b>0</b>	<b>-600</b>	<b>-600</b>	<b>0</b>	<b>-600</b>
<b>Net Assets/(Liabilities)</b>	<b>-100</b>	<b>0</b>	<b>-100</b>	<b>-100</b>	<b>0</b>	<b>-100</b>
<b>Partnership Equity</b>	<b>-100</b>	<b>0</b>	<b>-100</b>	<b>-100</b>	<b>0</b>	<b>-100</b>

- 10.5. The up-front cost to new partners of joining GP practices which do not have significant capital tied-up in their premises is low. However, such practices may find that the payments they receive in Notional Rent are not enough to cover their premises-related costs. A GP Sustainability Loan would significantly reduce their borrowing costs and so increase their profitability.

**EXAMPLE 3**

The partnership has five partners and its premises are valued at £500,000. The partnership has secured debts of £500,000 and receives Notional Rent. The net value of the partnership's assets is £0. There is no up-front cost for new partners to join the practice. Notional Rent may not be enough to cover borrowing costs. The partnership receives a loan of £100,000 from its Health Board. The loan is used to repay £100,000 of the partnership's secured debt.

The net value of the partnership's assets is still £0. There is still no up-front cost for a new partner to join the practice. However, the practice only has to make repayments on £400,000 of its debts. Its borrowing costs could reduce by up to 20% while its Notional Rent payments remain the same.

	CURRENT POSITION			FUTURE POSITION		
	CONTINUING PARTNERS	RETIRING PARTNERS	TOTAL	CONTINUING PARTNERS	HEALTH BOARD	TOTAL
<b>Example 3 (£000)</b>						
<b>Assets:</b>						
Property	500		500	500		500
Debtors			0		100	100
Cash			0		-100	-100
<b>Total Assets</b>	<b>500</b>		<b>500</b>	<b>500</b>	<b>0</b>	<b>500</b>
<b>Liabilities:</b>						
Bank Creditor	-500		-500	-400		-400
Health Board Creditor			0	-100		-100
<b>Total Liabilities</b>	<b>-500</b>		<b>-500</b>	<b>-500</b>	<b>0</b>	<b>-500</b>
<b>Net Assets/(Liabilities)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Partnership Equity</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

- 10.6. GP practices which do not have substantial capital tied-up in their premises and receive Notional Rent payments which exceed their premises costs would also benefit. A GP Sustainability Loan would significantly reduce a practice's borrowing costs and so reduce their overall expenses. This increases the sustainability of the practice by making it more attractive to new partners.

### Eligibility

10.7. All GP contractors who own their premises will be eligible.

### Amount of loan

- 10.8. The GP Sustainability Loan will be of an amount up to maximum of 20% of the Existing Use Value of the premises.
- 10.9. Initially, the Existing Use Value of GP premises will be calculated using 2017 values for Notional Rent to ensure this commitment is affordable. This will be reviewed annually. These values are provided by the District Valuer.
- 10.10. Health Boards will be able to provide loans to GP contractors with money provided by the Scottish Government for that purpose. All loans will be funded from the GP Premises Sustainability Fund. Health Boards may, when they consider the circumstances are exceptional and entirely at their discretion, top-up the amount of the GP Sustainability Loan from their own funds but only if their resources allow it.

### Repayment of loans by GP contractors

- 10.11. GP Sustainability Loans will be repayable in the event that the premises are no longer used by the GP contractor for the provision of primary medical services under a contract with a Health Board. The property cannot be sold without repayment being made.
- 10.12. The repayment obligation cannot be assigned by the GP contractor without the Health Board's consent. Changes in the membership of the GP contractor's partnership or reincorporation by the GP as a limited liability partnership will not trigger repayment of the loan.

### Conditions which must be satisfied to obtain a GP Sustainability Loan

- 10.13. The GP Contractor must grant a standard security over its premises to secure the loan.
- 10.14. Where the GP contractor's premises are in negative equity, it must have or enter into an agreement with its pre-existing lenders to repay the capital of its pre-existing loans before the GP Sustainability Loan is made. Health Boards are entitled to review all existing loan and security arrangements when deciding an application for a GP Sustainability Loan.
- 10.15. The pre-existing debt owed to a holder of a pre-existing security would be paid off before the Health Board in the event that the GP contractor defaulted on its mortgage. A ranking agreement, on terms acceptable to the Health Board, with any pre-existing secured lenders is required before the Health Board makes an interest-free loan. Confirmation of the amount outstanding under any pre-existing secured loans is also required.

### Conditions attached to GP Sustainability Loans

- 10.16. The GP Sustainability Loan will give Health Boards the option to purchase GP premises at an appropriate value, as assessed by the District Valuer as close as practical to the date of purchase. This value will depend on the type of the premises. For some premises, the value will be the Market Value. For others, it may be the Existing Use Value of the premises. The basis of valuation will be agreed in the loan documentation. The option to purchase will not be exercised if the purchase price is not sufficient to clear the GP contractor's other secured debts and an arrangement cannot be reached with the GP contractor's other secured lenders.
- 10.17. The Health Board will have an obligation to lease the premises back to the GP contractor where it exercises its option to purchase.
- 10.18. GP contractors who are not in negative equity must not increase their total secured borrowings to deliberately enter negative equity.

### Payment of loans by Health Board


- 10.19. Where a GP contractor has pre-existing secured debts, the Health Board must pay such an amount of the loan directly to the pre-existing lender as is necessary to prevent the GP contractor from entering negative equity.
- 10.20. Where a GP contractor is in negative equity, the entire amount of the GP Sustainability Loan must be paid directly by the Health Board to the pre-existing lender.

### Effect of loan on Notional Rent or borrowing cost payments

- 10.21. The provision of a GP Sustainability Loan will have no effect on recurring financial assistance paid to the GP contractor under the Premises Directions (i.e. Notional Rent and borrowing cost payments). These will not be abated due to a loan.

### What happens when a GP Sustainability Loan becomes repayable?

- 10.22. A GP Sustainability Loan is repayable in one of two circumstances – where the premises are sold or are no longer used by the GP contractor for the purposes of providing primary medical services under a contract with a Health Board. Changes in the membership of the GP contractor's partnership or reincorporation by the GP as a limited liability partnership will not trigger repayment of the loan.
- 10.23. Where the premises are sold either by the GP contractor or another secured creditor, the GP Sustainability Loan is repayable in full. The Health Board will however write-off part of the GP Sustainability Loan in certain circumstances (see 10.27).

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- 10.24. If the premises are no longer used by the GP contractor for the purposes of providing primary medical services under a contract with the Health Board, the Health Board must agree to defer repayment for up to 12 months to allow the GP contractor to market the property.
- 10.25. If repayment has not taken place within the agreed period the Health Board is entitled to sell the property as a secured lender. Once all secured creditors are paid off, the balance of the sale price will be paid to the GP contractor. For the avoidance of doubt, the Health Board is entitled to refuse to discharge its security on a sale if full repayment is not taking place, unless the write-off provisions below apply.
- 10.26. The Health Board may also decide to exercise its option to purchase the premises. In this case, the value of the loan must be off-set against the purchase price.

**In what circumstances will a Health Board write-off a GP Sustainability Loan?**

- 10.27. Where the GP contractor sells its premises and the sale price is not enough to pay off the full amount of the GP Sustainability Loan, the part which cannot be paid off will be written-off by the Health Board if:
- 10.27.1. the Health Board is satisfied that the premises were placed on the open market with proper marketing to sell them at the maximum price achievable;
  - 10.27.2. the Health Board is satisfied, having taken professional advice, that an increased offer (i.e. an offer that was better than the one that was in fact accepted for the premises) could not reasonably have been achieved;
  - 10.27.3. the Health Board is satisfied that the premises have not been sold to a person connected to the GP contractor; and
  - 10.27.4. the GP contractor did not deliberately increase its borrowings so as to enter negative equity in the period between the granting of the GP Sustainability Loan and the marketing of the property i.e. the negative equity is due to market conditions, not GP contractor additional borrowing.
- 10.28. The GP contractor's debt will not be written-off if the GP contractor was in negative equity when it drew down its GP Sustainability Loan and it remained in negative equity from that point until the point the premises were sold.

10.29. A GP Sustainability Loan will not be written-off where the premises are sold by another secured creditor. The payment by Health Boards of Notional Rent and borrowing costs grants to GP contractors means that practices should never default on the repayments of their secured debts.

### **Prioritisation**

10.30. If there are more applications at any one time for GP Sustainability Loans than there is funding available, applications will be prioritised according to need.

10.31. The system of prioritisation will be designed to ensure that loans are given first to those who need them most.

10.32. It is anticipated that the GP Premises Sustainability Fund will only be open to priority applications for its first six months. Further guidance on the system of prioritisation will be issued in early 2018.

### **Future purchase of premises by Health Board**

10.33. In the event that the Health Board decides to purchase the GP premises after the GP contractor has received a GP Sustainability Loan, the value of the loan must be off-set against the purchase price.

### **Further loan applications**

10.34. Once a GP contractor has received a GP Sustainability Loan, it will not receive a further loan for a period of at least five years, except in exceptional circumstances. This is to allow all premises owning GP contractors the opportunity to receive assistance by 31 March 2023.


10.35. A Health Board will accept its standard security ranking second to a commercial lender's standard security. This is the case even if the GP contractor only applies for a commercial loan after it has drawn-down its GP Sustainability Loan. This will allow GP contractors to continue to access the commercial loan market. The GP contractor must not, however, enter negative equity due to its additional borrowing.

## **11. THE LEASE OF GP OWNED PREMISES TO HEALTH BOARDS**

11.1. Health Boards should only agree to lease premises from GPs in exceptional circumstances. There are few, if any, premises issues which will not be substantially addressed with a GP Sustainability Loan.

11.2. GP contractors with premises issues should apply for a GP Sustainability Loan before asking their Health Boards to lease their premises.

11.3. A GP contractor which wishes its Health Board to lease its premises due to premises issues must explain to the satisfaction of the Health Board what those issues are and how a GP Sustainability Loan or other measures would not address them.

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- 11.4. If a GP contractor's request for the Health Board to lease its premises does not relate to premises liabilities, the Health Board and the GP contractor must explore alternative measures to address the issues facing the GP contractor.
- 11.5. Where a Health Board does decide to lease premises from GP contractors or former GP contractors, the Health Board must not agree to pay a rent higher than the market rent (for a lease of that type for a property of that type and condition) as assessed by the District Valuer.
- 11.6. This also applies where the premises are owned by a partner, former partner, shareholder or employee of the GP contractor or a family member or employer of such a person.<sup>4</sup>

#### Conditions of the GP owned premises before the Board leases it

- 11.7. The premises must be suitable for the provision of primary medical services, be sufficient to meet the reasonable needs of patients and meet the minimum standards in the Premises Directions before the Health Board agrees to lease them.

#### Terms of the lease

- 11.8. Further details on the terms on which Health Boards should lease premises are set out in Part C of this Code.

## 12. OUTRIGHT PURCHASE OF GP OWNED PREMISES BY HEALTH BOARDS

- 12.1. Health Boards should only purchase GP premises in response to a request by a GP contractor in exceptional circumstances. There are few, if any, GP premises issues which will not be substantially addressed by a GP Sustainability Loan. The purchase of GP premises is a time-consuming process. The high costs involved could be used instead to fund the construction of new primary care premises to meet population growth pressures or provide better facilities for existing practices.
- 12.2. A GP contractor with premises issues should apply for a GP Sustainability Loan before asking its Health Board to purchase its premises.
- 12.3. A GP contractor which wishes its Health Board to purchase its premises due to premises issues must explain to the satisfaction of the Health Board what those issues are and how a GP Sustainability Loan or other measures would not address them.
- 12.4. If a GP contractor's request for the Health Board to purchase its premises does not relate to premises liabilities, the Health Board and the GP contractor must explore alternative measures to address the issues facing the GP contractor.

4 "Family member" is used here with the same meaning as in the Premises Directions.



### Condition of the premises

- 12.5. The premises should be suitable for the provision of primary medical services, sufficient to meet the reasonable needs of patients and meet the minimum standards set out in the Premises Directions before the Health Board agrees to purchase them. If the premises do not meet the required standards, the Health Board may choose not to purchase them.

### Price

- 12.6. In order to ensure a fair price for both the GP contractor and the Health Board, Health Boards may only purchase GP-owned premises at the property's value as determined by the District Valuer. If the GP contractor is unwilling to sell at this price, the Health Board will not purchase the premises.
- 12.7. This also applies where the premises are owned by a partner, former partner, shareholder or employee of the GP contractor or a family member or employer of such a person.

### Other conditions of purchase

- 12.8. All other normal conditions of purchase, such as conditions relating to title, building warrants, planning permission, statutory notices, moveable property, IT and telecom, and discharge of standard securities, must apply.

### Terms on which GP contractors continue in Board owned premises

- 12.9. Where the GP contractor continues to occupy the premises it will do so on a lease or licence to occupy. Further details on the terms and conditions on which GP contractors should occupy Health Board provided facilities are set out in Part C.

## 13. NEW NOTIONAL RENT AND BORROWING COST GRANT APPLICATIONS

- 13.1. The cost of providing modern primary care facilities is significant and it is no longer reasonable to expect GPs to invest their own money in building them. It has been very rare for GPs to do so for some time.
- 13.2. Therefore, Health Boards will, in most circumstances, no longer approve applications by GP contractors for Notional Rent or borrowing cost payments under the Premises Directions for new GP owned premises. This rule only applies to premises which do not already receive Notional Rent or borrowing costs payments under the Premises Directions.
- 13.3. This rule does not affect existing payments under the Premises Directions or any increases to them. It does not prevent GPs who receive assistance with their borrowing costs from switching to Notional Rent payments instead.

- 13.4. The change reflects the reality of investing in new primary care facilities. GPs may continue to invest in existing GP owned premises.

## **14. RELOCATION OF GP CONTRACTORS**

- 14.1. Under the 2004 Premises Directions, Health Boards can provide financial assistance to GP contractors who are relocating to modern leasehold premises. Health Boards will now be able to provide financial assistance to GP contractors who are relocating to any premises provided by the Health Board, other public bodies or community trusts.
- 14.2. The types of financial assistance that a Health Board can provide to a GP contractor who is relocating are: a guarantee of a minimum sale price for the GP contractor's existing premises; a mortgage deficit grant (to clear negative equity); and a mortgage redemption fees grant.
- 14.3. Taken together, these powers to provide financial assistance provide comfort to GPs in relation to their capital investment in their existing premises where they relocate to premises provided by the Health Board, another public body or a community trust.

### **Guaranteed minimum sale price**

- 14.4. Where a GP contractor is relocating to premises provided by the Health Board, another public body or a community trust, the Health Board will be able to exercise its existing power to guarantee a minimum sale price for the GP contractor's existing premises.
- 14.5. The effect of the guarantee is that where the actual sale price is less than the guaranteed minimum sale price, the Health Board will provide financial assistance in the form of a payment equal to the difference between those two prices.

### **Mortgage deficit grants**

- 14.6. Where a GP contractor is relocating to premises provided by the Health Board, another public body or a community trust, the Health Board will be able to exercise its existing power to provide a mortgage deficit grant. This means the Health Board can pay-off the GP contractor's negative equity. It ensures that negative equity is not a barrier to GPs relocating.

### **Mortgage redemption fees**

- 14.7. Health Boards have the power to provide grants to GP contractors who are relocating in order to pay any mortgage redemption fees that the contractor incurs as a result of the sale of their existing premises.

### Health Board's powers to relocate GP Contractors

- 14.8. GP Sustainability Loans are a significant intervention by the Scottish Government in the GP owned estate. They would, on their own, act to prevent the shift to a model where GPs do not provide their premises. A GP practice which owes a significant part of the value of its property to the Health Board (which it does not have to repay while the premises are used for primary medical services) and still receives Notional Rent would have a powerful financial incentive to remain in its existing premises and not move to alternative modern premises. Notional Rent payments would be much greater than the premises-related expenses and there would be little capital tied-up in the premises.
- 14.9. The intention behind GP Sustainability Loans is not to prevent the shift to a model where GPs do not provide their own premises – it is to support the GP owned estate and to smooth the transition to the new model.
- 14.10. Therefore, Health Boards will have a new power to withdraw Notional Rent and borrowing cost payments where all of the following conditions are met:
- a) the Health Board has asked the GP contractor to relocate from its current premises to premises provided by the NHS Board, another public body or a community trust;
  - b) the new premises are suitable for the delivery of primary medical services, sufficient to meet the reasonable needs of the contractor's patients, and comply with the minimum standards in the Premises Directions;
  - c) the new premises are within a reasonable distance of the current premises;
  - d) the Health Board guarantees a minimum sale price;
  - e) the Health Board agrees to provide a mortgage deficit grant in the event that the actual sale price is not enough to clear the GP contractor's secured debts;
  - f) the Health Board agrees to provide a mortgage redemption grant if there will be mortgage redemption fees;
  - g) the GP contractor chooses not to relocate; and
  - h) The Health Board has involved its Area Medical Committee (in practice this is expected to be the GP Sub-Committee) in its decision-making process.
- 14.11. A decision to withdraw Notional Rent or borrowing costs payments will be appealable to the Scottish Ministers under the contractual NHS Dispute Resolution Procedure.
- 14.12. This new power will allow Health Boards to provide fit-for-purpose premises to GP contractors within a reasonable distance of their current premises while providing comfort for GP contractors in relation to the value of their investment in their current premises.

# PART C – PREMISES LEASED FROM PRIVATE LANDLORDS

## 15. STRATEGY FOR GP PREMISES LEASED FROM PRIVATE LANDLORDS

### Long-term strategy

- 15.1. The Scottish Government's long term strategy is that no GP contractor will need to enter a lease with a private landlord. Health Boards will, over the course of the next fifteen years, take on the responsibility for negotiating and entering into leases with private landlords and the subsequent obligations for maintaining the premises from GP contractors who no longer want to lease privately. Health Boards will ensure that GP contractors are provided with fit-for-purpose accommodation which complies with the standards set by the Premises Directions.
- 15.2. GP contractors who wish to continue to provide their own accommodation are free to do so. They will continue to be eligible to receive rent reimbursements under the Premises Directions. Before a GP contractor agrees to a new lease with a private landlord, it should consult its Health Board on the terms of the proposed lease.

### Short to medium term strategy

- 15.3. This Code sets out the actions that GP contractors who no longer wish to lease their premises from private landlords must take to allow Health Boards to take on that responsibility.
- 15.4. There are three ways in which Health Boards can take on the responsibility of providing a GP contractor with premises. Those are:
- negotiating a new lease for the GP contractor's current premises, with the Health Board as the tenant;
  - accepting an assignation of the GP contractor's current lease; and
  - providing alternative accommodation for the GP contractor when its current lease expires.
- 15.5. The difference in approach is set out in more detail in the subsequent sections of this Part.

## 16. WHERE HEALTH BOARDS LEASE GP PREMISES FROM PRIVATE LANDLORDS

- 16.1. This Code sets out two situations in which a Health Board leases GP premises from private landlords. Firstly, where the Health Board negotiates a new lease for the GP contractor's current premises or for new premises. Secondly, where the Health Board takes on an existing lease replacing a GP contractor as the tenant (assignation).
- 16.2. In both these cases, the lease must allow the Health Board:
- a) To use the premises for the provision of health and social care services (and not simply for the purposes of general practice);
  - b) To sub-let or grant a licence to occupy the premises or part of them for the purpose of providing health and social care services; and
  - c) To sub-let or grant a licence to occupy the premises on different terms from the principal lease.

- 16.3. Often leases only allow tenants to sub-let properties on the same terms and conditions as the principal lease. The Scottish Government wishes to support GP practices to continue as independent contractors. To allow this to happen, the lease to the Health Board (the principal lease) must allow the tenant (the Health Board) to sub-let or grant a licence to occupy the premises to a GP contractor on different terms from the principal lease.
- 16.4. One reason for this is that the Health Board must retain the obligation to maintain the premises, and to ensure the premises comply with relevant legislation or be able to require the landlord to do so. The Health Board will not pass on that responsibility to the GP contractor. The Health Board must make a reasonable charge, based on actual cost, to the GP contractor for maintenance and for any other services provided, such as utilities and cleaning.

## 17. GENERAL APPROACH

- 17.1. The closer a lease is to expiry, the more pressing the need to take action. The longer a lease has to expiry, the less pressing the need for the HSCP and the Health Board to take action. HSCPs and Health Boards should prioritise those practices whose leases expire first.


### Leases - key points

If a lease expires before 1 April 2023, the most likely action is for the Health Board to negotiate a new lease or provide alternative accommodation.

If the lease expires after 1 April 2023, Health Boards will take on the existing lease from GPs where:

- the practice has ensured that its premises are suitable for the delivery of primary medical services and sufficient to meet the reasonable needs of its patients;
- the practice has met its statutory obligations regarding the premises;
- the practice has provided all relevant information to its Health Board;
- the practice has given sufficient notice to its Health Board of its need for assistance;
- the practice has registered the lease with the Health Board;
- the practice has the agreement of the landlord to the assignation of the lease (and the other necessary conditions);
- the practice has complied with its obligations under its existing lease; and
- the rent represents value for money.

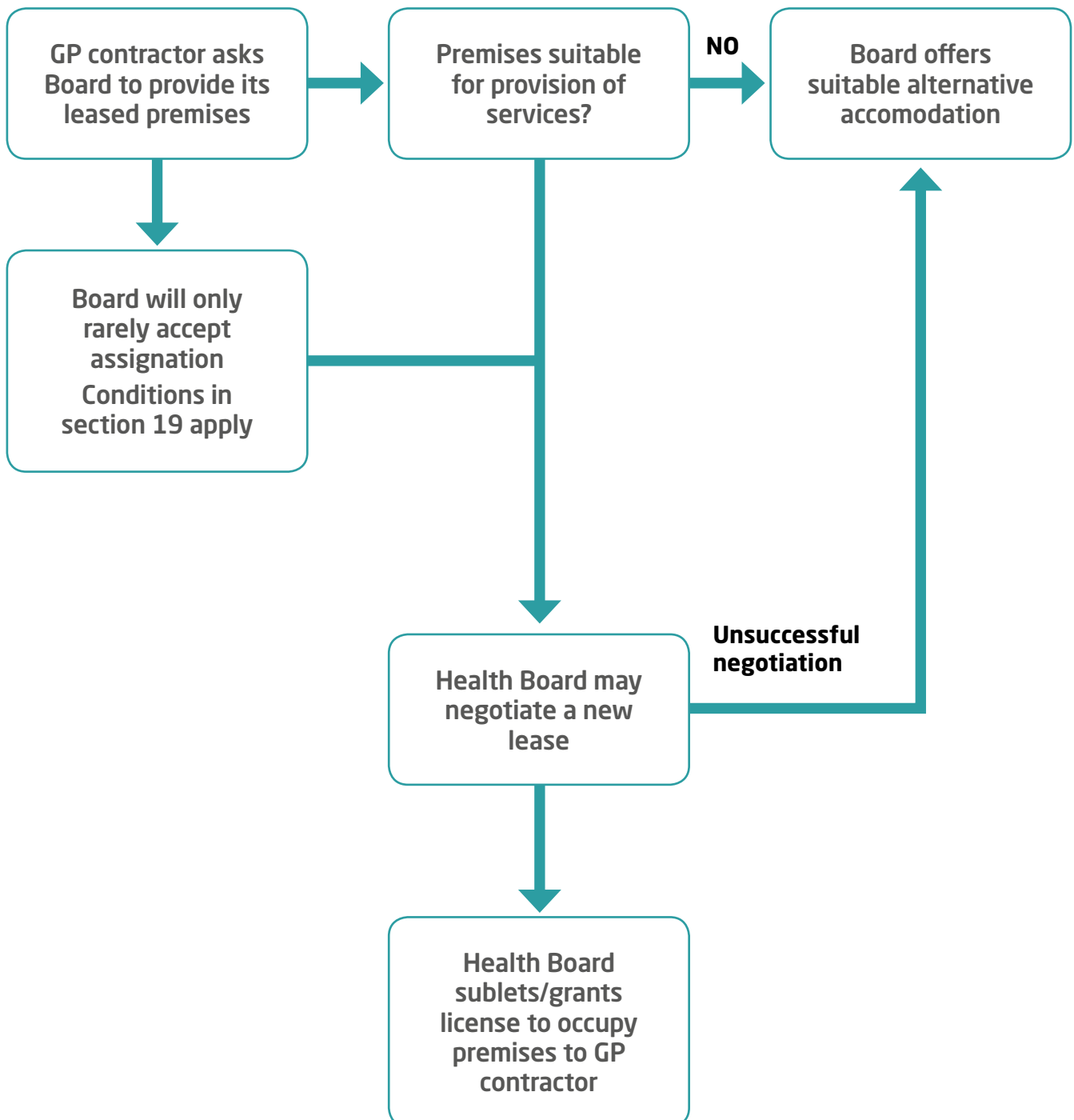
GP contractors who wish to continue to provide their own accommodation are free to do so. They will continue to be eligible to receive rent reimbursements under the Premises Directions.


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- 17.2. GP Contractors should formally advise their HSCP and Health Board as soon as they reach the point where their lease has no more than five years until the expiry date or until a break option can be exercised. This will give the parties time to develop the options for a plan for the GP Contractor to either continue in the existing premises or in alternative premises.
- 17.3. Where a lease is due to expire, if the GP contractor does not want to continue to provide its premises itself, it should not agree a new lease with its landlord. Instead, the Health Board must either negotiate a new lease for the current premises with itself as the tenant, accept an assignment of the lease, or offer alternative accommodation to the GP contractor. This is a decision for the Health Board to make.
- 17.4. If a lease expires within the next five years (before 1 April 2023), the Health Board will only agree to assignment of the existing lease in the rarest of circumstances. The most likely course of action is for the Health Board to negotiate a new lease with the landlord or to offer alternative accommodation to the GP contractor.
- 17.5. If a break option can be exercised within the next five years (before 1 April 2023), the Health Board may decide to negotiate a new lease or provide alternative accommodation to the GP contractor, asking the GP contractor to exercise its right to terminate the lease at its break point. The Health Board may also accept an assignment of the lease if the conditions set out in section 19 are met.
- 17.6. If a GP contractor's lease expires after 1 April 2023, the GP contractor may apply to the Health Board for its lease to be included on a register of the leases that the Health Board is willing to accept the assignment of the tenant's interest. The lease may then be assigned to the Health Board at an agreed future date if the conditions set out in section 19 are met.

## **18. NEGOTIATION OF NEW LEASES OR PROVISION OF ALTERNATIVE ACCOMMODATION**

- 18.1. Where a lease is due to expire and the GP contractor is to remain in its existing premises, the most likely option for the Health Board to take is negotiating a new lease and not assignment of the existing lease.
- 18.2. The Health Board's approach should be informed by the priorities, identified by the HSCP for the Health Board's operational area. Where there is more than one HSCP, the Health Board, together with the HSCPs in its operational area, will have to agree the Health Board's priorities.

## Negotiation of a new lease



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- 18.3. If the delivery of primary medical services from the existing premises continue to meet the needs of the local community, and if the premises continue to be suitable for the provision of primary medical services, the Health Board may attempt to negotiate a new lease with the landlord.
- 18.4. The GP contractor must meet the cost of the dilapidations claim it agrees with the landlord.
- 18.5. The Health Board should seek in its negotiations on the new lease with the landlord to minimise the level of dilapidations for which the contractor is liable without prejudicing its own position. The Health Board may provide financial assistance to the GP contractor with negotiating any dilapidations claim.
- 18.6. GP contractors who have, in the opinion of their Health Board, taken all reasonable steps to maintain their property to the standards required by their leases and the Premises Directions, may be able to recover part of the cost of any reasonable dilapidations claim from the GP Premises Sustainability Fund. This will be permitted only where budgets allow. The GP contractor must take all reasonable steps to reduce the amount payable to its landlord in respect of dilapidations.
- 18.7. In these circumstances, a GP contractor must allow its Health Board to inspect its premises and provide to its Health Board a copy of its lease (with any accompanying schedule of condition and schedule of dilapidations), copies of its accounts, any invoices for repair and maintenance and details of the steps taken to negotiate the level of the dilapidations claim. This is to allow the Health Board to determine whether the GP contractor has taken all reasonable steps to maintain its property to the standards required by its lease and the Premises Directions and to reduce the amount to be paid in respect of the dilapidations claim.
- 18.8. If the Health Board decides to accept an assignment of the lease rather than negotiating a new lease, the conditions in relation to the assignment of a lease as set out in section 19 will apply.

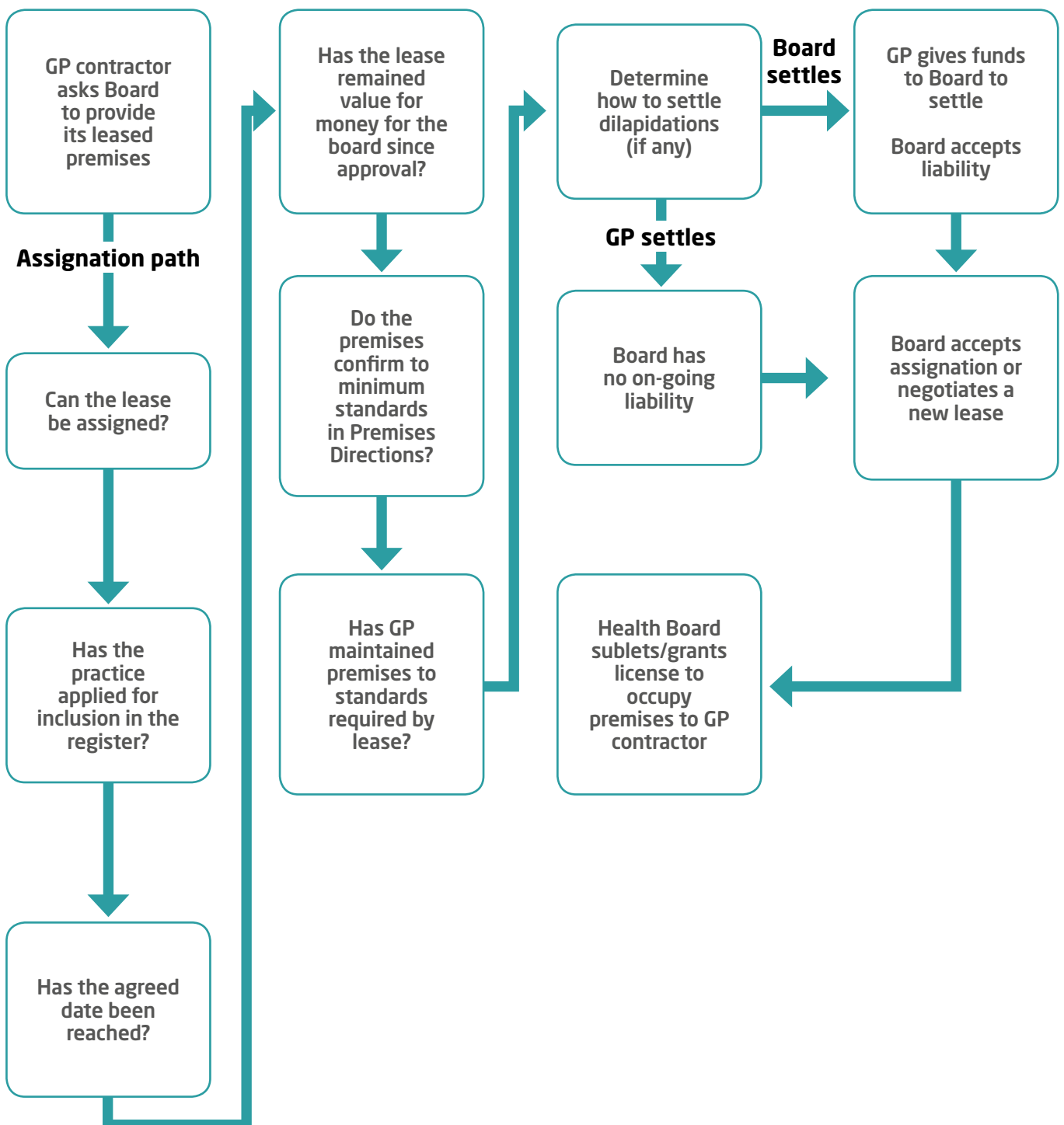
#### **Alternative accommodation**

- 18.9. If the GP contractor is not to continue in its existing premises, the Health Board must offer alternative, fit-for-purpose, accommodation to the GP contractor which complies with the standards set by the Premises Directions.
- 18.10. The GP contractor must meet the cost of the dilapidations claim it agrees with the landlord.
- 18.11. The Health Board may provide financial assistance to the GP contractor with negotiating any dilapidations claim.



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- 18.12. GP contractors who have, in the opinion of their Health Board, taken all reasonable steps to maintain their property to the standards required by their leases and the Premises Directions, may be able to recover part of the cost of any reasonable dilapidations claim from the GP Premises Sustainability Fund. This will be permitted only where budgets allow. The GP contractor must take all reasonable steps to reduce the amount payable to its landlord in respect of dilapidations.
- 18.13. In these circumstances, a GP contractor must allow its Health Board to inspect its premises and provide to its Health Board a copy of its lease (with any accompanying schedule of condition and schedule of dilapidations), copies of its accounts, any invoices for repair and maintenance and details of the steps taken to negotiate the level of the dilapidations claim. This is to allow the Health Board to determine whether the GP contractor has taken all reasonable steps to maintain its property to the standards required by its lease and the Premises Directions and to reduce the amount to be paid in respect of the dilapidations claim.
- 18.14. The Health Board should also consider leasing the existing premises on a short-term basis while it finds more suitable alternative accommodation.

## 19. ASSIGNATION OF LEASES



- 19.1. Health Boards should establish a register ('the Register') within the Estates Terrier Section of the Estate and Asset Management System (EAMS) of the leases in which they are willing to accept an assignment of the tenant's interests.
- 19.2. Only those leases which expire after 1 April 2023 are likely to be included in the Register for the reasons given in section 17.
- 19.3. The number of leases that Health Boards accept assignment of each year will have to be managed. Health Boards do not have the capacity to accept assignment of all or even most GP leases within a short period of time.
- 19.4. A GP contractor may apply to the Chief Executive of its Health Board for its lease to be included on the Register. The application must include:
- the date on which it would like the lease to be assigned to the Health Board;
  - the reason(s) why that date has been chosen;
  - an explanation of why a later date is not reasonable or practical;
  - a copy of the lease;
  - confirmation in principle by the landlord that it will consent to the assignment; and
  - confirmation in principle by the landlord that it will consent to the Health Board using the premises for any health or social care purpose (where such consent is necessary).
- 19.5. Once an application has been received, the Health Board will check the application to ensure it is accurate and gather any additional information it considers necessary from the GP contractor to carry out this check. The Health Board and the GP contractor will agree the date on which the lease is to be assigned. Where the Health Board is of the view that it is reasonable and practical for the lease to be assigned to it at a different date to that included in the application, the Health Board and GP contractor may agree to amend that date in the application. The Health Board may choose another date for assignment of a lease on the grounds of capacity. If agreement on a date cannot be reached, the Health Board may refuse the application.
- 19.6. Once the lease is on the Register, the Health Board will accept an assignment of the tenant's interest in the lease on the agreed date provided:
- i. that the lease has not been varied in such a way that it no longer represents value for money since the Health Board approved the payment of financial assistance with the GP contractor's rental costs under the Premises Directions; and
  - ii. the GP contractor can provide the following:
    - a) A variation of the lease to allow assignment (where necessary);
    - b) The landlord's consent to assignment (where necessary);

- c) A variation of the lease to allow the premises to be used for health and social care purposes (where necessary);
- d) A variation of the lease to allow the tenant to sub-let and grant a licence to occupy on different terms from the principal lease (where necessary);
- e) A schedule of dilapidations which has been agreed between the landlord and the GP contractor for the GP contractor to fund and/or carry out prior to the assignation being completed;
- f) Sufficient funds to meet the cost of any dilapidations not undertaken by the time of the assignation;
- g) Confirmation and evidence from the GP contractor to the Health Board's satisfaction that the premises comply with all relevant statutory obligations;
- h) Confirmation and evidence to the Health Board's satisfaction that the premises comply with the minimum standards set out in the Premises Directions;
- i) A signed sub-lease or licence to occupy in the form provided by the Health Board.

### Value for money

- 19.7. In most cases, the Health Board will have already satisfied itself that the terms of the lease represent value for money when granting financial assistance with rental costs to the GP contractor under the Premises Directions.
- 19.8. However, it is possible that a lease has been varied by the GP contractor and the landlord since the Health Board decided to grant financial assistance with rental costs. The Health Board will have to be satisfied, where appropriate in consultation with the District Valuer, that the varied lease still represents value for money.
- 19.9. If the lease no longer represents value for money, the Board may refuse to accept assignation.

### Variation of lease and landlord's consent (points a to d in paragraph 19.6)

- 19.10. Most leases contain a clause about assignation. Often the lease will say that the tenant can only assign its rights and obligations to another person with the landlord's agreement, usually with the proviso that this consent is not to be unreasonably withheld. Only rarely will a lease say that the tenant cannot assign the lease at all.
- 19.11. If a GP contractor's lease says that it cannot be assigned at all, the GP contractor must obtain a variation to the lease to allow assignation before it can be assigned to the Health Board.
- 19.12. If a GP contractor's lease requires the landlord's consent to the assignation of the lease, the GP contractor must obtain the landlord's consent to the assignation when the contractor assigns the lease to the Health Board.

- 19.13. Where the documents at points a, b, c and d in paragraph 19.6 are required, the assignment to the Health Board cannot proceed until they are obtained by the GP contractor. If the documents are not forthcoming by the date on which the lease is to be assigned, the Health Board may remove the lease from the Register. The Health Board will then be under no further obligation to accept an assignment of the tenant's interest in the lease.
- 19.14. There are three parties that have to reach agreement to allow a Health Board to take on an existing lease from a GP contractor – the Health Board, the GP contractor and the landlord. Both the GP contractor and the Health Board must do what they can to achieve the timescales as agreed between them. This includes, where the GP contractor requires and requests it, the Health Board facilitating and supporting the GP contractor with discussions between it and the landlord.

#### **Dilapidations (points e and f in paragraph 19.6)**

- 19.15. The GP contractor should pay the funds for any dilapidations directly to the landlord. The Health Board may provide financial assistance to the GP contractor with negotiating any dilapidations claim. The landlord should then confirm in writing to the Health Board that the dilapidations costs have been paid by the GP contractor, when and how the remedial works will be undertaken and that the Health Board will have no on-going liability for those dilapidations.
- 19.16. Alternatively, the Health Board may agree to the GP contractor paying the agreed cost of the dilapidations directly to the Health Board. This will allow the Health Board to carry out the remedial work itself. The Health Board will have to ensure that the dilapidations claimed by the landlord are fair and reasonable. In this case, the Health Board will accept liability for all dilapidations at the expiry of the lease, including those dilapidations which occurred while the GP contractor leased the premises.
- 19.17. Once the lease is assigned to the Health Board, it will become responsible for maintaining the property according to the terms of the lease. If it fails to do so, the Health Board will be responsible for paying any future dilapidations claim. Therefore, if a GP contractor fails to satisfy points e and f, the Health Board may refuse to accept an assignment of the lease.
- 19.18. GP contractors who have, in the opinion of their Health Board, taken all reasonable steps to maintain their property to the standards required by their leases and the Premises Directions, may be able to recover part of the cost of any reasonable dilapidations claim from the GP Premises Sustainability Fund. This will be permitted only where budgets allow. The GP contractor must take all reasonable steps to reduce the amount payable to its landlord in respect of dilapidations.

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19.19. In these circumstances, a GP contractor must allow its Health Board to inspect its premises and provide to its Health Board a copy of its lease (with any accompanying schedule of condition and schedule of dilapidations), copies of its accounts, any invoices for repair and maintenance and details of the steps taken to negotiate the level of the dilapidations claim. This is to allow the Health Board to determine whether the GP contractor has taken all reasonable steps to maintain its property to the standards required by its lease and the Premises Directions and to reduce the amount to be paid in respect of the dilapidations claim.

#### **Compliance with statute and the Premises Directions (points g and h in paragraph 19.6)**

19.20. If the GP contractor cannot provide the confirmation and evidence required at points g and h in paragraph 19.6, it must pay the Health Board an amount which the Health Board is satisfied will cover the cost of the Health Board improving the premises so that they do comply with statutory requirements and the minimum standards set by the Premises Directions. If a GP contractor fails to provide the confirmation and evidence at points g and h in paragraph 19.6 and it fails to provide payment to cover the costs of compliance, the Health Board may refuse to accept an assignation of the lease.

#### **Assignation and repairing obligations**

19.21. Once the lease is on the Register, the GP contractor will be expected to continue to comply with the tenant's obligations, including any repair, maintenance and statutory obligations, until the date of assignation to the Health Board.

#### **Negotiation of a new leases for premises on the Register**

19.22. Instead of accepting assignation of a lease on the Register, the Health Board may negotiate a new lease for the premises with itself as the tenant. If those negotiations are unsuccessful, the Health Board will still accept assignation of the lease if the conditions are met.



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Any enquiries regarding this publication should be sent to us at  
The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-78851-371-5

Published by The Scottish Government, November 2017

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS317706 (11/17)

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