

NATIONAL HEALTH SERVICE ACT 1977

Directions as to the functions of the Family Health Services Appeal Authority (GMS Contract Disputes) 2004

The Secretary of State for Health, in exercise of powers conferred by sections 49S(4) of the National Health Service Act 1977(a), and all other powers enabling him in that behalf, hereby gives the following Directions:-

Commencement and extent

- 1.-(1) These Directions shall come into force on 9th March 2004.
- (2) These Directions apply to England only.

Interpretation

2. In these Directions—

“the Authority” means the Family Health Services Appeal Authority established by section 49S of the National Health Service Act 1977;

“contractor” means a party to a GMS contract or a default contract (as the case may be);

“default contract” means a contract with a Primary Care Trust made pursuant to article 13 of the Order which is on the terms set out, or agreed in accordance with any options set out, in the Default Contract 2004 dated 18th February 2004(b);

“GMS contract” means a general medical services contract under section 28Q of the National Health Service Act 1977;

“the Order” means the General Medical Services Transitional and Consequential Provisions Order 2004(c); and

“the Regulations” means the National Health Service (General Medical Services Contracts) Regulations 2004(d).

Functions exercisable by the Authority

3. The functions of the Secretary of State set out in—
 - (a) article 33 of the Order (dispute resolution procedures for default contracts), in relation to the matters specified in direction 4;
 - (b) paragraphs 101 and 102 of Schedule 6 to the Regulations (dispute resolution), in relation to the matters specified in direction 5,shall be exercised on his behalf by the Authority.

(a) 1977 c.49. Section 49S was inserted by the Health and Social Care Act 2001 (c.15), section 27(4) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17), section 1(3) and Schedule 1, paragraphs 1 and 18.

(b) The Default Contract 2004 is published by the Department of Health. It is available on their website at www.dh.gov.uk/PolicyAndGuidance/HumanResourcesAndTraining/ModernisingPay/GPContracts or a copy can be obtained by writing to the Department of Health, Room 3E46, Quarry House, Quarry Hill, Leeds LS2 7UE.

(c) S.I. 2004/433.

(d) S.I. 2004/291.

4.—(1) The Authority shall exercise the Secretary of State’s functions pursuant to the provision specified in direction 3(a) in respect of any dispute (or a part of a dispute) between the parties to a default contract that relates to clause 387 of the default contract, but only insofar as that dispute requires a determination as to whether, pursuant to that clause, a contractor is no longer a general medical practitioner.

(2) The Authority shall also exercise the Secretary of State’s functions pursuant to the provision specified in direction 3(a) in respect of any dispute (or a part of a dispute) between the parties to a default contract that relates to clauses 388 to 392 of the default contract, but only insofar as that dispute requires a determination as to whether any of the persons specified in clause 388 falls within clause 389 during the existence of the default contract, including a determination in respect of any dispute relating to a decision a Primary Care Trust has taken pursuant to clauses 390 to 392 of the default contract (where those clauses apply).

5.—(1) The Authority shall exercise the Secretary of State’s functions pursuant to the provisions specified in direction 3(b) in respect of any dispute (or a part of a dispute) between the parties to a GMS contract that relates to a term of the contract that gives effect to paragraph 111 (termination by the Primary Care Trust for breach of conditions in regulation 4) or 112 (termination by the Primary Care Trust for the provision of untrue etc. information) of Schedule 6 to the Regulations, but only insofar as that dispute requires a determination as to whether—

- (a) pursuant to paragraph 111—
 - (i) an individual medical practitioner no longer satisfies the condition specified in regulation 4(1) of the Regulations,
 - (ii) a partner no longer satisfies the condition in regulation 4(2)(a) of the Regulations, where the contractor is a partnership, or
 - (iii) a shareholder no longer satisfies the condition in regulation 4(3)(a) of the Regulations, where the contractor is a company; or
- (b) pursuant to paragraph 112, written information provided to the Primary Care Trust by the contractor before the GMS contract was entered into was, when given, untrue or inaccurate in a material respect.

(2) The Authority shall also exercise the Secretary of State’s functions pursuant to the provisions specified in direction 3(b) in respect of any dispute (or a part of a dispute) between the parties to a GMS contract that relates to a term of the contract that gives effect to paragraph 113 of Schedule 6 to the Regulations, but only insofar as that dispute requires a determination as to whether any of the persons specified in paragraph 113(1) falls within paragraph 113(2) during the existence of the GMS contract, including a determination in respect of any dispute relating to a decision a Primary Care Trust has taken pursuant to paragraph 113(3) to (5) (where those sub-paragraphs apply).

Signed by authority of the Secretary of State

Richard Armstrong

A Member of the Senior Civil Service

Department of Health

8th March 2004