

NATIONAL HEALTH SERVICE ACT 1977

DIRECTIONS AS TO THE FUNCTIONS OF THE NATIONAL HEALTH SERVICE LITIGATION AUTHORITY (PMS AGREEMENT DISPUTES) 2005

The Secretary of State for Health, in exercise of the powers conferred on him by sections 16D, 17 and 18 of the National Health Service Act 1977(a), and all other powers enabling him in that behalf, hereby gives the following Directions:-

Citation, commencement and application

1.—(1) These Directions, which may be cited as the Directions as to the Functions of the National Health Service Litigation Authority (PMS Agreement Disputes) 2005, shall come into force on 1st April 2005.

(2) These Directions apply in relation to England only.

Interpretation

2. In these Directions—

“agreement” means an agreement for primary medical services made under section 28C of the National Health Service Act 1977(b);

“the Authority” means the National Health Service Litigation Authority established by article 2 of the National Health Service Litigation Authority (Establishment and Constitution) Order 1995(c);

“closure notice” means a notice in the form specified in Schedule 8 to the Regulations;

“contractor” means a party to an agreement;

“contractor’s list of patients” has the meaning assigned to it in the Regulations;

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

(a) 1977 c.49. Section 16D was substituted by the Health Act 1999 (c.8) (“the 1999 Act”), s. 12(1) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17) (“the 2002 Act”), s. 3(2) and Schedule 1, paragraph 6; section 17 was substituted by the 1999 Act, s. 12(1), and amended by the Health and Social Care Act 2001 (c.15) (“the 2001 Act”), Schedule 5, paragraph 5(3) and the 2002 Act, Schedule 1, paragraph 7; section 18 was amended by the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 9 and Schedule 3, the 1999 Act, sections 12(3) and (4), and the 2002 Act, section, 3(5), Schedule 1, paragraph 9, and Schedule 9. As respects Wales, the powers to give directions under these sections have been transferred to the National Assembly for Wales, *see* article 2 of, and the entry in relation to the National Health Service Act 1977 in, Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999, S.I.1999/672.

(b) Section 28C was inserted into the National Health Service Act 1977 by the National Health Service (Primary Care) Act 1997 (c.46), section 21(1), and was amended by the 1999 Act, section 65(1) and Schedule 4, paragraphs 4 and 15; the 2001 Act, section 40 and Schedule 5, paragraph 11; the 2002 Act, section 4(3) and Schedule 3, paragraphs 1 and 7; and by the Health and Social Care (Community Health and Standards) Act 2003 (c.43), section 196 and Schedule 14, and section 184 and Schedule 11, paragraphs 7 and 14.

(c) S.I. 1995/2800, as amended by S.I. 2002/2621 and S.I. 2005/503.

(d) Section 49S was inserted into the National Health Service Act 1977 by the 2001 Act, section 27(4) and amended by the 2002 Act, Schedule 1, paragraph 18.

“FHSAA (SHA)” means the Family Health Services Appeal Authority (Special Health Authority) established by article 2 of the Family Health Services Appeal Authority (Establishment and Constitution) Order 1995(a);

“mixed dispute” means a dispute that falls within direction 4(1)(a) or (b) where that dispute—

(a) will also involve the determination of matters that are not specified in direction 4(1)(a) or (b), or

(b) involves, or is likely to involve, a claim by either party for a direction from the adjudicator that payments should be made by either party to the other party;

“the Regulations” means the National Health Service (Personal Medical Services Agreements) Regulations 2004(b); and

“relevant body” has the meaning assigned to it in the Regulations.

Functions exercisable by the Authority

3. The functions of the Secretary of State set out in—

- (a) regulation 8 of the Regulations (pre-agreement disputes); and
- (b) paragraphs 95 and 96 of Schedule 5 to the Regulations (dispute resolution), except in relation to the matters specified in direction 4,

shall be exercised on his behalf by the Authority.

4.—(1) The Authority shall not, except in relation to a mixed dispute, exercise the Secretary of State’s functions pursuant to the provisions specified in direction 3(b) in respect of any dispute that arises in relation to—

- (a) the rejection of a closure notice by a Primary Care Trust pursuant to a term of the agreement that gives effect to paragraph 30 of Schedule 5 to the Regulations (rejection of closure notice); or
- (b) the assignment of a patient to a contractor’s list of patients pursuant to a term of the agreement that gives effect to paragraph 31 (assignment of patients to lists: open lists) or 32 (assignment of patients to lists: closed lists) of Schedule 5 to the Regulations.

(2) The Authority shall not exercise the Secretary of State’s functions pursuant to the provisions specified in direction 3(b) in respect of any dispute that arises in relation to—

- (a) a term of the agreement that gave effect to paragraph 103 (termination by the relevant body for breach of conditions in regulation 4) of Schedule 5 to the Regulations(c), insofar as the dispute requires a determination as to whether a—
 - (i) medical practitioner who was a party to the agreement no longer satisfied the condition specified in regulation 4(1) of the Regulations; or
 - (ii) qualifying body which was a party to the agreement no longer satisfied the condition specified in regulation 4(2) of the Regulations;

(a) S.I.1995/621. The name of the Family Health Services Appeal Authority was changed to the Family Health Services Appeal Authority (Special Health Authority) by S.I. 2001/3562.

(b) S.I. 2004/627, as amended by S.I. 2004/906 and 2694 and 2005/28 and 893.

(c) Regulation 4 of and paragraph 103 of Schedule 5 to the Regulations were revoked by S.I. 2004/2694. However the dispute resolution terms survive termination of the contract and under paragraph 95(4) of Schedule 5 to the Regulations a contractor has 3 years to register a dispute.

- (b) a term of the agreement that gives effect to paragraph 104 (termination by the relevant body for the provision of untrue etc. information) of Schedule 5 to the Regulations, insofar as the dispute requires a determination as to whether written information provided to the relevant body by the contractor was, when given, untrue or inaccurate in a material respect; or
- (c) a term of the agreement that gives effect to paragraph 105 of Schedule 5 to the Regulations, but only insofar as that dispute requires a determination as to whether any of the persons specified in paragraph 105(1) or (2) falls within paragraph 105(3), including a determination in respect of any dispute relating to a decision a relevant body has taken pursuant to paragraph 105(4) to (6) (where those sub-paragraphs apply).

Co-operation with the FHSAA and Strategic Health Authorities

5. In exercising functions pursuant to these Directions in relation to a particular agreement, the Authority shall co-operate with the FHSAA or any Strategic Health Authority (as the case may be) in respect of any function to be exercised by either of those bodies pursuant to—

- (a) the Directions as to the functions of Strategic Health Authorities (PMS Agreement Disputes) 2004 which came into force on 19th March 2004; and
- (b) the Directions as to the functions of the Family Health Services Appeal Authority (PMS Agreement Disputes) 2004 which came into force on 19th March 2004,

insofar as it is necessary to ensure the just, expeditious, economical and final determination of any dispute arising in relation to an agreement.

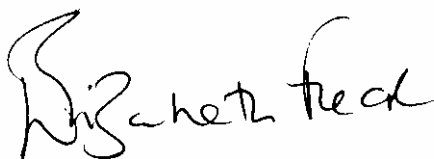
Revocation and transitional provisions

6.—(1) The Directions as to the functions of the Family Health Services Appeal Authority (Special Health Authority) (PMS Agreement Disputes) 2004, which came into force on 19th March 2004, are revoked.

(2) Where, pursuant to article 18 (provision for continuity in the exercise of functions) of the Special Health Authorities Abolition Order 2005(a), the Authority is continuing to consider an appeal made to the FHSAA(SHA) which the FHSAA(SHA) had appointed an adjudicator to determine under paragraphs 95 and 96 of Schedule 5 to the Regulations (dispute resolution), that appeal shall continue to be determined on behalf of the Authority by the adjudicator so appointed.

(3) Paragraph (2) shall not prevent the Authority from taking any necessary steps to appoint a replacement adjudicator on or after 1st April 2005.

Signed by authority of the Secretary of State



A Member of the Senior Civil Service

31st March 2005

(a) S.I. 2005/502.