

# NATIONAL HEALTH SERVICE ACT 1977

## The Out of Hours Medical Services (Appeals by Transferors) (England) Directions 2004

The Secretary of State for Health, in exercise of the powers conferred upon him by sections 16D, 17, 18(3)(a) and 126(4) of the National Health Service Act 1977<sup>(a)</sup>, and all other powers enabling him in that behalf, hereby gives the following Directions:

### Citation, commencement, application and interpretation

1.—(1) These Directions may be cited as the Out of Hours Medical Services (Appeals by Transferors) (England) Directions 2004 and shall come into force on 22nd January 2004.

(2) These Directions apply to England only.

(3) In these Directions—

“the 1977 Act” means the National Health Service Act 1977;

“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<sup>(b)</sup> and renamed by virtue of article 2 of the Family Health Services Appeal Authority (Change of Name) Order 2001<sup>(c)</sup>;

“the GMS Regulations” means the National Health Service (General Medical Services) Regulations 1992<sup>(d)</sup>;

“the PMS OOH Regulations” means the National Health Service (Out of Hours Provision of Personal Medical Services and Miscellaneous Amendments) (England) Regulations 2003<sup>(e)</sup>; and

“specified function” means any one of the functions specified in direction 2(1).

### Transfer of the Secretary of State’s functions to the FHSAA(SHA)

2.—(1) The functions of the Secretary of State under—

(a) paragraph 18A(12) and (13) of Schedule 2 to the GMS Regulations (determination of appeals against a decision of a Primary Care Trust to refuse to approve an out of hours arrangement for general medical services, and giving notice of that determination);

(b) paragraph 18B(6) of Schedule 2 to the GMS Regulations (determination of appeals against a decision of a Primary Care Trust to withdraw its approval of an out of hours arrangement for general medical services, and giving notice of that determination);

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<sup>(a)</sup> 1977 c.49; sections 16D and 17 are as substituted by section 12 of the Health Act 1999 (c.8), and section 126(4) was amended by: the National Health Service and Community Care Act 1990 (c.19), section 65(2); the Health Act 1999, Schedule 4, paragraphs 4 and 37; and the Health and Social Care Act 2001 (c.15), Schedule 5, paragraph 5(1) and (13)(b). The 1977 Act has effect in relation to services provided in accordance with Part I of the National Health Service (Primary Care) Act 1997 (c.46) by virtue of section 9 of that Act. As regards Wales, these functions of the Secretary of State under the 1977 Act were transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672, as amended by section 66(5) of the Health Act 1999 and as read with section 40(1) of the National Health Service Reform and Health Care Professions Act 2002 (c.17).

<sup>(b)</sup> S.I. 1995/621; there are no relevant amending instruments.

<sup>(c)</sup> S.I. 2001/3562.

<sup>(d)</sup> S.I. 1992/635; the relevant amending instruments are S.I. 1996/702, 1998/682, 2001/3742, 2002/1896, 2469, 2548 and 3135, and 2003/26.

<sup>(e)</sup> S.I. 2003/26.

- (c) paragraph 18C(4) of Schedule 2 to the GMS Regulations (determination of appeals against a decision of a Primary Care Trust to withdraw its approval of an out of hours arrangement for general medical services immediately, and giving notice of that determination);
- (d) regulation 4(6) and (7) of the PMS OOH Regulations (determination of appeals against a decision of a Primary Care Trust or a Strategic Health Authority to refuse to approve an out of hours arrangement for personal medical services, and giving notice of that determination);
- (e) regulation 5(4) of the PMS OOH Regulations (determination of appeals against a decision of a Primary Care Trust or a Strategic Health Authority to withdraw its approval of an out of hours arrangement for personal medical services, and giving notice of that determination); and
- (f) regulation 6(2) of the PMS OOH Regulations (determination of appeals against a decision of a Primary Care Trust or a Strategic Health Authority to withdraw its approval of an out of hours arrangement for personal medical services immediately, and giving notice of that determination),

shall be exercised by the FHSAA(SHA), and the Secretary of State shall only exercise one of those specified functions in circumstances where he has decided, for duly justified reasons notified in writing to the FHSAA(SHA), to exercise the function.

(2) Accordingly, the following provisions—

- (a) paragraphs 18A(11) to (15), 18B(6) and 18C(4) of Schedule 2 to the GMS Regulations; and
- (b) regulations 4(5) to (7), 5(4) and (5) and 6(2) of the PMS OOH Regulations,

shall apply (except in circumstances where, for duly justified reasons notified in writing to the FHSAA(SHA), the Secretary of State has decided to exercise the relevant specified function) as if for the words “Secretary of State”, at each place they occur, there were substituted “Family Health Service Appeals Authority (Special Health Authority)”.

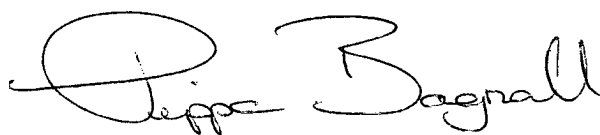
#### **Exercise of the functions by the FHSAA(SHA)**

**3.—**(1) The FHSAA(SHA) shall make arrangements for the functions that it is directed to exercise by virtue of direction 2(1) above to be exercised on its behalf by an officer of the FHSAA(SHA).

(2) That officer may, where appropriate, convene a review panel (composed as he sees fit, except that the chairman shall be a barrister or a solicitor) to—

- (a) consider any appeal that he must determine on behalf of the FHSAA(SHA) by virtue of paragraph (1) above; and
- (b) give advice to him about how any appeal that he has asked the panel to consider should, in the panel’s opinion, be determined.

Signed by authority of the Secretary of State for Health



Pippa Bagnall  
A member of the Senior Civil Service  
Department of Health

21 January 2004