

NATIONAL HEALTH SERVICE ACT 1977

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

The Secretary of State for Health, in exercise of powers conferred 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:-

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 (Special Health Authority) established by article 2 of the Family Health Services Appeal Authority (Establishment and Constitution) Order 1995(b);

“contractor” means a party to a GMS contract;

“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(c);

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

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

“mixed dispute” means a dispute that falls within direction 4(2) or 5(1)(a) or (b) where that dispute-

- (a) will also involve the determination of matters that are not specified in direction 4(2) or 5(1)(a) or (b), or

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- (a) Section 16D was substituted by the Health Act 1999 (c.8), section 12(1) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17), section 3(2) and Schedule 1, paragraph 6; section 18, subsections (1) to (1B) were substituted by the Health Act 1999 (c.8), section 21(3) and amended by the National Health Service Reform and Health Care Professions Act 2002, Schedule 1, paragraph 9. Section 17 was substituted by section 12 of the Health Act 1999 (c.8) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 1, paragraph 7. As respects Wales, the powers to give directions under these sections have been transferred to the National Assembly for Wales, *see* article two 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) 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.
 - (c) 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/GP_Contracts or a copy can be obtained by writing to the Department of Health, Room 3E46, Quarry House, Quarry Hill, Leeds LS2 7UE.
 - (d) 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) 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 Order” means the General Medical Services Transitional and Consequential Provisions Order 2004(a);

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

“closure notice” and “contractor’s list of patients” have the meanings assigned to them in the Regulations.

Functions exercisable by the Authority

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

- (a) article 4 of the Order (appeal against refusal of a contract under article 3), including any appeal brought pursuant to article 13(9) of the Order;
- (b) article 11 of the Order (appeal against failure of a Primary Care Trust to enter into a general medical services contract);
- (c) article 33 of the Order (dispute resolution procedures for default contracts), except in relation to the matters specified in direction 4;
- (d) regulation 9 of the Regulations (pre-contract disputes); and
- (e) paragraphs 101 and 102 of Schedule 6 to the Regulations (dispute resolution), except in relation to the matters specified in direction 5;

shall be exercised on his behalf by the Authority.

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

- (a) clause 387 of the default contract, insofar as the dispute requires a determination as to whether, pursuant to that clause, a contractor is no longer a general medical practitioner;
- (b) clauses 388 to 392 of the default contract, insofar as the 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 any question or dispute relating to a decision a Primary Care Trust has taken pursuant to clauses 390 to 392 of the default contract (where applicable).

(2) 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(c) in respect of any dispute that arises out of the assignment of a patient to a contractor’s list of patients pursuant to clause 144 of a default contract (assignment of patients to lists: open lists).

5.—(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(e) 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 GMS contract that gives effect to paragraph 31 of Schedule 6 to the Regulations (rejection of closure notice by the Primary Care Trust); or

(a) S.I. 2004/433.
(b) S.I. 2004/291.

- (b) the assignment of a patient to a contractor's list of patients pursuant to a term of the GMS contract that gives effect to paragraph 32 (assignment of patients to lists: open lists) or 33 (assignment of patients to lists: closed lists) of Schedule 6 to the Regulations.
- (2) The Authority shall not exercise the Secretary of State's functions pursuant to the provisions specified in direction 3(e) in respect of any dispute that arises in relation to—
- (a) a term of the GMS 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, insofar as the dispute requires a determination as to whether—
 - (i) pursuant to paragraph 111—
 - (aa) an individual medical practitioner no longer satisfies the condition specified in regulation 4(1) of the Regulations,
 - (bb) a partner no longer satisfies the condition in regulation 4(2)(a) of the Regulations, where the contractor is a partnership, or
 - (cc) a shareholder no longer satisfies the condition in regulation 4(3)(a) of the Regulations, where the contractor is a company, or
 - (ii) 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;
 - (b) a term of the GMS contract that gives effect to paragraph 113 of Schedule 6 to the Regulations (other grounds for termination by the Primary Care Trust), insofar as the 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 any question or dispute relating to any decision a Primary Care Trust has taken pursuant to a term of the GMS contract that gives effect to paragraph 113(3) to (5) (where applicable).

Co-operation with the FHSAA and Strategic Health Authorities

6. In exercising functions pursuant to these Directions in relation to a particular GMS contract or default contract, 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 (GMS Contract Disputes) 2004 which came into force on 9th March 2004; and
- (b) the Directions as to the functions of the Family Health Services Appeal Authority (GMS Contract Disputes) 2004 which came into force on 9th March 2004,

insofar as it is necessary to ensure the just, expeditious, economical and final determination of any dispute arising in relation to a GMS contract or a default contract.

Signed by authority of the Secretary of State

Richard Armstrong

A Member of the Senior Civil Service

Department of Health

8th March 2004