

SCHEDULE 3

OTHER CONTRACTUAL TERMS

PART 7

DISPUTE RESOLUTION

Local resolution of agreement disputes

53. In the case of any dispute arising out of, or in connection with, the agreement, the contractor and [F1the Board] must make every reasonable effort to communicate and co-operate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings).

Textual Amendments

- F1** Words in Sch. 3 para. 53 substituted (1.4.2013) by [The National Health Service \(Primary Dental Services\) \(Miscellaneous Amendments and Transitional Provisions\) Regulations 2013 \(S.I. 2013/364\)](#), regs. 1(1), **39(30)** (with Sch. 2)

Dispute resolution: non-NHS contracts

54.—[F2(1) In the case of an agreement that is not an NHS contract, any dispute arising out of or in connection with the agreement, except matters dealt with under the complaints procedure pursuant to Part 6, may be referred for consideration and determination to the Secretary of State—

- (a) if it relates to a period when the contractor was a health service body, by the contractor or by the Board; or
 - (b) in any other case, by the contractor or, if the contractor agrees in writing, by the Board.]
- (2) In the case of a dispute referred to the Secretary of State under sub-paragraph (1)—
- (a) the procedure to be followed is the NHS dispute resolution procedure; and
 - (b) the parties agree to be bound by any determination made by the adjudicator.

Textual Amendments

- F2** Sch. 3 para. 54(1) substituted (1.7.2015) by [The National Health Service \(Primary Dental Services and General Ophthalmic Services\) \(Miscellaneous Amendments and Transitional Provision\) Regulations 2015 \(S.I. 2015/416\)](#), regs. 1(3), **9** (with reg. 12)

NHS dispute resolution procedure

55.—(1) The procedure specified in the following sub-paragraphs and paragraph 56 applies in the case of any dispute arising out of or in connection with the agreement which is referred to the Secretary of State—

- (a) in accordance with section 4(3) of the 1990 Act (where the agreement is an NHS contract); or
- (b) in accordance with paragraph 54(1) (where the agreement is not an NHS contract).

Status: Point in time view as at 14/09/2020.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Personal Dental Services Agreements) Regulations 2005, PART 7. (See end of Document for details)

(2) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) shall send to the Secretary of State a written request for dispute resolution which shall include or be accompanied by—

- (a) the names and addresses of the parties to the dispute;
- (b) a copy of the agreement; and
- (c) a brief statement describing the nature and circumstances of the dispute.

(3) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send the request under sub-paragraph (2) within a period of three years beginning with the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute.

(4) Where the dispute relates to an agreement which is not an NHS contract, the Secretary of State may determine the matter herself or, if she considers it appropriate, appoint a person or persons to consider and determine it^{MI}.

(5) Before reaching a decision as to who should determine the dispute, either under sub-paragraph (4) or under section 4(5) of the 1990 Act, the Secretary of State shall, within the period of seven days beginning with the date on which a matter was referred to her, send a written request to the parties to make in writing, within a specified period, any representations which they may wish to make about the matter.

(6) The Secretary of State shall give, with the notice given under sub-paragraph (5), to the party other than the one which referred the matter to dispute resolution a copy of any document by which the matter was referred to dispute resolution.

(7) The Secretary of State shall give a copy of any representations received from a party to the other party and shall in each case request (in writing) a party to whom a copy of the representations is given to make within a specified period any written observations which it wishes to make on those representations.

(8) Following receipt of any representations from the parties or, if earlier, at the end of the period for making such representations specified in the request sent under sub-paragraph (5) or (7), the Secretary of State shall, if she decides to appoint a person or persons to hear the dispute—

- (a) inform the parties in writing of the name of the person or persons whom she has appointed; and
- (b) pass to the person or persons so appointed any documents received from the parties under or pursuant to paragraph (2), (5) or (7).

(9) For the purpose of assisting him in his consideration of the matter, the adjudicator may—

- (a) invite representatives of the parties to appear before him to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which he wishes them to give special consideration; or
- (b) consult other persons whose expertise he considers will assist him in his consideration of the matter.

(10) Where the adjudicator consults another person under sub-paragraph (9)(b), he shall notify the parties accordingly in writing and, where he considers that the interests of any party might be substantially affected by the result of the consultation, he shall give to the parties such opportunity as he considers reasonable in the circumstances to make observations on those results.

(11) In considering the matter, the adjudicator shall consider—

- (a) any written representations made in response to a request under sub-paragraph (5), but only if they are made within the specified period;

- (b) any written observations made in response to a request under sub-paragraph (7), but only if they are made within the specified period;
- (c) any oral representations made in response to an invitation under sub-paragraph (9)(a);
- (d) the results of any consultation under sub-paragraph (9)(b); and
- (e) any observations made in accordance with an opportunity given under sub-paragraph (10).

(12) In this paragraph, “specified period” means such period as the Secretary of State shall specify in the request, being not less than two, nor more than four weeks, beginning with the date on which the notice referred to is given, but the Secretary of State may, if she considers that there is good reason for doing so, extend any such period (even after it has expired) and, where she does so, a reference in this paragraph to the specified period is to the period as so extended.

(13) Subject to the other provisions of this paragraph and paragraph 56, the adjudicator shall have wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.

Marginal Citations

M1 Where the dispute relates to a contract which is an NHS contract, section 4(5) of the 1990 Act applies.

Determination of dispute

56.—(1) The adjudicator shall record his determination and the reasons for it in writing and shall give notice of the determination (including a record of the reasons) to the parties.

(2) In the case of any dispute referred for determination in accordance with paragraph 54(1), subsection (8) of section 4 of the 1990 Act shall apply as that subsection applies in the case of any dispute referred for determination in accordance with subsection (3) of section 4 of that Act.

Interpretation of Part 7

57.—(1) In this Part, “any dispute arising out of, or in connection with, the agreement” includes any dispute arising out of, or in connection with, the termination of the agreement.

(2) Any term of the agreement that makes provision in respect of the requirements in this Part shall survive even where the agreement has terminated.

Status:

Point in time view as at 14/09/2020.

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service (Personal Dental Services Agreements) Regulations 2005, PART 7.