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National Health Service (Scotland) Act 1978

1978 CHAPTER 29

PART I

ORGANISATION

Co-operation and assistance

[^{F1}17A NHS contracts. **S**

- (1) The persons or bodies mentioned in paragraphs (a) to (e) of subsection (2) may, for the purpose of carrying out their functions under any enactment, and without prejudice to any other power they may have in that regard, enter into arrangements for the provision of goods or services to or by them with—
- (a) one another; or
 - (b) any of the persons or bodies mentioned in [^{F2}paragraphs (f) to (q)] of that subsection.
- (2) The persons and bodies referred to in subsection (1) are—
- (a) Health Boards;
 - (b) the Agency;
 - (c) the Scottish Dental Practice Board;
 - (d) a State Hospital Management Committee constituted under section 91 of the ^{M1} Mental Health (Scotland) Act 1984;
 - (e) NHS trusts established under section 12A;
 - (f) health authorities within the meaning of section 128(1) (interpretation) of the ^{M2} National Health Service Act 1977;
 - (g) the Dental Practice Board;
 - (h) the Public Health Laboratory Service Board;
 - (i) Family Health Services Authorities within the meaning of section 10 of the National Health Service Act 1977;

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- (j) recognised fund-holding practices;
 - (k) NHS trusts established under section 5 of the National Health Service and Community Care Act 1990;
 - (l) Health and Social Services Boards constituted under the Health and Personal Social Services (Northern Ireland) Order ^{M3}1972; ^{F3} . . .
 - (m) the Secretary of State.
 - [^{F4}(n) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972;
 - (o) special health and social services agencies established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990;
 - (p) Health and Social Services trusts established under the Health and Personal Social Services (Northern Ireland) Order 1991; and
 - (q) the Department of Health and Social Services for Northern Ireland.]
- (3) In subsection (1)—
- (a) “goods” includes accommodation; and
 - (b) “services” includes services of any description,
- and in this Act an arrangement falling within that subsection is referred to as an “NHS contract”.
- (4) Whether or not an arrangement which constitutes an NHS contract would, apart from this subsection, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities, but if any dispute arises with respect to such an arrangement, either party may refer the matter to the Secretary of State for determination under the following provisions of this section.
- (5) If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to either of the prospective parties that—
- (a) the terms proposed by the other party are unfair by reason that that party is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement; or
 - (b) for any other reason arising out of the relative bargaining positions of the prospective parties any of the terms of the proposed arrangements cannot be agreed.
- that party may refer the terms of the proposed arrangement to the Secretary of State for determination under the following provisions of this section.
- (6) Where a reference is made to the Secretary of State under subsection (4) or (5), the Secretary of State may determine the matter himself or, if he considers it appropriate, appoint a person to consider and determine it in accordance with regulations.
- (7) By his determination of a reference under subsection (5), the Secretary of State or, as the case may be, the person appointed by him under subsection (6) may specify terms to be included in the proposed arrangement and may direct that it be proceeded with; and it shall be the duty of the prospective parties to the proposed arrangement to comply with any such directions.
- (8) A determination of a reference under subsection (4) may contain such directions (including directions as to payment) as the Secretary of State or, as the case may be,

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the person appointed under subsection (6) considers appropriate to resolve the matter in dispute; and it shall be the duty of the parties to the NHS contract in question to comply with any such directions.

(9) Without prejudice to the generality of his powers on a reference under subsection (4), the Secretary of State or, as the case may be, the person appointed by him under subsection (6) may by his determination in relation to an arrangement constituting an NHS contract vary the terms of the arrangement or bring it to an end; and where the arrangement is so varied or brought to an end—

- (a) subject to paragraph (b), the variation or termination shall be treated as being effected by agreement between the parties; and
- (b) directions included in the determination by virtue of subsection (8) may contain such provisions as the Secretary of State or, as the case may be, the person appointed by him under subsection (6) considers appropriate in order satisfactorily to give effect to the variation or to bring the arrangement to an end.

[Where a body mentioned in subsection (2)(1), (n), (o), (p) or (q) is a party or^{F5}(10) prospective party to an arrangement or proposed arrangement which—

- (a) falls within subsection (1); and
- (b) also falls within the definition of HSS contract in Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991,

subsections (4) to (9) shall apply in relation to that arrangement or proposed arrangement with the substitution for references to the Secretary of State of references to the Secretary of State and the Department of Health and Social Services for Northern Ireland acting jointly.]]

Textual Amendments

- F1** Ss. 17A and 17B inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 30; S.I. 1990/1793, art. 2(4), Sch. II
- F2** Words in s. 17A(1)(b) substituted (1.4.1991) by S.I. 1991/195, art. 4(2)
- F3** Word in s. 17A(2) repealed (1.4.1991) by S.I. 1991/195, art. 4(3)
- F4** S. 17A(2)(n)-(q) added (1.4.1991) by S.I. 1991/195, art. 4(3)
- F5** S. 17A(10) added (1.4.1991) by S.I. 1991/195 art. 4(4)

Modifications etc. (not altering text)

- C1** S. 17A applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), Sch. Pt. I (with art. 6)
S. 17A applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), Sch. Pt. I (with art. 6)
- C2** S. 17A applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), Sch. Pt. I

Marginal Citations

- M1** 1984 c.36(85).
- M2** 1977 c.49(113:2).
- M3** S.I. 1972/1265 (N.I. 14).

[^{F6}17A NHS contracts. **S**

(1) The persons or bodies mentioned in paragraphs (a) to (e) of subsection (2) may, for the purpose of carrying out their functions under any enactment, and without prejudice to

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any other power they may have in that regard, enter into arrangements for the provision of goods or services to or by them with—

- (a) one another; or
- (b) any of the persons or bodies mentioned in [^{F7}paragraphs (f) to (g)] of that subsection.

(2) The persons and bodies referred to in subsection (1) are—

- (a) Health Boards;
- (b) the Agency;
- (c) the Scottish Dental Practice Board;
- (d) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act ^{M4}1984;
- (e) NHS trusts established under section 12A;
- (f) health authorities within the meaning of section 128(1) (interpretation) of the ^{M5}National Health Service Act 1977;
- (g) the Dental Practice Board;
- (h) the Public Health Laboratory Service Board;
- (i) Family Health Services Authorities within the meaning of section 10 of the National Health Service Act 1977;
- (j) recognised fund-holding practices;
- (k) NHS trusts established under section 5 of the National Health Service and Community Care Act 1990;
- (l) Health and Social Services Boards constituted under the Health and Personal Social Services (Northern Ireland) Order 1972; ^{F8} . . .
- (m) the Secretary of State.
- ^{F9}(n) [the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972;
- (o) special health and social services agencies established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990;
- (p) Health and Social Services trusts established under the Health and Personal Social Services (Northern Ireland) Order 1991; and
- (q) the Department of Health and Social Services for Northern Ireland.]

(3) In subsection (1)—

- (a) “goods” includes accommodation; and
- (b) “services” includes services of any description,

and in this Act an arrangement falling within that subsection is referred to as an “NHS contract”.

(4) Whether or not an arrangement which constitutes an NHS contract would, apart from this subsection, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities, but if any dispute arises with respect to such an arrangement, either party may refer the matter to the Secretary of State for determination under the following provisions of this section.

(5) If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to either of the prospective parties that—

- (a) the terms proposed by the other party are unfair by reason that that party is seeking to take advantage of its position as the only, or the only practicable,

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provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement; or

- (b) for any other reason arising out of the relative bargaining positions of the prospective parties any of the terms of the proposed arrangements cannot be agreed.

that party may refer the terms of the proposed arrangement to the Secretary of State for determination under the following provisions of this section.

- (6) Where a reference is made to the Secretary of State under subsection (4) or (5), the Secretary of State may determine the matter himself or, if he considers it appropriate, appoint a person to consider and determine it in accordance with regulations.
- (7) By his determination of a reference under subsection (5), the Secretary of State or, as the case may be, the person appointed by him under subsection (6) may specify terms to be included in the proposed arrangement and may direct that it be proceeded with; and it shall be the duty of the prospective parties to the proposed arrangement to comply with any such directions.
- (8) A determination of a reference under subsection (4) may contain such directions (including directions as to payment) as the Secretary of State or, as the case may be, the person appointed under subsection (6) considers appropriate to resolve the matter in dispute; and it shall be the duty of the parties to the NHS contract in question to comply with any such directions.
- (9) Without prejudice to the generality of his powers on a reference under subsection (4), the Secretary of State or, as the case may be, the person appointed by him under subsection (6) may by his determination in relation to an arrangement constituting an NHS contract vary the terms of the arrangement or bring it to an end; and where the arrangement is so varied or brought to an end—
- (a) subject to paragraph (b), the variation or termination shall be treated as being effected by agreement between the parties; and
- (b) directions included in the determination by virtue of subsection (8) may contain such provisions as the Secretary of State or, as the case may be, the person appointed by him under subsection (6) considers appropriate in order satisfactorily to give effect to the variation or to bring the arrangement to an end.

[Where a body mentioned in subsection (2)(1), (n), (o), (p) or (q) is a party or ^{F10}(10) prospective party to an arrangement or proposed arrangement which—

- (a) falls within subsection (1); and
- (b) also falls within the definition of HSS contract in Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991,

subsections (4) to (9) shall apply in relation to that arrangement or proposed arrangement with the substitution for references to the Secretary of State of references to the Secretary of State and the Department of Health and Social Services for Northern Ireland acting jointly.]]

Textual Amendments

F6 Ss. 17A and 17B inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 30

F7 Words in s. 17A(1)(b) substituted (1.4.1991) by [S.I. 1991/195](#), art. 4(2)

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F8 Word in s. 17A(2) repealed (1.4.1991) by S.I. 1991/195, art. 4(3)

F9 S. 17A(2)(n)-(q) added (1.4.1991) by S.I. 1991/195, art. 4(3)

F10 S. 17A(10) added (1.4.1991) by S.I. 1991/195 art. 4(4)

Marginal Citations

M4 1984 c.36(85).

M5 1977 c.49(113:2).

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