



# National Health Service (Wales) Act 2006

## 2006 CHAPTER 42

### PART 1

#### PROMOTION AND PROVISION OF THE HEALTH SERVICE IN WALES

##### *NHS contracts*

#### **7 NHS contracts**

- (1) In this Act, an NHS contract is an arrangement under which one health service body (“the commissioner”) arranges for the provision to it by another health service body (“the provider”) of goods or services which it reasonably requires for the purposes of its functions.
- (2) Section 97(6) (NHS contracts and the provision of local pharmaceutical services under pilot schemes) makes further provision about acting as commissioner for the purposes of subsection (1).
- (3) Paragraph 15 of Schedule 3 (NHS trusts and NHS contracts) makes further provision about an NHS trust acting as provider for the purposes of subsection (1).
- (4) “Health service body” means any of the following—
  - (a) a Strategic Health Authority,
  - (b) a Primary Care Trust,
  - (c) an NHS trust,
  - (d) a Special Health Authority,
  - (e) a Local Health Board,
  - (f) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29),
  - (g) a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)),
  - (h) the Common Services Agency for the Scottish Health Service,
  - (i) the Wales Centre for Health,

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- (j) the Health Protection Agency,
  - (k) the Commission for Healthcare Audit and Inspection,
  - (l) the Scottish Dental Practice Board,
  - (m) the Secretary of State,
  - (n) the Welsh Ministers,
  - (o) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972,
  - (p) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 (S.I. 1990/247 (N.I.3)),
  - (q) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I.1)),
  - (r) the Department of Health, Social Services and Public Safety.
- (5) Whether or not an arrangement which constitutes an NHS contract would apart from this subsection be a contract in law, it must not to be regarded for any purpose as giving rise to contractual rights or liabilities.
- (6) But if any dispute arises with respect to such an arrangement, either party may refer the matter to the Welsh Ministers for determination under this section.
- (7) If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to a health service body—
- (a) that the terms proposed by another health service body are unfair by reason that the other 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) that for any other reason arising out of the relative bargaining position of the prospective parties any of the terms of the proposed arrangement cannot be agreed,
- that health service body may refer the terms of the proposed arrangement to the Welsh Ministers for determination under this section.
- (8) Where a reference is made to the Welsh Ministers under subsection (6) or (7), they may determine the matter themselves or appoint a person to consider and determine it in accordance with regulations.
- (9) “The appropriate person” means the Welsh Ministers or the person appointed under subsection (8).
- (10) By the determination of a reference under subsection (7), the appropriate person may specify terms to be included in the proposed arrangement and may direct that it be proceeded with.
- (11) A determination of a reference under subsection (6) may contain such directions (including directions as to payment) as the appropriate person considers appropriate to resolve the matter in dispute.
- (12) The appropriate person may by the determination in relation to an NHS contract vary the terms of the arrangement or bring it to an end (but this does not affect the generality of the power of determination under subsection (6)).

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- (13) Where an arrangement is so varied or brought to an end—
- (a) subject to paragraph (b), the variation or termination must be treated as being effected by agreement between the parties, and
  - (b) the directions included in the determination by virtue of subsection (11) may contain such provisions as the appropriate person considers appropriate in order to give effect to the variation or to bring the arrangement to an end.

## **8 Provision for bodies in Northern Ireland**

- (1) Subsection (2) applies where a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)) or a body mentioned in paragraph (o), (p), (q) or (r) of section 7(4) is a party or prospective party to an arrangement or proposed arrangement which—
- (a) falls within the definition of NHS contract in section 7(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 (S.I. 1991/194 (N.I.1)).
- (2) Subsections (5) to (13) of section 7 apply in relation to the arrangement or proposed arrangement with the substitution for references to the Welsh Ministers of references to the Welsh Ministers and the Department of Health, Social Services and Public Safety acting jointly.

## **9 Arrangements to be treated as NHS contracts**

- (1) This section applies to any arrangement under which a Local Health Board or such other health service body as may be prescribed arranges for the provision to it—
- (a) by a contractor under a general ophthalmic services contract,
  - (b) by a person on an ophthalmic list,
  - (c) by a person on a pharmaceutical list, or
  - (d) by a person who has entered into a pharmaceutical care services contract under section 17Q of the National Health Service (Scotland) Act 1978 (c. 29),
- of the goods or services mentioned in subsection (2).
- (2) The goods or services are those that the body reasonably requires for the purposes of its functions, other than functions under—
- (a) Part 6 (general ophthalmic services),
  - (b) Chapter 1 or 2 of Part 7 (pharmaceutical services and local pharmaceutical services under pilot schemes), or
  - (c) section 115 of, or Chapter 1 or 2 of Part 7 of, the National Health Service Act 2006 (c. 41) (primary ophthalmic services and pharmaceutical services and local pharmaceutical services under pilot schemes).
- (3) Any such arrangement is to be treated as an NHS contract for the purposes of section 7 (other than subsections (7) and (10)).
- (4) In this section—
- “general ophthalmic services contract” and “contractor” under such a contract have the meanings given by section 117 of the National Health Service Act 2006, “health service body” means a body which is a health service body for the purposes of section 7,

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“ophthalmic list” includes a list published in accordance with regulations made under—

- (a) section 26(2)(a) of the National Health Service (Scotland) Act 1978 (c. 29), or
- (b) Article 62(2)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)), and

“pharmaceutical list” includes a list published in accordance with regulations made under—

- (a) section 129(2)(a) of the National Health Service Act 2006, or
- (b) Article 63(2A)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972.

- (5) The reference to a list published in accordance with regulations made under paragraph (a) of section 26(2) of the National Health Service (Scotland) Act 1978 is a reference to the first part of the list (referred to in sub-paragraph (i) of that paragraph) which is published in accordance with regulations under that paragraph.

**Modifications etc. (not altering text)**

- C1** S. 9 modified (temp.) (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006](#) (c. 43), ss. 5, 8(2), [Sch. 3 paras. 2, 3](#) (with [Sch. 3 Pt. 1](#))

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