

SCHEDULE 1

OTHER CONTRACTUAL TERMS

PART 6

Dispute Resolution

Local resolution of contract disputes

28. In the case of any dispute arising out of or in connection with the contract, the contractor and the PCT 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).

Dispute resolution: non-NHS contracts

29.—(1) In the case of a contract which is not an NHS contract, any dispute arising out of or in connection with the contract, except disputes about matters dealt with under the complaints procedure pursuant to Part 5 of this Schedule, may be referred for consideration and determination to the Secretary of State, if—

- (a) the PCT so wishes and the contractor has agreed in writing; or
 - (b) the contractor so wishes (even if the PCT does not agree).
- (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 (or in a case to which sub-paragraph (1)(b) applies is deemed to agree) to be bound by any determination made by the adjudicator.

NHS dispute resolution procedure

30.—(1) The procedure specified in the following sub-paragraphs and paragraph 31 applies in the case of any dispute arising out of or in connection with the contract which is referred to the Secretary of State—

- (a) in accordance with section 9(6) (where the contract is an NHS contract); or
 - (b) in accordance with paragraph 29 (where the contract is not an NHS contract).
- (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 contract; 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 3 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 a contract which is not an NHS contract, the Secretary of State may determine the matter himself or, if he considers it appropriate, appoint a person or persons to consider and determine it.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(5) Before reaching a decision as to who should determine the dispute, either under sub-paragraph (4) or under section 9(8), the Secretary of State shall, within the period of 7 days, beginning with the date on which the matter was referred to him, 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 the written request for dispute resolution and any accompanying documents.

(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 he decides to appoint a person or persons to hear the dispute—

- (a) notify the parties of the name of the person or persons whom he has appointed; and
- (b) pass to the person or persons so appointed any documents received from the parties under sub-paragraphs (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 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 an invitation 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 he considers that there is good reason for doing so, extend any such period (even after it has expired) and, where he 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 31, 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.

Determination of dispute

31.—(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 a contract referred for determination in accordance with paragraph 30(1), section 9(12) and (13) shall apply as that subsection applies in the case of a contract referred for determination in accordance with section 9(6).

(3) In the case of a contract referred for determination in accordance with paragraph 29(1), section 122(5) (GOS contracts: disputes and enforcement) shall apply as that subsection applies in the case of a contract referred for determination in accordance with section 9.

Interpretation of Part 6

32.—(1) In this Part, reference to any dispute arising out of or in connection with the contract includes any dispute arising out of or in connection with the termination of the contract.

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