

SCHEDULE 3

Other contractual terms

PART 4

Assignment of patients to lists

Assignment to closed lists: NHS dispute resolution procedure relating to determinations of the assessment panel

42.—(1) Where an assessment panel makes a determination under paragraph 41(7)(a) that [F1NHS England] may assign new patients to contractors who have closed their lists of patients, any contractor specified in the determination may refer the matter to the Secretary of State to review that determination.

(2) Where a matter is referred to the Secretary of State under sub-paragraph (1), it must be reviewed in accordance with the procedure specified in the following sub-paragraphs.

(3) Where more than one contractor specified in the determination would like to refer the matter for dispute resolution, those contractors may, if they all agree, refer the matter jointly and, in that case, the Secretary of State must review the matter in relation to those contractors together.

(4) The contractor (or contractors) must send to the Secretary of State, before the end of the period of seven days beginning with the date of the determination of the assessment panel in accordance with paragraph 41(7), a written request for dispute resolution which must include or be accompanied by—

- (a) the names and addresses of the parties to the dispute;
- (b) a copy of the contract (or contracts); and
- (c) a brief statement describing the nature of and circumstances giving rise to the dispute.

(5) The Secretary of State must, before the end of the period of seven days beginning with the date on which the matter was referred to the Secretary of State—

- (a) give notice in writing to the parties that the Secretary of State is dealing with the matter; and
- (b) include with the notice a written request to the parties to make, in writing before the end of a specified period, any representations which those parties would like to make about the dispute.

(6) The Secretary of State must give, with the notice 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 dispute was referred to dispute resolution.

(7) The Secretary of State must, upon receiving any representations from a party—

- (a) give a copy of those representations to each other party; and
- (b) request, in writing, that each party to which a copy of those representations is given makes, before the end of a specified period, any written observations which the party would like to make about those representations.

(8) The Secretary of State may—

- (a) invite representatives of the parties to appear before, and make oral representations to, the Secretary of State 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 the Secretary of State would like them to give special consideration; or

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- (b) consult other persons whose expertise the Secretary of State considers is likely to assist the Secretary of State's consideration of the dispute.
- (9) Where the Secretary of State consults another person under sub-paragraph (8)(b), the Secretary of State must—
 - (a) give notice in writing to that effect to the parties; and
 - (b) where the Secretary of State considers that the interests of any party might be substantially affected by the results of the consultation, give to the parties such opportunity as the Secretary of State considers reasonable in the circumstances to make observations about those results.
- (10) In considering the dispute, the Secretary of State must take into account—
 - (a) any written representations made in response to a request under sub-paragraph (5)(b), but only if those representations are made before the end of the specified period;
 - (b) any written observations made in response to a request under sub-paragraph (7), but only if those written observations are made before the end of the specified period;
 - (c) any oral representations made in response to an invitation under sub-paragraph (8)(a);
 - (d) the results of any consultation under sub-paragraph (8)(b); and
 - (e) any observations made in accordance with an opportunity given under sub-paragraph (9).
- (11) Subject to the other provisions of this paragraph and to any agreement between the parties, the Secretary of State may determine the procedure which is to apply to the dispute resolution in such manner as the Secretary of State considers appropriate in order to ensure the just, expeditious, economical and final determination of the dispute.
- (12) In this paragraph, “specified period” means—
 - (a) such period as the Secretary of State specifies in the request being a period of not less than one week and not more than two weeks beginning with the date on which the notice referred to is given; or
 - (b) such longer period as the Secretary of State may allow for the determination of the dispute where the period for determination of the dispute has been extended in accordance with sub-paragraph (16), and where the Secretary of State does so allow, a reference in this paragraph to the specified period is to the period as so extended.
- (13) Subject to sub-paragraph (16), the Secretary of State must—
 - (a) determine the dispute before the end of the period of 21 days beginning with the date on which the matter was referred to the Secretary of State;
 - (b) determine whether [F1NHS England] may assign new patients to contractors which have closed their lists of patients; and
 - (c) if the Secretary of State determines that [F1NHS England] may assign new patients to such contractors, determine the contractors to which such new patients may be assigned.
- (14) The Secretary of State must not determine that patients may be assigned to a contractor which was not specified in the determination of the assessment panel under paragraph 41(7)(b).
- (15) In the case of a matter referred jointly by contractors in accordance with sub-paragraph (3), the Secretary of State may determine that patients may be assigned to one, some or all of the contractors which referred the matter.
- (16) The period of 21 days referred to in sub-paragraph (13) may be extended (even after it has expired) by a further specified number of days if an agreement to that effect is reached by—
 - (a) the Secretary of State;
 - (b) [F1NHS England]; and

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- (c) the contractor (or contractors) which referred the matter to dispute resolution.
- (17) The Secretary of State must—
- (a) record the determination, and the reasons for it, in writing; and
 - (b) give notice in writing of the determination (including the record of the reasons) to the parties.

Textual Amendments

- F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 3 para. 2(3)(4) inserted by [S.I. 2024/575 Sch. 1 para. 7\(a\)\(ii\)](#)
- Sch. 3 para. 18(3)(3A) substituted for Sch. 3 para. 18(3) by [S.I. 2024/575 Sch. 1 para. 10](#)