

Status: This version of this provision is prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The National Health Service (General Medical Services Contracts) (Wales) Regulations 2023. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

PROSPECTIVE

SCHEDULE 3

Other contractual terms

PART 10

Dispute resolution

NHS dispute resolution procedure

106.—(1) Subject to sub-paragraph (2), the procedure specified in the following sub-paragraphs and paragraph 107 applies in the case of any dispute arising out of or in connection with the contract which is referred to the Welsh Ministers—

- (a) in accordance with section 7(6) of the Act (where the contract is an NHS contract), or
- (b) in accordance with paragraph 105(1) (where the contract is not an NHS contract).

(2) The procedure specified in this paragraph does not apply where a contractor refers a matter for determination in accordance with paragraph 46, and in such a case the procedure specified in that paragraph applies instead.

(3) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send to the Welsh Ministers 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, and
- (c) a brief statement describing the nature of, and circumstances giving rise to, the dispute.

(4) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send the request under sub-paragraph (3) 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.

(5) Where the dispute relates to a contract which is not an NHS contract, the Welsh Ministers may determine the matter themselves or, if the Welsh Ministers consider it appropriate, appoint a person or persons to consider and determine it.

(6) Before reaching a decision as to who should determine the dispute, either under sub-paragraph (5) or under section 7(8) of the Act, the Welsh Ministers must, within the period of 7 days beginning with the date on which a matter under dispute was referred to it, 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 under dispute.

(7) The Welsh Ministers must give, with the notice given under sub-paragraph (6), 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.

(8) The Welsh Ministers must give a copy of any representation received from a party to the other party and must 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.

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(9) 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 (6) or (8), the Welsh Ministers must, if they decide 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 it has appointed, and
- (b) pass to the person or persons so appointed any documents received from the parties under or pursuant to sub-paragraph (3), (6) or (8).

(10) For the purpose of assisting the adjudicator in the consideration of the matter, the adjudicator may—

- (a) invite representatives of the parties to appear before the adjudicator 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 the adjudicator wishes them to give special consideration, or
- (b) consult other persons whose expertise the adjudicator considers can assist in the consideration of the matter.

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

(12) In considering the matter, the adjudicator must consider—

- (a) any written representations made in response to a request under sub-paragraph (6), but only if they are made within the specified period,
- (b) any written observations made in response to a request under sub-paragraph (8), but only if they are made within the specified period,
- (c) any oral representations made in response to an invitation under sub-paragraph (10)(a),
- (d) the results of any consultation under sub-paragraph (10)(b), and
- (e) any observations made in accordance with an opportunity given under sub-paragraph (11).

(13) In this paragraph, “specified period” means such period as the Welsh Ministers specify in the request, being not less than 2, nor more than 4, weeks beginning with the date on which the notice referred to is given, but the Welsh Ministers may, if they consider that there is good reason for doing so, extend any such period (even after it has expired) and, where they do so, a reference in this paragraph to the specified period is to the period as so extended.

(14) Subject to the other provisions of this paragraph and paragraph 107 and to any agreement by the parties, the adjudicator has wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.

Commencement Information

II Sch. 3 para. 106 in force at 1.10.2023, see [reg. 1\(2\)](#)

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Changes and effects yet to be applied to :

- Sch. 3 para. 106 coming into force by [S.I. 2023/953 reg. 1\(2\)](#)
- Sch. 3 para. 106(9) comma inserted by [S.I. 2023/1421 reg. 18\(ii\)\(i\)](#)
- Sch. 3 para. 106(13) full stop inserted by [S.I. 2023/1421 reg. 18\(ii\)\(ii\)](#)

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. 16(3) inserted by [S.I. 2023/1421 reg. 18\(b\)](#)
- Sch. 5 para. 2(2)(a)(iv)(aa) omitted by [S.I. 2023/1421 reg. 20\(d\)](#)
- Sch. 5 para. 2(2)(a)(i)(aa) word substituted by [S.I. 2023/1421 reg. 20\(c\)](#)