

SCHEDULE 5

OTHER CONTRACTUAL TERMS

PART 7

DISPUTE RESOLUTION

Local resolution of contract disputes

91.—(1) Subject to sub-paragraph (3), in the case of any dispute arising out of or in connection with the contract, the contractor and the Board 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 dispute resolution procedure (or, where applicable, before commencing court proceedings).

(2) Either the contractor or the Board may, if it wishes to do so, invite the Local Medical Committee for the area of the Board to participate in discussions which take place pursuant to sub-paragraph (1).

(3) In the case of a dispute which falls to be dealt with under the procedure specified in paragraph 36, sub-paragraph (1) does not apply where it is not practicable for the parties to attempt local resolution before the expiry of the period specified in paragraph 36(4).

Dispute resolution: non-HSS contracts

92.—(1) In the case of a contract which is not an HSS contract, any dispute arising out of or in connection with the contract, except matters dealt with under the complaints procedure pursuant to Part 6, may be referred for consideration and determination to the Department, if –

- (a) the Board so wishes and the contractor has agreed in writing; or
- (b) the contractor so wishes (even if the Board does not agree).

(2) In the case of a dispute referred to the Department under sub-paragraph (1) –

- (a) the procedure to be followed is the dispute resolution procedure; and
- (b) the parties agree to be bound by any determination made by the adjudicator.

Dispute resolution procedure

93.—(1) Subject to sub-paragraph (2), the procedure specified in the following sub-paragraphs and paragraph 94 applies in the case of any dispute arising out of or in connection with the contract which is referred to the Department –

- (a) in accordance with Article 8(4) of the 1991 Order (where the contract is a HSS contract); or
- (b) in accordance with paragraph 92(1) (where the contract is not a HSS contract).

(2) The procedure specified in this paragraph and paragraph 94 does not apply where a contractor refers a matter for determination in accordance with paragraph 36(1), and in such a case the procedure specified in that paragraph shall apply instead.

(3) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) shall send to the Department 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.

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(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 three years beginning with and including 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 a HSS contract, the Department may determine the matter itself or, if it considers it appropriate, appoint a person to consider and determine it⁽¹⁾.

(6) Before reaching a decision as to who should determine the dispute, either under sub-paragraph (5) or under Article 8(5) of the 1991 Order, the Department shall, within the period of 7 days beginning with and including the date on which a matter 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.

(7) The Department shall 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 Department 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.

(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 Department shall, if it decides to appoint a person to hear the dispute –

- (a) inform the parties in writing 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 or pursuant to paragraphs (3), (6) or (8).

(10) 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.

(11) Where the adjudicator consults another person under sub-paragraph (10)(b), he shall notify the parties accordingly in writing 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.

(12) In considering the matter, the adjudicator shall 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).

(1) Where the dispute relates to a contract which is a HSS contract, Article 8(4) of the 1991 Order applies

(13) In this paragraph, “specified period” means such period as the Department shall specify in the request, being not less than 2, nor more than 4, weeks beginning with and including the date on which the notice referred to is given, but the Department may, if it considers that there is good reason for doing so, extend any such period (even after it has expired) and, where it does 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 94 and to any agreement by the parties, 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

94.—(1) The adjudicator shall record his determination and the reasons for it, in writing and shall give notice of the determination (including the record of the reasons) to the parties.

(2) In the case of a contract referred for determination in accordance with paragraph 92(1), sub-paragraph (9) of Article 8 of the 1991 Order shall apply as that sub-paragraph applies in the case of a contract referred for determination in accordance with sub-paragraph (4) of Article 8 of that Order.

(3) In the case of a contract referred for determination in accordance with paragraph 92(1), sub-paragraph (5) of Article 57F of the Order shall apply as that subparagraph applies in the case of a contract referred for determination in accordance with sub-paragraph (4) of Article 8 of the 1991 Order.

Interpretation of Part 7

95.—(1) In this Part, “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.