



# National Health Service and Community Care Act 1990

## 1990 CHAPTER 19

### PART I

#### THE NATIONAL HEALTH SERVICE: ENGLAND AND WALES

##### *Local management*

#### **4 NHS contracts**

- (1) In this Act the expression “NHS contract” means an arrangement under which one health service body (“the acquirer”) 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) In this section “health service body” means any of the following, namely,—
  - (a) a health authority;
  - (b) a health board;
  - (c) the Common Services Agency for the Scottish Health Service;
  - (d) a Family Health Services Authority;
  - (e) an NHS trust;
  - (f) a recognised fund-holding practice;
  - (g) the Dental Practice Board or the Scottish Dental Practice Board;
  - (h) the Public Health Laboratory Service Board; and
  - (i) the Secretary of State.
- (3) Whether or not an arrangement which constitutes an NHS contract would, apart from this subsection, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities, but if any dispute arises with respect to such an arrangement, either party may refer the matter to the Secretary of State for determination under the following provisions of this section.

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*Status: This is the original version (as it was originally enacted).*

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- (4) 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 Secretary of State for determination under the following provisions of this section.
- (5) Where a reference is made to the Secretary of State under subsection (3) or subsection (4) above, the Secretary of State may determine the matter himself or, if he considers it appropriate, appoint a person to consider and determine it in accordance with regulations.
- (6) By his determination of a reference under subsection (4) above, the Secretary of State or, as the case may be, the person appointed under subsection (5) above may specify terms to be included in the proposed arrangement and may direct that it be proceeded with; and it shall be the duty of the prospective parties to the proposed arrangement to comply with any such directions.
- (7) A determination of a reference under subsection (3) above may contain such directions (including directions as to payment) as the Secretary of State or, as the case may be, the person appointed under subsection (5) above considers appropriate to resolve the matter in dispute; and it shall be the duty of the parties to the NHS contract in question to comply with any such directions.
- (8) Without prejudice to the generality of his powers on a reference under subsection (3) above, the Secretary of State or, as the case may be, the person appointed under subsection (5) above may by his determination in relation to an arrangement constituting an NHS contract vary the terms of the arrangement or bring it to an end; and where an arrangement is so varied or brought to an end—
- (a) subject to paragraph (b) below, the variation or termination shall be treated as being effected by agreement between the parties; and
  - (b) the directions included in the determination by virtue of subsection (7) above may contain such provisions as the Secretary of State or, as the case may be, the person appointed under subsection (5) above considers appropriate in order satisfactorily to give effect to the variation or to bring the arrangement to an end.
- (9) In subsection (2) above “NHS trust” includes—
- (a) such a trust established under the National Health Service (Scotland) Act 1978; and
  - (b) a body established in Northern Ireland and specified by an order made by statutory instrument by the Secretary of State as equivalent to an NHS trust established under this Part of this Act.