



Health and Social Care Act 2001

2001 CHAPTER 15

PART 1

NATIONAL HEALTH SERVICE

The Family Health Services Appeal Authority

27 The Family Health Services Appeal Authority

- (1) After section 49R of the 1977 Act (which is inserted by section 25 of this Act) there shall be inserted—

“The Family Health Services Appeal Authority

49S The Family Health Services Appeal Authority

- (1) There shall be a body to be known as the Family Health Services Appeal Authority (“FHSAA”).
- (2) The FHSAA shall be constituted in accordance with Schedule 9A to this Act, which also makes other provision in relation to the FHSAA.
- (3) The FHSAA shall have such functions as are conferred on it by this Act or by any other enactment.
- (4) The Secretary of State may direct the FHSAA to exercise any of his functions relating to the determination of appeals to him which are specified in the directions.
- (5) Directions under subsection (4) shall be given by regulations or by an instrument in writing.
- (6) The Secretary of State may make available to the FHSAA any facilities (including the use of any premises) provided by him or by a Special Health Authority or NHS trust for any service under this Act, and the services of

persons employed by the Secretary of State or by a Special Health Authority or NHS trust.

(7) Subsections (1) to (3) of section 27 above apply in relation to the services of persons employed by a Special Health Authority and made available under subsection (6) as they apply in relation to the services of officers of Special Health Authorities to be made available under section 26 above.

(8) For the purposes of subsection (6)—

(a) the Secretary of State may give directions to an NHS trust requiring it to make facilities or the services of persons available as mentioned there; but

(b) subsections (1) and (2) of section 27 above apply in relation to the services of such persons as they apply in relation to the services of officers to be made available by virtue of section 26 above by a Health Authority, Special Health Authority or Primary Care Trust.”

(2) In section 102 of the 1977 Act (allowances and remuneration for members of certain bodies), in each of subsections (1)(a)(v) and (2)(d), for “the Tribunal constituted under section 46 above” there shall be substituted “the FHSAA”.

(3) In section 128(1) of the 1977 Act (interpretation), in the appropriate place there shall be inserted—

““the FHSAA” means the Family Health Services Appeal Authority;”.

(4) Before Schedule 10 to the 1977 Act there shall be inserted—

“SCHEDULE 9A

THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Constitution

1 The Family Health Services Appeal Authority (“the FHSAA”) shall consist of—

- (a) a President;
- (b) one or more Deputy Presidents; and
- (c) a number of other members,

all appointed by the Lord Chancellor on terms to be determined by him.

2 The number of the other members shall be determined by the Lord Chancellor after consulting the Secretary of State.

3 A person appointed as the President shall have a 10 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)), and a person appointed as a Deputy President shall have a 7 year general qualification.

4 The qualifications which the other members must have in order to be eligible for appointment shall be determined by the Lord Chancellor.

5 Each person appointed under paragraph 1—

- (a) shall hold and vacate office in accordance with the terms of his appointment; and

- (b) may be removed from office by the Lord Chancellor on grounds of incapacity or misbehaviour.
- 6 The other members must include at least one—
- (a) medical practitioner providing general medical services, or performing personal medical services under section 28C arrangements;
 - (b) dental practitioner providing general dental services, or performing personal dental services under section 28C arrangements;
 - (c) ophthalmic optician or medical practitioner providing general ophthalmic services; and
 - (d) registered pharmacist providing pharmaceutical services or local pharmaceutical services (whether under this Act or under a pilot scheme made under section 28 of the Health and Social Care Act 2001),

and must also include such number of persons with a 7 year general qualification (construed as in paragraph 3) as the Lord Chancellor considers appropriate bearing in mind the requirements of paragraph 9, and a number of lay persons who do not fall within paragraphs (a) to (d) and who possess such qualifications and experience as the Lord Chancellor considers appropriate.

Procedure

- 7 The procedure of the FHSAA shall be as it determines, subject to the following.
- 8 The functions of the FHSAA shall be exercised by panels consisting—
- (a) in the case of functions referred to in section 49S(4) above, of such one or more members as the President may choose; and
 - (b) in the case of other functions, of three members chosen by the President,
- and, in either case, the President may include himself (or, in the case of a one-member panel, may constitute the panel).
- 9 Subject to paragraph 10, at least one member of each panel (or, in the case of a one-member panel, that member) must have a 7 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)).
- 10 In the case of a panel constituted for the purposes of section 49M or 49N above, one member of the panel must have the qualification mentioned in paragraph 9, and (unless the President decides otherwise)—
- (a) if the practitioner provides general medical services, one member of the panel must fall within paragraph 6(a), and so on as respects a practitioner who provides one of the other services referred to in section 49F(1); and
 - (b) the third member must neither fall within any of sub-paragraphs (a) to (d) of paragraph 6 nor have a legal qualification.
- 11 Where a panel has more than one member—
- (a) the President shall nominate one of the members as chairman,

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

- (b) decisions shall be taken by a majority of votes, and
 - (c) if there is a tie the chairman shall have a second vote as a casting vote.
- 12 The FHSAA shall—
- (a) give notice of a panel’s decision and of the reasons for it to each party to the proceedings; and
 - (b) publish each decision of a panel falling within paragraph 13 in such way as the FHSAA considers appropriate;
- and it may send a copy of any such decision to such prescribed persons or persons of prescribed descriptions as it considers appropriate, together with any information relevant to the decision which the FHSAA considers it appropriate to include.
- 13 The following decisions fall within this paragraph—
- (a) a decision on national disqualification (see section 49N above);
 - (b) a decision to allow an appeal brought by virtue of section 49M(2) (a), (b) or (c) above; and
 - (c) such other decisions as may be prescribed.
- 14 The FHSAA may publish a decision not falling within paragraph 13 if it considers it appropriate to do so.
- 15 The Lord Chancellor may make rules as to—
- (a) the composition of panels,
 - (b) the allocation to panels of cases, or of particular proceedings in any case, and
 - (c) the procedure to be followed by a panel in considering any matter before it.
- 16 The Lord Chancellor shall make rules—
- (a) giving each party to proceedings before a panel the opportunity of putting his case at a hearing,
 - (b) entitling each party to be legally represented at any hearing (whether it is held at the instance of the panel or of a party), and
 - (c) securing that any hearing is held in public unless the practitioner asks for it to be in private (a request which the panel must consider but need not grant).
- 17 Rules under this Schedule may, in particular, make provision—
- (a) as to the carrying out by a Deputy President of functions of the President,
 - (b) as to how, and as to the time within which, an application to the FHSAA is to be made, or an appeal to the FHSAA is to be brought (so far as the matter is not provided for in or by virtue of this or any other Act),
 - (c) for a period which must elapse before an application, or a further application, may be made under section 49M(5)(a) above,
 - (d) as to the matters referred to in paragraph 12,
 - (e) for the giving by the panel of directions to the parties as to the conduct of the case, and for the consequences of failure to comply with such directions (which may include allowing or dismissing

- the appeal or application if the failure to comply was without reasonable excuse);
- (f) empowering a panel to require persons to attend and give evidence or produce documents,
 - (g) about the admissibility of evidence, and
 - (h) enabling the panel to administer oaths.
- 18 No person shall be required by virtue of any such rules to give any evidence or produce any document or other material which he could not be compelled to give or produce in civil proceedings in a court in England and Wales.

Miscellaneous

- 19 (1) The President must, in respect of each period of 12 months beginning on 1st April, prepare a written report about the FHSAA's activities during that period.
- (2) He must send a copy of the report to the Lord Chancellor, the Secretary of State and the National Assembly for Wales.
- (3) After consulting the Lord Chancellor and the National Assembly for Wales, the Secretary of State may give directions to the President as to subjects with which the report must deal.
- 20 The President must arrange such training for himself and the other members of the FHSAA as he considers appropriate.

Interpretation

- 21 In this Schedule—
- “practitioner” means the person whose case is before the FHSAA;
 - “prescribed” means prescribed by the Lord Chancellor in rules.”
- (5) In the National Health Service (Primary Care) Act 1997 (c. 46)—
- (a) in section 22 (supplementary regulations about personal medical or dental services), in the section 28E to be inserted into the 1977 Act, in subsection (7) (e), for “Tribunal constituted under section 46” there shall be substituted “Family Health Services Appeal Authority constituted under section 49S”; and
 - (b) in Schedule 1 (preferential treatment on transferring to medical lists), in paragraph 9(a), for “Tribunal constituted under section 46” there shall be substituted “Family Health Services Appeal Authority constituted under section 49S”.