
STATUTORY INSTRUMENTS

1991 No. 725

**NATIONAL HEALTH SERVICE
ENGLAND AND WALES**

**The National Health Service Contracts
(Dispute Resolution) Regulations 1991**

<i>Made</i>	- - - -	<i>19th March 1991</i>
<i>Laid before Parliament</i>		<i>16th October 1991</i>
<i>Coming into force</i>	- -	<i>15th April 1991</i>

The Secretary of State for Health, in exercise of powers conferred by sections 126(4) and 128(1) of the National Health Service Act 1977(1) and section 4(5) of the National Health Service and Community Care Act 1990(2) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service Contracts (Dispute Resolution) Regulations 1991 and shall come into force on 15th April 1991.

(2) In these Regulations, unless the context otherwise requires—

“the Act” means the National Health Service and Community Care Act 1990;

“adjudicator” means a person appointed under section 4(5) of the Act;

“party” means—

(a) in relation to a reference under section 4(3) of the Act, a party to the NHS contract to which the reference relates, and

(b) in relation to a reference under section 4(4) of the Act, a health service body which is a prospective party to the proposed NHS contract to which the reference relates;

“relevant Regional Authority” means, in relation to a party which is—

(a) a District Health Authority in England, the Regional Health Authority whose region includes the district of that District Health Authority,

(1) 1977 c. 49. Sections 126(4) and 128(1) were amended by the National Health Service and Community Care Act 1990 (c. 19), sections 65(2) and 26(2) respectively. Section 128(1) is cited for the definition of “regulations”.

(2) 1990 c. 19. Section 4 was amended by Article 7(3), (4) and (5) of the Health and Personal Social Services (Northern Ireland Consequential Amendments) Order 1991 (S.I.1991/195).

- (b) a Family Health Services Authority, the Regional Health Authority in whose region lies the whole or the greater part of the Family Health Service Authority's locality,
- (c) an NHS trust, the Regional Health Authority which is the relevant Regional Health Authority determined in accordance with section 5(4)(a) of the Act,
- (d) a recognised fund-holding practice, the Regional Health Authority which is the relevant Regional Health Authority determined in accordance with section 14 of the Act,

being in each case a Regional Health Authority which is not a party.

- (3) Any notice or other document required or authorised to be given under these Regulations—
 - (a) to a health service body other than a recognised fund-holding practice may be given by delivering it to the principal office of that body, or by sending it by post in a pre-paid envelope addressed to that body at its principal office;
 - (b) to a recognised fund-holding practice may be given by delivering it to the address given as that of any of the members of the practice in the medical list in which he is included or by sending it by post in a prepaid envelope addressed to any of the members of the practice at the address given as his address in the medical list in which he is included.

(4) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation is to the regulation bearing that number in these Regulations, and any reference in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation.

Representations and consideration

2.—(1) Within the period of seven days beginning with the date of his appointment to consider and determine a matter, the adjudicator shall—

- (a) give notice of his appointment to the parties and to each (if any), relevant Regional Authority;
- (b) request the parties, each (if any) relevant Regional Authority and (whether or not he is a party) the Secretary of State to make any representations which they wish to make about the matter within a specified period.

(2) The adjudicator shall give, with the notice given under paragraph (1) to those other than the health service body which referred the matter to the Secretary of State, a copy of any document by which the matter was referred under section 4(3) or section 4(4) of the Act.

(3) The adjudicator shall forthwith upon receiving any representations—

- (a) from a relevant Regional Authority or the Secretary of State (where he is not a party), give copies of them to the parties;
- (b) from a party, give a copy of them to the other party,

and shall in each case request a party to whom a copy of the representations is given to make any written observations which it wishes to make on those representations within a specified period.

(4) 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 or to make oral representations either together or, with the agreement of the parties, separately;
- (b) consult other persons whose expertise he considers will assist him in his consideration of the matter, provided that he notifies the parties accordingly and, where he considers that the interests of a party might be substantially affected by the result of the consultation, that he gives to the parties such opportunity as he considers reasonable in the circumstances to make observations on those results.

(5) In considering the matter, the adjudicator shall consider—

- (a) any written representations made in response to a request under paragraph (1)(b), but only if they are made within the specified period;
 - (b) any written observations made in response to a request under paragraph (3), but only if they are made within the specified period;
 - (c) any oral representations made in response to an invitation under paragraph (4)(a);
 - (d) the results of any consultation under, and any observations made under, paragraph (4)(b).
- (6) In this regulation, “specified period” means—
- (a) in relation to a request under paragraph (1)(b), such period as the adjudicator shall specify in accordance with paragraph (7), being not less than two, nor more than four, weeks from the date on which the notice referred to in paragraph (1)(a) was given;
 - (b) in relation to a request under paragraph (3), such period as the adjudicator shall specify being not less than two weeks from the date on which copies of the representations are given,

but the adjudicator may, if he considers that there is good reason for doing so, extend any such period (even after it has expired) and, where he does so, a reference in this regulation to the specified period is to the period as so extended.

(7) In specifying a period for the purposes of paragraph (1)(b) for a relevant Regional Authority or the Secretary of State, the adjudicator shall seek to ensure, so far as is reasonably practicable, that the period will be such as to permit observations made by a party under paragraph (3) on those representations to be made within the period specified for the party under paragraph (1)(b).

(8) Where a party is situated in Northern Ireland, the references in paragraphs (1), (3)(a) and (7) to the Secretary of State shall be taken to include references to the Department of Health and Social Services for Northern Ireland as well as to the Secretary of State.

Recording of Determination

3. 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)—

- (a) to the parties;
- (b) to any relevant Regional Authority;
- (c) to the Secretary of State and, where one of the parties is situated in Northern Ireland, to the Department of Health and Social Services for Northern Ireland.

19th March 1991

William Waldegrave
Secretary of State for Health

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the procedure to be followed when the Secretary of State appoints a person to consider and determine a dispute between health service bodies.

Section 4(3) of the National Health Service and Community Care Act 1990 provides that an arrangement between health service bodies which constitutes an NHS contract shall not give rise to contractual rights and liabilities but that a dispute which arises with respect to such an arrangement may be referred to the Secretary of State for determination. Section 4(4) of that Act makes similar provision for a situation where health service bodies are negotiating a proposed NHS contract. The Secretary of State may determine both types of reference himself or appoint a person to consider and determine them in accordance with regulations.

The Regulations make provision for the person appointed to give both parties to the dispute, and the Secretary of State and relevant Regional Health Authorities, an opportunity to make written representations (regulation 2(1)). The person appointed may invite the parties to make oral representations and may consult experts (regulation 2(4)). There are time limits for the various stages of the dispute resolution procedure (regulation 2(6) and (7)). Regulation 3 makes provision for the adjudicator to record his determination in writing, give reasons for his determination and send it and the reason for it to the parties, the relevant Regional Health Authority and the Secretary of State.