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STATUTORY INSTRUMENTS

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**1996 No. 623**

**NATIONAL HEALTH SERVICE,  
ENGLAND AND WALES**

**The National Health Service Contracts  
(Dispute Resolution) Regulations 1996**

<i>Made</i>	- - - -	<i>6th March 1996</i>
<i>Laid before Parliament</i>		<i>7th March 1996</i>
<i>Coming into force</i>	- -	<i>1st April 1996</i>

The Secretary of State for Health, in exercise of powers conferred on him 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 1996 and shall come into force on 1st April 1996.

(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(3) which is a prospective party to the proposed NHS contract to which the reference relates.

(3) Any notice or other document required or authorised to be given under these Regulations—

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(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 is 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) and paragraph 68 of Schedule 1 to the Health Authorities Act 1995 (c. 17).

(3) See paragraph 68 of Schedule 1 to the Health Authorities Act 1995 (c. 17) which amends the definition of “health service body” in section 4(2) of the Act, with effect from 1st April 1996.

- (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 any medical list in which he is included or by sending it by post in a pre-paid envelope addressed to any of the members of the practice at the address given as his address in any medical list in which he is included.

(4) In these Regulations, unless the context otherwise requires, any reference 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 to the parties notice in writing of his appointment
- (b) include with the notice 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; and
- (c) where he is not a party, make in writing the same request of the Secretary of State.

(2) The adjudicator shall make any request to the Secretary of State under paragraph (1)(c) on the same day as the day on which the notice referred to in paragraph (1)(a) is given.

(3) The adjudicator shall give, with the notice given under paragraph (1) to each party 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.

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

- (a) from the Secretary of State (where he is not a party), give a copy of them to each of the parties;
- (b) from a party, give a copy of them 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.

(5) 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;
- (b) consult other persons whose expertise he considers will assist him in his consideration of the matter.

(6) Where the adjudicator consults another person under paragraph (5)(b), he shall notify the parties accordingly 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.

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

- (a) any written representations made in response to a request under paragraph (1)(b) and (c), but only if they are made within the specified period;
- (b) any written observations made in response to a request under paragraph (4), but only if they are made within the specified period;
- (c) any oral representations made in response to an invitation under paragraph (5)(a);

- (d) the results of any consultation under paragraph (5)(b); and
  - (e) any observations made in accordance with an opportunity given under paragraph (6).
- (8) In this regulation, “specified period” means—
- (a) in relation to a request under paragraph (1)(b) or (c), such period as the adjudicator shall specify in the request in accordance with paragraph (9), being not less than two, nor more than four, weeks from the date on which the notice referred to in paragraph (1)(a) is given;
  - (b) in relation to a request under paragraph (4), such period as the adjudicator shall specify in the request, 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.

(9) In specifying a period for the purposes of paragraph (1)(c) for 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 (4) on those representations to be made within the period specified for the party under paragraph (1)(b).

(10) Where a party is situated in Northern Ireland, the references in paragraphs (1), (2), (4)(a) and (9) 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 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.

### **Revocation**

4. The National Health Service Contracts (Dispute Resolution) Regulations 1991(4) are hereby revoked.

Signed by authority of the Secretary of State for Health

6th March 1996

*Gerald Malone*  
Minister of State,  
Department of Health

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

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the procedure to be followed where the Secretary of State has appointed a person to consider and determine a dispute between health service bodies regarding an NHS contract or the proposed terms of such a contract. The Regulations supersede earlier regulations governing the determination of such disputes, in the light of the changes made to health service bodies by the Health Authorities Act 1995.

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 the matter in accordance with regulations.

The Regulations make provision for the person appointed to give both parties to the dispute and the Secretary of State an opportunity to make written representations (regulation 2(1)). The person appointed may invite parties to make oral representations and may consult experts (regulation 2(5)). There are time limits for the various stages of the dispute resolution procedure (regulation 2(8) and (9)). 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 and the Secretary of State.

Regulation 4 revokes the instrument which these Regulations replace.