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STATUTORY INSTRUMENTS

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**2010 No. 76**

**NATIONAL HEALTH SERVICE, ENGLAND**

The National Health Service (Functions of the  
First-tier Tribunal relating to Primary Medical,  
Dental and Ophthalmic Services) Regulations 2010

<i>Made</i>	- - - -	<i>15th January 2010</i>
<i>Laid before Parliament</i>		<i>20th January 2010</i>
<i>Coming into force</i>	- -	<i>11th February 2010</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 169(3), 272(7) and 273(4) of the National Health Service Act 2006(1).

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the National Health Service (Functions of the First-tier Tribunal relating to Primary Medical, Dental and Ophthalmic Services) Regulations 2010 and come into force on 11th February 2010.

(2) These Regulations apply in relation to England.

**Interpretation**

2. In these Regulations—

“the Act” means the National Health Service Act 2006;

“contractor”, in the case of a—

- (a) GDS contract, GMS contract or GOS contract, means a party to the contract other than a Primary Care Trust; or
- (b) PDS agreement or PMS agreement, means the party to the agreement who is providing services under that agreement (and so in the case of an agreement between a Primary Care Trust and a Strategic Health Authority, the Primary Care Trust);

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(1) 2006 c. 41. Section 169 is amended by paragraph 121 of Schedule 2 to the Transfer of Tribunal Functions Order 2010 (S.I. 2010/22). Section 273(4) is amended by paragraph 126 of Schedule 2 to that Order. See section 275(1) of the Act, as amended by paragraph 127 of Schedule 2 to that Order, for the definition of “regulations” which is relevant to the powers being exercised.

“GDS contract” means a general dental services contract within the meaning of section 100 of the Act;

“GDS Contracts Regulations” means the National Health Service (General Dental Services Contracts) Regulations 2005(2);

“GMS contract” means a general medical services contract within the meaning of section 84 of the Act;

“GMS Contracts Regulations” means the National Health Service (General Medical Services Contracts) Regulations 2004(3);

“GOS contract” means a general ophthalmic services contract within the meaning of section 117 of the Act;

“GOS Contracts Regulations” means the General Ophthalmic Services Contracts Regulations 2008(4);

“PDS agreement” means a dental services agreement made under section 107 of the Act;

“PDS Agreements Regulations” means the National Health Service (Personal Dental Services Agreements) Regulations 2005(5);

“PMS agreement” means an agreement for primary medical services made under section 92 of the Act;

“PMS Agreements Regulations” means the National Health Service (Personal Medical Services Agreements) Regulations 2004(6); and

“relevant body”, in the case of a PDS agreement or a PMS agreement—

- (a) between a Primary Care Trust and any person other than a Strategic Health Authority, means the Primary Care Trust; or
- (b) between a Primary Care Trust and a Strategic Health Authority, means the Strategic Health Authority.

### **Directions in respect of GMS contract disputes**

3.—(1) The Secretary of State directs the First-tier Tribunal to exercise the functions of the Secretary of State under paragraphs 101 and 102 of Schedule 6 to the GMS Contracts Regulations (dispute resolution) referred to in paragraph (2).

(2) The functions are those in respect of any dispute (or part of a dispute) between the parties to a GMS contract that relate to a term of the contract that gives effect to any of the following provisions in Schedule 6 to the GMS Contracts Regulations—

- (a) paragraph 111 (termination by the Primary Care Trust for breach of conditions in regulation 4), but only in so far as the dispute requires a determination as to whether—
  - (i) an individual medical practitioner no longer satisfies the condition specified in regulation 4(1) of those Regulations,
  - (ii) in the case of a partnership, a partner no longer satisfies the condition in regulation 4(2)(a) of those Regulations, or
  - (iii) in the case of a company, a shareholder no longer satisfies the condition in regulation 4(3)(a) of those Regulations;

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(2) S.I. 2005/3361.

(3) S.I. 2004/291. Relevant amendments were made by S.I. 2004/2694, 2005/893 and 2007/3491.

(4) S.I. 2008/1185.

(5) S.I. 2005/3373. A relevant amendment was made by S.I. 2006/563.

(6) S.I. 2004/627. Relevant amendments were made by S.I. 2004/2694, 2005/893 and 2007/3491.

- (b) paragraph 112 (termination by the Primary Care Trust for the provision of untrue etc. information), but only in so far as the dispute requires a determination as to whether written information provided to the Primary Care Trust by the contractor before the contract was entered into was, when given, untrue or inaccurate in a material respect; or
- (c) paragraph 113 (termination by the Primary Care Trust on other grounds), but only in so far as the dispute requires a determination in respect of—
  - (i) whether any of the persons specified in paragraph 113(1) falls within paragraph 113(2) during the existence of the contract, or
  - (ii) any dispute relating to a decision taken by a Primary Care Trust in accordance with paragraph 113(3) to (5).

#### **Directions in respect of PMS agreement disputes**

4.—(1) The Secretary of State directs the First-tier Tribunal to exercise the functions of the Secretary of State under paragraphs 95 and 96 of Schedule 5 to the PMS Agreements Regulations (dispute resolution) referred to in paragraph (2).

(2) The functions are those in respect of any dispute (or part of a dispute) between the parties to a PMS agreement that relate to a term of the agreement that gives effect to any of the following provisions in Schedule 5 to the PMS Agreements Regulations—

- (a) paragraph 104 (termination by the relevant body for the provision of untrue etc. information), but only in so far as the dispute requires a determination as to whether written information provided to the relevant body by the contractor before the agreement was entered into was, when given, untrue or inaccurate in a material respect; or
- (b) paragraph 105 (termination by the relevant body on fitness grounds), but only in so far as the dispute requires a determination in respect of—
  - (i) whether any of the persons specified in paragraph 105(1) or (2) falls within paragraph 105(3) during the existence of the agreement, or
  - (ii) any dispute relating to a decision taken by a relevant body in accordance with paragraph 105(4) to (6).

#### **Directions in respect of GDS contract disputes**

5.—(1) The Secretary of State directs the First-tier Tribunal to exercise the functions of the Secretary of State under paragraphs 55 and 56 of Schedule 3 to the GDS Contracts Regulations (dispute resolution) referred to in paragraph (2).

(2) The functions are those in respect of any dispute (or part of a dispute) between the parties to a GDS contract that relate to a term of the contract that gives effect to any of the following provisions in Schedule 3 to the GDS Contracts Regulations—

- (a) paragraph 69 of Schedule 3 (termination by the Primary Care Trust: no longer eligible to enter into and breach of conditions of the contract), but only in so far as the dispute requires a determination as to whether—
  - (i) a contractor is or is not a dental practitioner for the purposes of continuing eligibility under section 102(1)(a) of the Act,
  - (ii) in the case of a partnership, a partner is no longer a person specified in section 102(2) (a) of the Act for the purposes of establishing continuing eligibility in accordance with section 102(1)(c) of the Act, or
  - (iii) a contractor satisfies the condition in section 102(1)(b) of the Act for the purposes of establishing continuing eligibility in accordance with section 102 of the Act,

- and including, in relation to a dispute falling within paragraphs (i) or (ii), as to whether the contractor is no longer a dental practitioner or no longer satisfies the condition in section 102(2)(a) by virtue of a suspension falling within paragraph 69(6) of Schedule 3;
- (b) paragraph 70 (termination by the Primary Care Trust for the provision of untrue etc. information), but only in so far as the dispute requires a determination as to whether written information provided to the Primary Care Trust by the contractor before the contract was entered into was, when given, untrue or inaccurate in a material respect; or
  - (c) paragraph 71 (termination by the Primary Care Trust on grounds of suitability etc.), but only in so far as it requires a determination in respect of—
    - (i) whether any of the persons specified in paragraph 71(1) falls within paragraph 71(2) during the existence of the contract, or
    - (ii) any issue arising or a decision taken by a Primary Care Trust in respect of the term of the contract that gives effect to paragraph 71(3) to (5).

#### **Directions in respect of PDS agreement disputes**

6.—(1) The Secretary of State directs the First-tier Tribunal to exercise the functions of the Secretary of State under paragraphs 55 and 56 of Schedule 3 to the PDS Agreements Regulations (dispute resolution) referred to in paragraph (2).

(2) The functions are those in respect of any dispute (or part of a dispute) between the parties to a PDS agreement that relate to a term of the agreement that gives effect to any of the following provisions in Schedule 3 to the PDS Agreements Regulations—

- (a) paragraph 68 (termination by the relevant body for the provision of untrue etc. information), but only in so far as the dispute requires a determination as to whether written information provided to the relevant body by the contractor before the agreement was entered into was, when given, untrue or inaccurate in a material respect; or
- (b) paragraph 69 (termination by the relevant body on the grounds of suitability etc.), but only in so far as it requires a determination in respect of—
  - (i) whether any person specified in paragraph 69(1) falls within paragraph 69(2) during the existence of the agreement, or
  - (ii) any issue arising or decision made in respect of the term that gives effect to paragraph 69(3) to (5).

#### **Directions in respect of GOS contract disputes**

7.—(1) The Secretary of State directs the First-tier Tribunal to exercise the functions of the Secretary of State under paragraphs 30 and 31 of Schedule 1 to the GOS Contracts Regulations (dispute resolution) referred to in paragraph (2).

(2) The functions are those in respect of any dispute (or part of a dispute) between the parties to a GOS contract that relate to a term of the contract that gives effect to any of the following provisions in Schedule 1 to the GOS Contracts Regulations—

- (a) paragraph 42 (termination by the PCT: contractor's inability to perform services), but only in so far as the dispute is about whether a contractor is able to perform services by virtue of a suspension referred to in paragraph 42(2);
- (b) paragraph 43 (termination by the PCT for the provision of untrue etc. information), but only in so far as the dispute is about whether information provided to the Primary Care Trust by the contractor before the contract was entered into was, when given, untrue or inaccurate in a material respect; or

- (c) paragraph 44 (termination by the PCT on grounds of suitability etc.), but only in so far as the dispute requires a determination in respect of—
  - (i) whether any person specified in paragraph 44(1)(a) to (c) falls within paragraph 44(2), or
  - (ii) any issue arising or decision made by a Primary Care Trust in relation to a term of the contract that gives effect to paragraph 44(3) to (5).

Signed by authority of the Secretary of State for Health

15th January 2010

*Mike O'Brien*  
Minister of Health  
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 Secretary of State's functions relating to the determination of certain appeals to be exercised by the First-tier Tribunal which was established under the Tribunals, Courts and Enforcement Act 2007 (c.15). The functions relate to the determination of disputes arising under particular provisions of contracts for the provision of primary care services. In all cases, the framework regulations governing those contracts make provision for the Secretary of State to settle specified types of dispute.

Regulations 3 and 4 direct the First-Tier Tribunal to exercise the Secretary of State's functions in respect of disputes which could result in the termination of arrangements to provide primary medical services on specified grounds. Regulations 5 and 6 direct the First-tier Tribunal to exercise the Secretary of State's functions in respect of disputes which could result in the termination of arrangements to provide primary dental services on specified grounds. Regulation 7 directs the First-tier Tribunal to exercise the Secretary of State's functions in respect of disputes which could result in the termination of a general ophthalmic services contract on specified grounds. In all cases, these are disputes relating to aspects of the suitability of contractors which previously would have been settled by the Family Health Services Appeals Authority, which is abolished as a consequence of the Transfer of Tribunal Functions Order 2010 (S.I. 2010/22).