



# 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,—
  - [<sup>F1</sup>(a) a Health Authority;
  - <sup>F1</sup>(aa) a Special Health Authority;]
  - (b) a health board;
  - [<sup>F2</sup>(bb) a Primary Care Trust]
  - (c) the Common Services Agency for the Scottish Health Service;
  - <sup>F3</sup>(d) .....
  - (e) an NHS trust;
  - [<sup>F4</sup>(f) a recognised fund-holding practice;]
  - [<sup>F5</sup>(ff) the Commission for Health Improvement]
  - (g) the Dental Practice Board or the Scottish Dental Practice Board;
  - (h) the Public Health Laboratory Service Board; <sup>F6</sup> . . .
  - (i) the Secretary of State

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- [<sup>F7</sup>(j) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland Order 1972;
- (k) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990;
- (l) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991; and
- (m) the Department of Health and Social Services for Northern Ireland.]
- (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.
- (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; <sup>F8</sup> . . .
- (7) a determination of a reference under subsection (3) above may contain such directions (including directions as to a 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; <sup>F8</sup> . . .
- (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

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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 <sup>M1</sup>National Health Service (Scotland) Act 1978; <sup>F9</sup> . . .

<sup>F9</sup>(b) . . . . .

[<sup>F10</sup>(10) Where a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 or a body mentioned in subsection (2) (j), (k), (l) or (m) above is a party or prospective party to an arrangement or proposed arrangement which—

(a) falls within the definition of NHS contract in subsection (1) above; and

(b) also falls within the definition of HSS contract in Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991,

subsections (3) to (8) above shall apply in relation to that arrangement or proposed arrangement with the substitution for references to the Secretary of State of references to the Secretary of State and the Department of Health and Social Services for Northern Ireland acting jointly.]

#### Textual Amendments

- F1** S. 4(2)(a) and (aa) substituted (1.4.1996 subject to s. 8 of the amending Act) for s. 4(2)(a) by 1995 c. 17, ss. 2(1)(3), **Sch. 1 para. 68(a)** (with Sch. 2 paras. 6, 16)
- F2** S. 4(2)(bb) inserted (4.1.2000) by 1999 c. 8, s. 65(1), Sch. 4 paras. 74, **76(a)(ii)**; S.I. 1999/2342, **art. 2(3)(b)(i)**
- F3** S. 4(2)(d) repealed (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, ss. 2(1)(3), 5(1)(2), Sch. 1 para. 68(b), **Sch. 3** (with Sch. 2 paras. 6, 16)
- F4** S. 4(2)(f) repealed (E.) (1.10.1999) by 1999 c. 8, s. 65(2), **Sch. 5**; S.I. 1999/2540, art. 2(1)(a), **Sch. 1**
- F5** S. 4(2)(ff) inserted (1.11.1999) by 1999 c. 8, s. 65(1), Sch. 4 paras. 74, **76(a)(ii)**; S.I. 1999/2793, art. 1(2)(b), **Sch. 2**
- F6** Word at end of s. 4(2)(h) repealed (1.4.1991) by S.I. 1991/195, **art. 7(3)**
- F7** S. 4(2)(j)(k)(l)(m) added (1.4.1991) by S.I. 1991/195, **art. 7(3)**
- F8** Words in s. 4(6)(7) omitted (1.9.1999 (E.) and 1.12.1999 (W.)) by virtue of 1999 c. 8, s. 65(1), Sch. 4 paras. 74, **76(2)**; S.I. 1999/2342, art. 2(1), **Sch. 5**; S.I. 1999/3184, art. 2(2), **Sch. 2**; and those same words expressed to be repealed (1.4.2000) by 1999 c. 8, s. 65(2), **Sch. 5**; S.I. 2000/1041, art. 2(d), **Sch.**
- F9** S. 4(9)(b) and word in s. 4(9)(a) repealed (1.4.1991) by S.I. 1991/195, **art. 7(4)**
- F10** S. 4(10) added (1.4.1991) by S.I. 1991/195, **art. 7(5)**

#### Modifications etc. (not altering text)

- C1** S. 4 extended (11.5.1998) by 1997 c. 46, s. 16(5); S.I. 1998/631, **art. 2(2)**
- C2** S. 4 modified (8.3.2002 for E. and 1.7.2002 for W.) by 2001 c. 15, s. 33(5), (with ss. 64(9), 65(4)); S.I. 2002/1095, **art. 2(4)**; S.I. 2002/1475, art. 2(1), **Sch. Pt. 1**

#### Commencement Information

- I1** S. 4(1)(2)(5)(6)(9) brought into force 6.3.1991 (in so far as they relate to a reference under s. 4(4)) by S.I. 1991/388
- I2** S. 4(4) brought into force 6.3.1991 by S.I. 1991/388

#### Marginal Citations

- M1** 1978 c. 29.

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