

HEALTH AND SOCIAL CARE ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: National Health Service

Health Service Funding

The Family Health Services Appeal Authority

Section 27: The Family Health Services Appeal Authority

153. The NHS Plan set out the Government's intention to abolish the NHS Tribunal and to devolve the power to suspend or remove practitioners from a Health Authority list to Health Authorities. Practitioners will have a right of appeal to the Family Health Services Appeal Authority (FHSAA) against any decision to remove them a list. *Section 16* of this Act abolishes the NHS Tribunal. The intention is to rationalise the functions carried out by the existing Family Health Services Appeal Authority and the NHS Tribunal into one body. In effect the Family Health Services Appeal Authority created by the Act will take over the functions of the Tribunal, adapted to take account of the new powers of Health Authorities to suspend or remove practitioners. The existing Family Health Services Appeal Authority is a Special Health Authority. *Section 27* provides for the creation of the new Authority as an independent body.
154. *Subsection (1)* of *section 27* inserts a new section 49S into the 1977 Act which sets up the Family Health Services Appeal Authority (FHSAA). *Subsection (2)* of the new section provides for the Authority to be constituted in accordance with new Schedule 9A. *Subsection (3)* provides for the functions of the FHSAA to be conferred on it by the 1977 Act or by any other enactment. *Subsection (4)* provides a power for the Secretary of State to direct the FHSAA to exercise any of his functions relating to the determination of appeals (for example, such functions currently exercised by the existing Family Health Services Appeal Authority). *Subsection (5)* provides that such directions must be given by regulations or in writing. *Subsection (6)* permits the Secretary of State to make available to the FHSAA any facilities (or premises) provided by him or a Special Health Authority or NHS trust as well as the services of any staff employed by him or by a Special Health Authority or NHS trust.
155. *Subsection (4)* (of *section 27*) inserts Schedule 9A into the 1977 Act. Paragraphs 1 to 6 set out the constitution and membership of the FHSAA. The FHSAA will consist of a President, one or more Deputy Presidents, and a number of other members, all to be appointed by the Lord Chancellor on terms to be determined by him. The number of other members will be determined by the Lord Chancellor after consulting the Secretary of State. The membership must include people with a lay background as well as those with relevant professional expertise.
156. *Paragraph 7* provides for the FHSAA to determine its own procedure, subject to the requirements of paragraphs 8 to 18 of the Schedule. Paragraph 8 provides that the functions of FHSAA are exercised by panels consisting of one or more members

*These notes refer to the Health and Social Care Act 2001
(c.15) which received Royal Assent on 11 May 2001*

chosen by the President (who may include himself). Paragraph 9 requires that at least one member of a panel (or in the case of a one member panel, that member) must have a seven year legal qualification. Paragraph 10 provides that a three member panel exercising functions under section 49M or 49N of the 1977 Act, as inserted by [section 25](#), must comprise one legal member, one professional member and one other.

157. [Paragraph 11](#) requires that where a panel has more than one member, the President shall nominate one of the members to act as chairman; for decisions to be taken by a majority of votes, and if there is a tie for the chairman to have a second vote as a casting vote.
158. The FHSAA will be required to give notice of a panel's decision and the reasons for it to each party to the proceedings; to publish each decision of a panel, and to send a copy of any such decision, and, where appropriate, any information as appears to be relevant, to prescribed persons or persons of prescribed descriptions.
159. [Paragraphs 15 to 18](#) provide for the Lord Chancellor to make rules regarding the composition of the panels and the procedure to be followed. Paragraph 19 provides for the publication of an annual written report about the FHSAA's activities. Paragraph 20 provides that the President must arrange for appropriate training for himself and the other members of the FHSAA.