

SCHEDULE 3

OTHER CONTRACTUAL TERMS

PART 7

DISPUTE RESOLUTION

Local resolution of contract disputes

53. In the case of any dispute arising out of or in connection with the contract, the contractor and the Local Health Board must make every reasonable effort to communicate and co-operate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings).

Dispute resolution: non-NHS contracts

54.—(1) In the case of a contract which is not an NHS contract, any dispute arising out of or in connection with the contract, except disputes about matters dealt with under the complaints procedure pursuant to Part 6 of this Schedule, may be referred for consideration and determination to the Assembly, if—

- (a) the Local Health Board so wishes and the contractor has agreed in writing; or
 - (b) the contractor so wishes (even if the Local Health Board does not agree).
- (2) In the case of a dispute referred to the Assembly under sub-paragraph (1)—
- (a) the procedure to be followed is the NHS dispute resolution procedure; and
 - (b) the parties agree to be bound by any determination made by the adjudicator.

NHS dispute resolution procedure

55.—(1) The procedure specified in the following sub-paragraphs and paragraph 56 applies in the case of any dispute arising out of or in connection with the contract which is referred to the Assembly—

- (a) in accordance with section 4(3) of the 1990 Act (where the contract is an NHS contract); or
 - (b) in accordance with paragraph 54 (where the contract is not an NHS contract).
- (2) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) will send to the Assembly a written request for dispute resolution which will include or be accompanied by—
- (a) the names and addresses of the parties to the dispute;
 - (b) copy of the contract; and
 - (c) a brief statement describing the nature and circumstances of the dispute.
- (3) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send the request under sub-paragraph (2) within a period of three years beginning with the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute.

Status: This is the original version (as it was originally made).

(4) Where the dispute relates to a contract which is not an NHS contract, the Assembly may determine the matter itself or, if it considers it appropriate, appoint a person or persons to consider and determine it⁽¹⁾.

(5) Before reaching a decision as to who should determine the dispute, either under sub-paragraph (4) or under section 4(5) of the 1990 Act, the Assembly will, within the period of 7 days beginning with the date on which a matter was referred to it, send 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.

(6) The Assembly will give, with the notice given under sub-paragraph (5), to the party other than the one which referred the matter to dispute resolution a copy of any document by which the matter was referred for dispute resolution.

(7) The Assembly will give a copy of any representations received from a party to the other party and will 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.

(8) Following receipt of any representations from the parties or, if earlier, at the end of the period for making such representations specified in the request sent under sub-paragraph (5) or (7), the Assembly will, if it decides to appoint a person or persons to hear the dispute—

- (a) inform the parties in writing of the name of the person or persons whom it has appointed; and
- (b) pass to the person or persons so appointed any documents received from the parties under or pursuant to paragraph (2), (5) or (7).

(9) For the purpose of assisting the adjudicator in the consideration of the matter, the adjudicator may—

- (a) invite representatives of the parties to appear before the adjudicator to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which the adjudicator wishes them to give special consideration; or
- (b) consult other persons whose expertise the adjudicator considers will assist in the consideration of the matter.

(10) Where the adjudicator consults another person under sub-paragraph (9)(b), the adjudicator will notify the parties accordingly in writing and, where the adjudicator considers that the interests of any party might be substantially affected by the result of the consultation, the adjudicator will give to the parties such opportunity as the adjudicator considers reasonable in the circumstances to make observations on those results.

(11) In considering the matter, the adjudicator will consider—

- (a) any written representations made in response to a request under sub-paragraph (5), but only if they are made within the specified period;
- (b) any written observations made in response to a request under sub-paragraph (7), but only if they are made within the specified period;
- (c) any oral representations made in response to an invitation under sub-paragraph (9)(a);
- (d) the results of any consultation under sub-paragraph (9)(b); and
- (e) any observations made in accordance with an opportunity given under sub-paragraph (10).

(12) In this paragraph, “specified period” means such period as the Assembly will specify in the request, being not less than two, nor more than four, weeks beginning with the date on which

(1) Where the dispute relates to a contract which is an NHS contract, section 4(5) of the 1990 Act applies.

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

(13) Subject to the other provisions of this paragraph and paragraph 56, the adjudicator will have wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.

Determination of dispute

56.—(1) The adjudicator will record the determination and the reasons for it, in writing and will give notice of the determination (including the record of the reasons) to the parties.

(2) In the case of a contract referred for determination in accordance with paragraph 54(1), subsection (8) of section 4 of the 1990 Act will apply as that subsection applies in the case of a contract referred for determination in accordance with subsection (3) of section 4 of that Act.

(3) In the case of a contract referred for determination in accordance with paragraph 54(1), subsection (5) of section 28P of the Act⁽²⁾ (GDS contracts: disputes and enforcement) will apply as that subsection applies in the case of a contract referred for determination in accordance with subsection (3) of section 4 of the 1990 Act.

Interpretation of Part 7

57.—(1) In this Part, reference to any dispute arising out of or in connection with the contract include any dispute arising out of or in connection with the termination of the contract.

(2) Any term of the contract that makes provision in respect of the requirements in this Part will survive even where the contract has terminated.

(2) Section 28P was inserted into the Act by section 172(1) of the 2003 Act.