



# National Health Service Act 2006

## 2006 CHAPTER 41

### PART 1

#### PROMOTION AND PROVISION OF THE HEALTH SERVICE IN ENGLAND

##### *NHS contracts*

### 9 NHS contracts

- (1) In this Act, an NHS contract is an arrangement under which one health service body (“the commissioner”) 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) Section 139(6) (NHS contracts and the provision of local pharmaceutical services under pilot schemes) makes further provision about acting as commissioner for the purposes of subsection (1).
- (3) Paragraph 15 of Schedule 4 (NHS trusts and NHS contracts) makes further provision about an NHS trust acting as provider for the purposes of subsection (1).
- (4) “Health service body” means any of the following—
  - [<sup>F1</sup>(za) [<sup>F2</sup>NHS England],
  - [<sup>F3</sup>(zb) an integrated care board,]]
  - <sup>F4</sup>(a) .....
  - <sup>F5</sup>(b) .....
  - (c) an NHS trust,
  - (d) a Special Health Authority,
  - (e) a Local Health Board,
  - (f) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29),
  - [<sup>F6</sup>(fa) a Special Health Board constituted under that section,]
  - [<sup>F7</sup>(g) the Regional Agency for Public Health and Social Well-being,]

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- (h) the Common Services Agency for the Scottish Health Service,
  - (i) the Wales Centre for Health,
  - <sup>F8</sup>(j) .....
  - [<sup>F9</sup>(k) the Care Quality Commission,]
  - [<sup>F10</sup>(ka) NICE,]
  - <sup>F11</sup>(kb) .....
  - <sup>F12</sup>(kc) .....
  - [<sup>F13</sup>(kd) the Health Services Safety Investigations Body,]
  - (l) the Scottish Dental Practice Board,
  - (m) the Secretary of State,
  - (n) the Welsh Ministers,
  - [<sup>F14</sup>(na) the Scottish Ministers,
  - (nb) Healthcare Improvement Scotland,]
  - [<sup>F15</sup>(o) the Regional Business Services Organisation,]
  - (p) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 (S.I. 1990/247 (N.I.3)),
  - (q) a [<sup>F16</sup>Health and Social Care trust] trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I.1)),
  - (r) the Department of Health, Social Services and Public Safety.
- (5) Whether or not an arrangement which constitutes an NHS contract would apart from this subsection be a contract in law, it must not be regarded for any purpose as giving rise to contractual rights or liabilities.
- (6) 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 this section.
- (7) 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 this section.
- (8) Where a reference is made to the Secretary of State under subsection (6) or (7), he may determine the matter himself or appoint a person to consider and determine it in accordance with regulations.
- (9) “The appropriate person” means the Secretary of State or the person appointed under subsection (8).

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- (10) By the determination of a reference under subsection (7) the appropriate person may specify terms to be included in the proposed arrangement and may direct that it be proceeded with.
- (11) A determination of a reference under subsection (6) may contain such directions (including directions as to payment) as the appropriate person considers appropriate to resolve the matter in dispute.
- (12) The appropriate person may by the determination in relation to an NHS contract vary the terms of the arrangement or bring it to an end (but this does not affect the generality of the power of determination under subsection (6)).
- (13) Where an arrangement is so varied or brought to an end—
- (a) subject to paragraph (b), the variation or termination must be treated as being effected by agreement between the parties, and
  - (b) the directions included in the determination by virtue of subsection (11) may contain such provisions as the appropriate person considers appropriate in order to give effect to the variation or to bring the arrangement to an end.

#### Textual Amendments

- F1** S. 9(4)(za)(zb) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 6(2)(a)**; S.I. 2012/1831, art. 2(2)
- F2** Words in Act substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F3** S. 9(4)(zb) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 4 para. 90**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F4** S. 9(4)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 6(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F5** S. 9(4)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 6(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F6** S. 9(4)(fa) inserted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 6(a)**; S.I. 2012/2657, art. 2(4)
- F7** S. 9(4)(g) substituted (30.11.2022) by The Health and Social Care Act (Northern Ireland) 2022 (Consequential Amendments) Order 2022 (S.I. 2022/1174), arts. 1(2), **23(2)(a)**
- F8** S. 9(4)(j) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 7 para. 18**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F9** S. 9(4)(k) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 5 para. 82**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)
- F10** S. 9(4)(ka) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 17 para. 10(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F11** S. 9(4)(kb) omitted (1.2.2023) by virtue of The Health and Social Care Information Centre (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/98), reg. 1(2), **Sch. para. 10(2)** (with reg. 3)
- F12** S. 9(4)(kc) omitted (1.4.2023) by virtue of The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(2), **Sch. 1 para. 9(4)** (with reg. 7)
- F13** S. 9(4)(kd) inserted (1.10.2023) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 15 para. 8(2)**; S.I. 2023/1035, reg. 2(c)
- F14** S. 9(4)(na)(nb) inserted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 6(b)**; S.I. 2012/2657, art. 2(4)
- F15** S. 9(4)(o) substituted (30.11.2022) by The Health and Social Care Act (Northern Ireland) 2022 (Consequential Amendments) Order 2022 (S.I. 2022/1174), arts. 1(2), **23(2)(b)**

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**F16** Words in s. 9(4)(q) substituted (30.11.2022) by The Health and Social Care Act (Northern Ireland) 2022 (Consequential Amendments) Order 2022 (S.I. 2022/1174), arts. 1(2), **23(2)(c)**

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

- C1** S. 9 modified (1.4.2013) by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349), regs. 1, **103(1)**
- C2** S. 9 modified (E.) (7.12.2015) by The National Health Service (General Medical Services Contracts) Regulations 2015 (S.I. 2015/1862), regs. 1(2), **10-12** (with reg. 2)
- C3** S. 9 modified (E.) (7.12.2015) by The National Health Service (Personal Medical Services Agreements) Regulations 2015 (S.I. 2015/1879), regs. 1(2), **9** (with regs. 2, 88)
- C4** S. 9(4) modified (temp.) (1.10.2008) by Health and Social Care Act 2008 (Consequential Amendments and Transitory Provisions) Order 2008 (S.I. 2008/2250), arts. 1(1), **3(14)**
- C5** S. 9(5) applied (E.) (7.12.2015) by The National Health Service (General Medical Services Contracts) Regulations 2015 (S.I. 2015/1862), regs. 1(2), **84(2)(b)** (with reg. 2)
- C6** S. 9(5) applied (E.) (7.12.2015) by The National Health Service (Personal Medical Services Agreements) Regulations 2015 (S.I. 2015/1879), regs. 1(2), **77(3)(b)** (with regs. 2, 88)
- C7** S. 9(12)(13) applied (E.) (7.12.2015) by The National Health Service (General Medical Services Contracts) Regulations 2015 (S.I. 2015/1862), regs. 1(2), **84(2)(a)** (with reg. 2)
- C8** S. 9(12)(13) applied (E.) (7.12.2015) by The National Health Service (Personal Medical Services Agreements) Regulations 2015 (S.I. 2015/1879), regs. 1(2), **77(3)(a)** (with regs. 2, 88)

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**Changes and effects yet to be applied to :**

- s. 9(3) omitted by 2012 c. 7 Sch. 14 para. 4

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 3B(1)(aa) inserted by 2022 c. 31 Sch. 3 para. 2(b)
- s. 3B(1)(za) inserted by 2022 c. 31 Sch. 3 para. 2(a)
- s. 13G(4) words omitted by virtue of 2012 c. 7, Sch. 14 para. 4A (as inserted) by 2014 c. 23 s. 120(18)(a)
- s. 35(3A)(3B) inserted by 2012 c. 7 s. 159(4)
- s. 35(3A) words substituted by 2022 c. 31 Sch. 5 para. 12(4) (This amendment not applied to legislation.gov.uk. The insertion of s. 35(3A) by 2012 c. 7 s.159(4) not yet in force.)
- s. 40(4)-(4B) substituted for s. 40(4) by 2012 c. 7 Sch. 14 para. 5
- s. 42(1A) inserted by 2012 c. 7 Sch. 14 para. 6
- s. 65F(2A)-(2F) inserted by 2012 c. 7 Sch. 14 para. 15(4) (This amendment is itself amended before it comes into force by 2014 c. 23, ss. 85(15), 120(18)(b)(c), 127(1); S.I. 2014/1714, art. 3(2)(b)(c))
- s. 65H(10A) inserted by 2012 c. 7 Sch. 14 para. 17(4)
- s. 65H(10A) omitted by 2022 c. 31 Sch. 8 para. 7(7) (This amendment not applied to legislation.gov.uk. 2012 c. 7 Sch. 14 revoked at 1.7.2022 by 2022 c. 31, s. 186(6), Sch. 7 para. 13 before the insertion of s. 65H(10A) could come into effect.)
- s. 82A-83A and cross-heading substituted for s. 83 and cross-heading by 2022 c. 31 Sch. 3 para. 3
- s. 84(4)-(4B) substituted for s. 84(4) by 2022 c. 31 Sch. 3 para. 4(4)
- s. 92(5A) inserted by 2022 c. 31 Sch. 3 para. 9(4)
- s. 94(3)(ca)(cb) substituted for s. 94(3)(ca) by 2022 c. 31 Sch. 3 para. 11(3)
- s. 98A98B substituted for s. 98A by 2022 c. 31 Sch. 3 para. 14
- s. 98BC-99B and cross-heading substituted for s. 99 and cross-heading by 2022 c. 31 Sch. 3 para. 15
- s. 100(3A)(3B) inserted by 2022 c. 31 Sch. 3 para. 16(4)
- s. 109(3)(ca)(cb) substituted for s. 109(3)(ca) by 2022 c. 31 Sch. 3 para. 23(3)
- s. 112(1)(za) inserted by 2022 c. 31 Sch. 3 para. 24(2)(b)
- s. 114A114B substituted for s. 114A by 2022 c. 31 Sch. 3 para. 26
- s. 114C and cross-heading inserted by 2022 c. 31 Sch. 3 para. 27
- s. 116A116B and cross-heading inserted by 2022 c. 31 Sch. 3 para. 30
- s. 117(4)(4A) substituted for s. 117(4) by 2022 c. 31 Sch. 3 para. 31(4)
- s. 125A125B substituted for s. 125A by 2022 c. 31 Sch. 3 para. 39
- s. 223C(1)(c)(d) inserted by 2022 c. 31 s. 28
- s. 223LA inserted by 2022 c. 31 s. 30(3)
- Sch. 15 para. 4(1)(b) and word omitted by 2012 c. 7 Sch. 14 para. 39(3)