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PROSPECTIVE

SCHEDULE 3

Other contractual terms

PART 10

Dispute resolution

Local resolution of contract disputes

104.—(1) The contractor and the Local Health Board must make reasonable efforts to communicate and co-operate with each other with a view to resolving any dispute which arises out of or in connection with the contract before referring the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings).

(2) Sub-paragraph (1) does not apply to a dispute relating to the assignment of patients to a closed list which falls to be determined under the NHS dispute resolution procedure by virtue of paragraph 46(1) where it is not practicable for the parties to attempt local resolution before the expiry of the period of 7 days specified in paragraph 46(4).

(3) The contractor or the Local Health Board may invite the Local Medical Committee (if any) for the area in which the contractor is providing services under the contract to participate in discussions which take place by virtue of sub-paragraph (1).

Commencement Information

II Sch. 3 para. 104 in force at 1.10.2023, see [reg. 1\(2\)](#)

Dispute resolution: non-NHS contracts

105.—(1) In the case of a contract that is not an NHS contract, any dispute arising out of or in connection with the contract, except matters dealt with under the procedures for notifying concerns or complaints pursuant to Part 9 of this Schedule, may be referred for consideration and determination to the Welsh Ministers—

- (a) if it relates to a period when the contractor was treated as a health service body, by the contractor or by the Local Health Board, or
- (b) in any other case, by the contractor or, if the contractor agrees in writing, by the Local Health Board.

(2) In the case of a dispute referred to the Welsh Ministers 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.

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Commencement Information

I2 Sch. 3 para. 105 in force at 1.10.2023, see [reg. 1\(2\)](#)

NHS dispute resolution procedure

106.—(1) Subject to sub-paragraph (2), the procedure specified in the following sub-paragraphs and paragraph 107 applies in the case of any dispute arising out of or in connection with the contract which is referred to the Welsh Ministers—

- (a) in accordance with section 7(6) of the Act (where the contract is an NHS contract), or
- (b) in accordance with paragraph 105(1) (where the contract is not an NHS contract).

(2) The procedure specified in this paragraph does not apply where a contractor refers a matter for determination in accordance with paragraph 46, and in such a case the procedure specified in that paragraph applies instead.

(3) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send to the Welsh Ministers a written request for dispute resolution which must include or be accompanied by—

- (a) the names and addresses of the parties to the dispute,
- (b) a copy of the contract, and
- (c) a brief statement describing the nature of, and circumstances giving rise to, the dispute.

(4) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send the request under sub-paragraph (3) within a period of 3 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.

(5) Where the dispute relates to a contract which is not an NHS contract, the Welsh Ministers may determine the matter themselves or, if the Welsh Ministers consider it appropriate, appoint a person or persons to consider and determine it.

(6) Before reaching a decision as to who should determine the dispute, either under sub-paragraph (5) or under section 7(8) of the Act, the Welsh Ministers must, within the period of 7 days beginning with the date on which a matter under dispute 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 under dispute.

(7) The Welsh Ministers must give, with the notice given under sub-paragraph (6), 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 to dispute resolution.

(8) The Welsh Ministers must give a copy of any representation received from a party to the other party and must 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.

(9) 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 (6) or (8), the Welsh Ministers must, if they decide 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 sub-paragraph (3), (6) or (8).

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(10) 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 can assist in the consideration of the matter.

(11) Where the adjudicator consults another person under sub-paragraph (10)(b), the adjudicator must 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 must give to the parties such opportunity as the adjudicator considers reasonable in the circumstances to make observations on those results.

(12) In considering the matter, the adjudicator must consider—

- (a) any written representations made in response to a request under sub-paragraph (6), but only if they are made within the specified period,
- (b) any written observations made in response to a request under sub-paragraph (8), but only if they are made within the specified period,
- (c) any oral representations made in response to an invitation under sub-paragraph (10)(a),
- (d) the results of any consultation under sub-paragraph (10)(b), and
- (e) any observations made in accordance with an opportunity given under sub-paragraph (11).

(13) In this paragraph, “specified period” means such period as the Welsh Ministers specify in the request, being not less than 2, nor more than 4, weeks beginning with the date on which the notice referred to is given, but the Welsh Ministers may, if they consider that there is good reason for doing so, extend any such period (even after it has expired) and, where they do so, a reference in this paragraph to the specified period is to the period as so extended.

(14) Subject to the other provisions of this paragraph and paragraph 107 and to any agreement by the parties, the adjudicator has wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.

Commencement Information

I3 Sch. 3 para. 106 in force at 1.10.2023, see [reg. 1\(2\)](#)

Determination of the dispute

107.—(1) The determination of the adjudicator and the reasons for it, must be recorded in writing and the adjudicator must give notice of the determination (including the record of the reasons) to the parties.

(2) Where a dispute in relation to a contract is referred for determination in accordance with paragraph 105(1)—

- (a) section 7(12) and (13) the Act apply in the same manner as those subsections apply to a dispute referred for determination in accordance with section 7(6) or (7) of the Act, and
- (b) section 48(5) of the Act applies to any dispute referred for determination in relation to a contract which is not an NHS contract as if it were referred for determination in accordance with section 7(6) of the Act.

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Commencement Information

I4 Sch. 3 para. 107 in force at 1.10.2023, see [reg. 1\(2\)](#)

Interpretation of this Part

108.—(1) In this Part, “any dispute arising out of or in connection with the contract” includes 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 is to survive even where the contract has terminated.

Commencement Information

I5 Sch. 3 para. 108 in force at 1.10.2023, see [reg. 1\(2\)](#)

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

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

- Sch. 3 para. 16(3) inserted by [S.I. 2023/1421 reg. 18\(b\)](#)
- Sch. 5 para. 2(2)(a)(iv)(aa) omitted by [S.I. 2023/1421 reg. 20\(d\)](#)
- Sch. 5 para. 2(2)(a)(i)(aa) word substituted by [S.I. 2023/1421 reg. 20\(c\)](#)