

SCHEDULE 12

PART 5

Transitional provisions relating to the Family Health Services Appeal Authority (Procedure) Rules 2001

Interpretation

50. In this Part—

“multiple list practitioner” means a practitioner who—

- (a) by virtue of being included in a particular Health Authority’s list immediately before the relevant date, is included in the list of two or more relevant Primary Care Trusts pursuant to the provisions of Part 1 of this Schedule, or
- (b) would, if he had been included in the list of the Health Authority that was the respondent Health Authority or party in respect of an appeal or application before the FHSAA under the 2001 Rules before the relevant date, be included in the list of two or more relevant Primary Care Trusts on the relevant date pursuant to Part 1 of this Schedule;

“relevant Primary Care Trust” means a Primary Care Trust—

- (a) in whose list the practitioner’s name is included on the relevant date pursuant to Part 1 of this Schedule, or
- (b) in whose list the practitioner’s name would have been included if, immediately before the relevant date, his name had remained on the Health Authority list that was the respondent Health Authority or party before the relevant date in any appeal or application before the FHSAA under the 2001 Rules;

“the 2001 Rules” means the Family Health Services Appeal Authority (Procedure) Rules 2001(1);

“single list practitioner” means a practitioner who—

- (a) by virtue of being included in a particular Health Authority’s list immediately before the relevant date, is included in the list of one relevant Primary Care Trust on the relevant date pursuant to Part 1 of this Schedule, or
- (b) would, if he had, immediately before the relevant date, been included in the list of the Health Authority that was the respondent Health Authority or party in respect of an appeal or application before the FHSAA under the 2001 Rules before the relevant date, be included in the list of one relevant Primary Care Trust on the relevant date pursuant to Part 1 of this Schedule; and

“the 1977 Act”, “application”, “contingent removal decision”, “decision”, “directions”, “disputed decision”, “the FHSAA” and “respondent Health Authority or Primary Care Trust” have the same meaning as in rule 2(1) of the 2001 Rules.

Appeals to the FHSAA under Part II of the 2001 Rules

51. Where—

- (a) the FHSAA receives a notice of appeal within the time limit specified in rule 5 of the 2001 Rules after the relevant date; and

(1) [S.I. 2001/3750](#), relevant amendments to which were made by [S.I. 2002/1921](#).

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- (b) that notice of appeal concerns a disputed decision taken by a respondent Health Authority before the relevant date,

paragraph 52 shall apply.

52. Where—

- (a) the FHSAA has received a notice of appeal in accordance with rule 6 of the 2001 Rules before the relevant date; and
- (b) that appeal concerns a disputed decision taken by a respondent Health Authority before the relevant date; and
- (c) that appeal has not been finally determined before the relevant date,

paragraph 53 shall apply.

53. Where this paragraph applies, a relevant Primary Care Trust or Trusts, determined in accordance with paragraph 54, shall, from the relevant date—

- (a) be deemed to have made the disputed decision;
- (b) be the respondent Primary Care Trust for the purposes of the 2001 Rules; and
- (c) be deemed to have done any acts of the respondent Health Authority before the relevant date, in relation to the Appellant and in relation to his appeal to the FHSAA.

54. The relevant Primary Care Trust that shall be deemed to have made the disputed decision shall be—

- (a) where the disputed decision relates to a single list practitioner, the relevant Primary Care Trust; or
- (b) where the disputed decision relates to a multiple list practitioner, all the relevant Primary Care Trusts,

save that nothing in this Part or the 2001 Rules shall prevent a relevant Primary Care Trust from applying to the FHSAA for a direction that it is not to be deemed to be a respondent Primary Care Trust in a particular appeal because it is not appropriate or desirable in the circumstances of that appeal.

55. Nothing in paragraph 54(b) shall prevent the relevant Primary Care Trusts from nominating from amongst themselves one relevant Primary Care Trust to represent all of them in respect of the appeal, and if such a nomination is made, those relevant Primary Care Trusts shall notify the FHSAA of the name of the nominated Primary Care Trust who will be dealing with the appeal on its behalf.

56. Where, before the relevant date, a panel has given leave to a Health Authority to amend any reply or supplementary statement pursuant to rule 13(2) of the 2001 Rules and that amendment has not been effected before the relevant date, the relevant Primary Care Trust or Trusts shall, from the relevant date, be deemed to have been given leave to make the specified amendments on such terms as the panel imposed when it gave leave to the Health Authority.

57. Where, before the relevant date, the FHSAA has made any directions pursuant to rule 8 or rule 13(3) of the 2001 Rules, those directions shall, if they applied to the Health Authority and remain effective immediately before the relevant date, apply to the relevant Primary Care Trust or Trusts from the relevant date.

58. Where a Strategic Health Authority holds any information that would assist a relevant Primary Care Trust in fulfilling its role as a respondent Primary Care Trust in relation to any appeal falling within paragraph 51 or 52, the Strategic Health Authority shall provide that relevant Primary Care Trust with that information as soon as is reasonably practicable.

59. The FHSAA may request information from a Strategic Health Authority concerning which Primary Care Trust is a relevant Primary Care Trust for the purposes of paragraphs 53 and 54 and

a Strategic Health Authority shall comply with any such request where it holds or has access to information that would assist the FHSAA.

Applications to the FHSAA under Part III of the 2001 Rules

60. Where the FHSAA—

- (a) has received an application pursuant to Part III of the 2001 Rules before the relevant date; and
- (b) that application has not been finally determined immediately before the relevant date, the parties to that application shall, from the relevant date, be deemed to be the practitioner who was a party immediately before the relevant date, and the relevant Primary Care Trust or Trusts, determined in accordance with paragraph 61.

61. For the purposes of paragraph 60, the relevant Primary Care Trust shall be—

- (a) where the application relates to a single list practitioner, the relevant Primary Care Trust; or
- (b) where the application relates to a multiple list practitioner, all the relevant Primary Care Trusts,

save that in relation to a relevant Primary Care Trust falling within sub-paragraph (b), nothing in this Part or the 2001 Rules shall prevent a relevant Primary Care Trust from applying to the FHSAA for a direction that it is not to be deemed to be a party because it is not appropriate or desirable in the circumstances of a particular application.

62. The relevant Primary Care Trust or Trusts specified in paragraph 60 shall be deemed to have done any acts of the Health Authority that was, together with the practitioner, a party to that application immediately before the relevant date.

63. Nothing in paragraph 61(b) shall prevent the relevant Primary Care Trusts from nominating from amongst themselves one relevant Primary Care Trust to represent all of them in respect of the application, and if such a nomination is made, those relevant Primary Care Trusts shall notify the FHSAA of the name of the nominated Primary Care Trust who will be dealing with the application on its behalf.

64. Where, before the relevant date, a panel has given leave to a Health Authority to amend any reply or supplementary statement pursuant to rule 25(2) of the 2001 Rules and that amendment has not been effected before the relevant date, the relevant Primary Care Trust or Trusts shall, from the relevant date, be deemed to have been given leave to make the specified amendments on such terms as the panel imposed when it gave leave to the Health Authority.

65. Where, before the relevant date, the FHSAA has made any directions pursuant to rule 19 or 26 of the 2001 Rules, those directions shall, if they applied to a Health Authority immediately before the relevant date, apply to the relevant Primary Care Trust or Trusts from the relevant date.

66. Where a Strategic Health Authority holds any information that would assist a relevant Primary Care Trust in fulfilling its role as a party in relation to any application falling within paragraph 60, the Strategic Health Authority shall provide that relevant Primary Care Trust with that information as soon as is reasonably practicable.

67. The FHSAA may request information from a Strategic Health Authority concerning which Primary Care Trust is a relevant Primary Care Trust for the purposes of paragraph 60 and a Strategic Health Authority shall comply with any such request where it holds or has access to information that would assist the FHSAA.

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General matters relating to cases under Part IV of the 2001 Rules

68. Where the FHSAA has served any document or notice on the respondent Health Authority before the relevant date in relation to any appeal falling within paragraph 52 or any application falling within paragraph 60, it shall be deemed to have served that document or notice on the relevant Primary Care Trust or Trusts.

69. Where a panel has—

- (a) pursuant to rule 32(1), 33, 44(2) or 45(2) of the 2001 Rules given any directions; or
- (b) pursuant to rule 37 of those Rules, varied any directions,

in relation to any appeal falling within paragraph 52 or any application falling within paragraph 60, those directions or varied directions shall, if they apply to a Health Authority and remain effective immediately before the relevant date, apply to the relevant Primary Care Trust or Trusts from the relevant date.

70. Where a panel has, pursuant to rule 42 or 43 of the 2001 Rules, given a decision—

- (a) that decision shall be deemed to apply to the relevant Primary Care Trust or Trusts; and
- (b) the relevant Primary Care Trust or Trusts, shall be entitled to apply to the FHSAA pursuant to and in accordance with rule 43 of the 2001 Rules for a review of a panel's decision,

and where any decision pursuant to rule 42 of the 2001 Rules was not announced at the hearing, and was consequently sent to a Health Authority, that decision shall be deemed to have been made in respect of the relevant Primary Care Trust or Trusts on the date that a copy of the document recording it was sent to the Health Authority, pursuant to rule 42(6) of the 2001 Rules.

71. Paragraph 72 applies where any application for, or a decision of a panel to, review a panel's decision has been made before the relevant date, pursuant to rule 43 of the 2001 Rules, and that review has not been finally determined before the relevant date.

72. Where this paragraph applies, a relevant Primary Care Trust or Trusts, determined in accordance with paragraph 73, shall, from the relevant date—

- (a) be deemed to—
 - (i) have made the application for a review of a panel's decision,
 - (ii) where the application for a review was made by a practitioner, be the other party to the application; or
 - (iii) where the decision to review is of the panel's own motion, be a party, together with the practitioner who the decision to be reviewed concerned,as the case may be; and
- (b) be deemed to have done any acts of the Health Authority before the relevant date, in relation to the proceedings that resulted in the panel's decision.

73. The relevant Primary Care Trust that shall be deemed to have made the application shall be—

- (a) where the application relates to a single list practitioner, the relevant Primary Care Trust; or
- (b) where the application relates to a multiple list practitioner, all the relevant Primary Care Trusts,

save that, in relation to a relevant Primary Care Trust falling within sub-paragraph (b), nothing in this Part or the 2001 Rules shall prevent such a relevant Primary Care Trust from applying to the FHSAA for a direction that it should not be deemed to have made that application because it is not appropriate or desirable in the circumstances of that application.

74. Nothing in paragraph 73(b) shall prevent the relevant Primary Care Trusts from nominating from amongst themselves one relevant Primary Care Trust to represent all of them in respect of the

application, and if such a nomination is made, those relevant Primary Care Trusts shall notify the FHSAA of the name of the nominated Primary Care Trust who will be dealing with the application on its behalf.

75. If a Health Authority has, before the relevant date, agreed with the other party upon the terms of a decision to be made by a panel pursuant to rule 44(1)(b) of the 2001 Rules, the relevant Primary Care Trust or Trusts, determined in accordance with paragraph 76 shall be deemed to have agreed those terms.

76. The relevant Primary Care Trust that shall be deemed to have agreed the terms of the decision shall be—

- (a) where the application relates to a single list practitioner, the relevant Primary Care Trust; or
- (b) where the application relates to a multiple list practitioner, all the relevant Primary Care Trusts,

save that, in relation to a relevant Primary Care Trust falling within sub-paragraph (b), nothing in this Part or the 2001 Rules shall prevent such a relevant Primary Care Trust from applying to the FHSAA for a direction that it should not be deemed to have agreed the terms of that decision because it is not appropriate or desirable in the circumstances of that decision.

77. Where the FHSAA has taken a decision before the relevant date which, by virtue of rule 46 of the 2001 Rules, it would, at the time it took that decision have been obliged to publish, that obligation shall continue on or after the relevant date if it has not published the decision immediately before the relevant date.