

NATIONAL HEALTH SERVICE REFORM AND HEALTH CARE PROFESSIONS ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – National Health Service, etc.

Financial arrangements: England and Wales

Sections 7, 8 and 9: funding of Strategic Health Authorities, Health Authorities, Primary Care Trusts and Local Health Boards

58. The statutory provision dealing with the public funding of HAs is section 97 of the 1977 Act. HAs are paid money in each year by the Secretary of State under sections 97(1) and (3). Section 97(1) concerns the remuneration of persons providing services under Part 2 of the 1977 Act (for example, general medical practitioners). Unless such remuneration is excepted from section 97(1) it is not cash limited. The Secretary of State is under a duty to pay each HA the cost of such remuneration and cannot impose a ceiling on such expenditure (defined as “general Part 2 expenditure” in paragraph 1 of Schedule 12A to the 1977 Act.) Section 97(3) provides that the Secretary of State must pay to each HA money not exceeding the amount allotted to it by the Secretary of State. This amount is allotted towards meeting an HA’s “main expenditure” (defined in paragraph 2 of Schedule 12A to the 1977 Act.) In the case of an HA this includes all expenditure attributable to the performance of their functions in relation to the provision of hospital-based and community health services, all their administrative costs, the costs of drugs attributed to them by the Secretary of State and certain other expenditure. The amount allotted constitutes a limit on the cash, which may be spent by the HA.
59. The Health Act inserts new provisions into the 1977 Act which provide for the establishment and operation of PCTs. Under section 97C, each year the HA must pay each of its PCTs (a) the cost of general Part 2 expenditure incurred by the trust (defined in paragraph 4 of Schedule 12A to the 1977 Act) and (b) money not exceeding the amount allotted by the Authority for that year towards meeting the trust’s main expenditure (defined in paragraph 5 of Schedule 12A to the 1977 Act). Provisions associated with PCTs have not been commenced in Wales.
60. The Government Resources and Accounts Act 2000 inserted two new sections into the 1977 Act (sections 97AA and 97E). These new sections provide for the setting of resource limits for every HA and PCT in addition to cash limits. Section 97AA concerns resource limits for HAs; section 97E concerns resource limits for PCTs. Section 97AA(2) provides for general Part 2 expenditure to be excluded from the resource limit.
61. The HSC Act inserts four new subsections into the 1977 Act (sections 97(3AA), 97AA(2A), 97C(1A) and 97E(2A)). These subsections provide that in determining amounts to be allotted towards main expenditure, the Secretary of State may take into account the level of a HA’s general Part 2 expenditure; and HAs may take into account the level of their PCTs’ general Part 2 expenditure.

62. An element of performance funding was introduced by the Health Act. Subsections (3C) to (3F) of section 97 of the 1977 Act, inserted by section 8 of the Health Act and amended by section 2 of the HSC Act, provide for the Secretary of State to increase the allotments made to a HA if they have, over a period notified to the HA, satisfied objectives notified as objectives to be met by the HA, or performed well against criteria notified to them as criteria relevant to their satisfactory performance of functions. The additional sums may be subject to conditions. If those conditions are not met the Secretary of State may reduce the HA's allotment, in the current year or following years.

Section 7: Funding of Strategic Health Authorities and Health Authorities

63. *Section 7(2)* inserts a new subsection into section 97 of the 1977 Act to provide for the funding of Strategic Health Authorities. It mirrors the existing provision for the funding of Special Health Authorities.
64. *Sections 7(3), 7(4) and 7(5)* relate to performance payments and add Strategic Health Authorities to the existing provisions of section 97.
65. *Sections 7(6), 7(7)(a) and 7(9)* add Strategic Health Authorities to the existing provisions of section 97 for the funding of HAs. They cover respectively: the variation of allotments in the course of a year; the earmarking of allotments for a particular purpose, and the payment of capital charges; and the keeping of records. *Section 7(7)(c)* omits the existing provision concerning sums paid by PCTs to HAs in respect of capital charges. The revised section 97C(8)(b) inserted by *section 8* provides for PCTs to pay these sums direct to the Secretary of State.

Section 8: Funding of Primary Care Trusts

66. *Section 8* provides for PCTs to be funded direct by the Secretary of State. It replaces the existing section 97C under which PCTs are funded by HAs. The provisions in the new section 97C (1), (2), (7), (8) and (9) mirror the existing provisions in section 97 for the funding of HAs by the Secretary of State. They cover respectively: the funding of PCTs; taking account of general Part 2 expenditure in determining amounts to be allotted towards main expenditure; the variation of allotments in the course of a year; the earmarking of allotments for a particular purpose, and the payment of capital charges; and the keeping of records.
67. Section 97C (3) to (6) mirrors existing provisions for HAs, to allow performance payments direct to PCTs. The provision allows the Secretary of State to increase the allotments made to a PCT if they have, over a period notified to the PCT, satisfied objectives notified as objectives to be met, or performed well against criteria notified to them as criteria relevant to their satisfactory performance of functions. The additional sums may be subject to conditions. If those conditions are not met the Secretary of State may reduce the PCT's allotment, in the current year or following years.

Section 9: Funding of Local Health Boards

68. *Section 9(1)* provides for LHBs to be funded directly by the Assembly. The provisions in the new section 97F (1), (2), (7), (8) and (9) mirror the existing provisions in section 97 for the funding of HAs. They cover respectively: the funding of LHBs; taking account of general Part 2 expenditure in determining amounts to be allotted towards main expenditure; the variation of allotments in the course of a year; the earmarking of allotments for a particular purpose, and the payment of capital charges; and the keeping of records.
69. Section 97F (3) to (6) is a new provision to allow performance payments direct to LHBs. The provision allows the Assembly to increase the allotments made to a LHB if they have, over a period notified to the LHB, satisfied objectives notified as objectives to be met, or performed well against criteria notified to them as criteria relevant to their satisfactory performance of functions. The additional sums may be subject to

conditions. If those conditions are not met the Assembly may reduce the LHB's allotment, in the current year or following years.

70. Section 97G is a new provision which specifies the financial duties of LHBs. It places a duty on LHBs not to spend more than the sum of the amount allotted to them by the Assembly (the cash limit) and any other receipts. It enables the Assembly to give directions to LHBs to ensure they comply with their financial duty. These provisions mirror those in respect of HAs in section 97A of the 1977 Act.
71. Section 97H extends the setting of resource limits to LHBs.

Section 10: Expenditure of NHS bodies

72. Currently HA expenditure distinguishes between "main expenditure" which is subject to resource and cash limits, and Part 2 (Family Health Services) expenditure which is not. Part 2 services include pharmaceutical services. However certain elements of pharmaceutical services, including the cost of drugs dispensed, form part of a HA's main expenditure. The cost initially falls on the HAs where the drugs are dispensed. For the purpose of HA resource and cash limits it is then apportioned between the HAs where it was prescribed (by GPs or others). Schedule 12A to the 1977 Act gives effect to this process. It is intended that in future the expenditure of PCTs be treated in the same way as HA expenditure is currently.
73. *Sections 10(3) to 10(10)* amend Schedule 12A to the 1977 Act (expenditure of HAs and PCTs). *Section 10(5)* amends the definition of PCT general Part 2 expenditure, so that it mirrors the definition of HAs' general Part 2 expenditure within Schedule 12A. *Sections 10(6) and 10(7)* redefine the main expenditure of PCTs, so that the definition matches that of HA main expenditure within Schedule 12A. *Section 10(8)* enables the Secretary of State to apportion remuneration referable to the cost of drugs between PCTs. This replaces the existing arrangement, which gave HAs the power to apportion the cost of drugs between PCTs.
74. *Section 10(4)* relates to paragraph 3 of Schedule 12A. The Assembly is substituted for the Secretary of State, which allows Wales to preserve its existing position until HAs are abolished.
75. *Section 10(9)* defines general Part 2 expenditure and main expenditure (main expenditure being cash-limited and general Part 2 services expenditure not being cash limited) and replicates for LHBs the existing position as currently applies to HAs in Wales.