
STATUTORY INSTRUMENTS

1997 No. 1014 (S. 92)

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (Fund-Holding Practices) (Scotland) Regulations 1997

<i>Made</i>	- - - -	<i>19th March 1997</i>
<i>Laid before Parliament</i>		<i>21st March 1997</i>
<i>Coming into force</i>	- -	<i>1st April 1997</i>

The Secretary of State, in exercise of the powers conferred on him by sections 2(5), 87A(4), 87B(5), 87C(1) to (4), 105(7), 106(a) and 108(1) of the National Health Service (Scotland) Act 1978⁽¹⁾, and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Fund-Holding Practices) (Scotland) Regulations 1997 and shall come into force on 1st April 1997.

(2) In these Regulations, unless the context otherwise requires—

“the Act” means the National Health Service (Scotland) Act 1978;

“allotted sum” has the meaning indicated by section 87B of the Act;

“application” means an application for the purposes of section 87A of the Act for recognition as a fund-holding practice;

“bank account” includes an account with a Building Society registered under the Building Societies Act 1986⁽²⁾;

⁽¹⁾ 1978 c. 29; section 2(5) was amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), Schedule 9, paragraph 19(1); sections 87A, 87B and 87C were inserted by the 1990 Act, section 34; section 105(7), which was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24, contains provision, and section 108(1) contains definitions of “prescribed” and “regulations”, relevant to the exercise of the statutory powers under which these Regulations are made.

⁽²⁾ 1986 c. 53.

“former fund-holding practice” means a medical practitioner or group of medical practitioners who were formerly members of a fund-holding practice and who have now ceased to be members of such a practice because either–

- (a) they have renounced recognition as a fund-holding practice in accordance with regulations 10 and 11; or
- (b) recognition as a fund-holding practice has been removed from them in accordance with regulations 12 and 13 or 14,

whichever is appropriate;

“fund-holding account” means the bank account referred to in Schedule 2;

“fund-holding practice” means a recognised fund-holding practice;

“health service body” means any of the bodies specified in section 17A(2) of the Act⁽³⁾;

“health visitor” means a person whose name is included in Part 11 of the register of qualified nurses, midwives and health visitors prepared and maintained by the Central Council for Nursing, Midwifery and Health Visiting in accordance with section 10 of the Nurses, Midwives and Health Visitors Act 1979⁽⁴⁾;

“nurse” means a person whose name is included in any part, other than parts 10 and 11, of the register of qualified nurses, midwives and health visitors prepared and maintained by the Central Council for Nursing, Midwifery and Health Visiting in accordance with section 10 of the Nurses, Midwives and Health Visitors Act 1979;

“medical list” means a list of medical practitioners prepared by a Health Board by virtue of Regulations under section 19(2)(a) of the Act;

“practice” means a number of medical practitioners acting either–

- (a) as individuals;
- (b) partly as individuals and partly in partnership; or
- (c) in partnership with each other,

who make or propose to make, jointly, an application and “members of the practice” shall be construed accordingly;

“primary care purchasing practice” means a fund-holding practice which has been granted recognition as a primary care purchasing practice in accordance with these Regulations;

“purchasing co-operative” means a fund-holding practice which has been granted recognition as a purchasing co-operative in accordance with these Regulations;

“recognised fund-holding practice” shall be construed in accordance with section 87A of the Act;

“relevant Health Board” has the same meaning as in section 19(8) of the Act⁽⁵⁾ except in the case to which regulation 2(3) applies where “the relevant Health Board” is the Health Board within whose area resides the largest number of the patients on the lists of the members of the practice;

“savings” shall be construed in accordance with regulation 22;

“standard fund-holding practice” means a fund-holding practice which has been granted recognition as a standard fund-holding practice in accordance with these Regulations;

“Health Authority” has the meaning indicated by section 8 of the National Health Service Act 1977⁽⁶⁾.

(3) section 17A was inserted by the 1990 Act, section 30.

(4) 1979 c. 36.

(5) Section 19(8) was inserted by the 1990 Act, section 37.

(6) 1977 c. 49; section 8 was inserted by the Health Authorities Act 1995 (c. 17), section 1.

(3) For the purposes of these Regulations, an application is made when it is received by the person to whom it is required to be made in accordance with regulation 2.

(4) For the purposes of these Regulations, any reference to a fund-holding practice renouncing recognition is a reference to the members of a fund-holding practice renouncing their status as a recognised fund-holding practice and “renunciation of recognition” shall be construed accordingly.

(5) For the purposes of these Regulations, any reference to a relevant Health Board removing recognition is a reference to that Board removing recognition from the members of a fund-holding practice and “removal of recognition” shall be construed accordingly.

(6) For the purposes of these Regulations, any reference to the rights and liabilities of members of a fund-holding practice is a reference to rights and liabilities incurred in connection with the application of the allotted sum and in particular to rights and liabilities under NHS contracts.

(7) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation is a reference to the regulation bearing that number in these Regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

(8) In these Regulations any reference to the sending of a document is a reference to the sending of the document by post addressed, in the case of a medical practitioner, to him at the address of his practice premises which is included in the medical list of the relevant Health Board, and, in the case of the Secretary of State or a Health Board, to them at their principal office.

PART II

RECOGNITION

Application for recognition as a fund-holding practice

2.—(1) An application shall be made in writing on a form approved by the Secretary of State and shall be accompanied by such additional information, including documents and other writings, as the form states may be required to enable the Health Board to determine the application.

(2) The application shall state whether it is an application for recognition as a primary care purchasing practice, a standard fund-holding practice or a purchasing co-operative.

(3) An application shall be signed by each member of the practice making it and shall be sent to the relevant Health Board.

(4) When an application has been made but before it has been determined in accordance with regulation 4, the members of the practice may, by notice to the relevant Health Board signed by each member of the practice, change their application for recognition as a standard fund-holding practice, a primary care purchasing practice, or as the case may be, a purchasing co-operative.

(5) Where at least one of the members of a practice wishing to make an application is on the medical list of a Health Authority, section 87A of the Act shall operate subject to the following modification, namely, at the end of subsection (1) there shall be added the words “except, if at least one of those practitioners is also providing general medical services in accordance with arrangements under section 29 of the National Health Service Act 1977, where more patients on the list of members of the practice reside in England than in Scotland”.

Grant of recognition as a fund-holding practice

3.—(1) A Health Board shall not grant recognition as a standard fund-holding practice, a primary care purchasing practice or a purchasing co-operative (as the case may be) unless it is satisfied that the conditions specified in Schedule 1 to these Regulations are fulfilled.

(2) For the purposes only of the payment and application of the management allowance referred to in regulation 21, recognition shall take effect on the date on which the Health Board determines to grant recognition.

Determination of application

4.—(1) The relevant Health Board shall—

- (a) within the period of three months from its receipt of an application, determine whether to grant or refuse recognition as a fund-holding practice and if it determines to grant recognition, shall determine the date on which the grant of recognition is to have effect;
- (b) within the period of fourteen days from making its determination send to each member of the practice notice of that determination including, where it determines to grant recognition, the date on which the grant of recognition is to have effect; and
- (c) where the determination is for refusal of recognition, include in the notice a statement of the reasons for its determination, and, except in the case of an application for recognition as a purchasing co-operative, inform each member of the practice of the right to appeal to the Secretary of State against the refusal.

(2) Where the relevant Health Board has failed, by the end of the period of three months specified in the preceding paragraph, to determine an application, the application shall be deemed to have been determined by refusal of recognition.

Appeals to the Secretary of State against refusal of recognition

5.—(1) The members of a practice may appeal to the Secretary of State against refusal by a relevant Health Board of recognition of the practice as a fund-holding practice.

(2) An appeal under this regulation shall be made by a notice signed by all the members of the practice and shall be sent to the Secretary of State within the period of one month beginning on the date on which notice of the determination of the relevant Health Board to refuse recognition was sent to the members of the practice or, in a case to which regulation 4(2) applies, on the date one month after the end of the period of three months specified in regulation 4(1)(a).

(3) The Secretary of State may dispense with the signature requirement mentioned in paragraph (2) where it appears to him just and proper to do so.

(4) A notice of appeal shall contain a concise statement of the grounds of appeal on which the practice relies.

(5) The Secretary of State shall send a copy of the notice of appeal to the relevant Health Board.

(6) The Secretary of State may, if he is of the opinion that the appeal is of such a nature that it can properly be determined without an oral hearing, determine the appeal without an oral hearing.

(7) If the Secretary of State is of the opinion that an oral hearing is required he shall appoint one or more persons to hear the appeal and shall send to each member of the practice and to the relevant Health Board a notice of the date of the hearing and the time and place at which it is to be held.

(8) All members of the practice may attend the hearing and the practice may be represented by a member of the practice or some other person appointed for the purpose by the practice and the relevant Health Board may be represented by a member or officer of the Board appointed for the purpose by the Health Board.

(9) Subject to paragraph (8), procedure at the hearing shall be as considered by the person or persons appointed to hear the appeal to be appropriate in the circumstances.

(10) The person or persons hearing the appeal shall report to the Secretary of State in writing and the report shall contain such findings of fact as the person or persons hearing the appeal consider necessary to enable the Secretary of State to determine the appeal.

(11) The Secretary of State, on receipt of the report, shall determine the appeal having regard to the provisions of these Regulations and the findings of fact in the report and shall thereafter send to each member of the practice which made the appeal, and to the relevant Health Board against whose refusal of recognition the appeal was made, a notice in writing of, including a statement of the reasons for, his determination.

(12) Where the Secretary of State allows the appeal of a practice under this regulation against refusal of recognition, he shall grant recognition to the practice so as to have effect from a date specified in the notice of his determination of the appeal.

CONTINUING RECOGNITION

Conditions for continuing recognition

6. Subject to the provisions of Part IV (removal of recognition) of these Regulations the members of a standard fund-holding practice, a primary care purchasing practice or a purchasing co-operative (as the case may be) shall continue to be entitled to recognition as such if and for so long as the conditions specified in Schedule 2 are fulfilled in relation to such a practice.

Additions to existing fund-holding practices

7.—(1) Where a medical practitioner (whether or not he is a member of another fund-holding practice) wishes to become a member of an existing fund-holding practice then, except in the circumstances specified in paragraph (2), he and the members of the existing fund-holding practice shall apply to the relevant Health Board for recognition as a fund-holding practice in accordance with regulation 2.

(2) Paragraph (1) shall not apply to a medical practitioner who becomes a partner of a member of a fund-holding practice whether in succession to another medical practitioner who has died or has left the practice, or otherwise as a result of the grant of an application made by the medical practitioner to a Health Board under section 20(1) of the Act⁽⁷⁾ to be included in the list of names of medical practitioners undertaking to provide general medical services in the area of such a Board and that application has been granted.

(3) A medical practitioner who becomes a partner of a member of a fund-holding practice in the circumstances described in paragraph (2) shall, as from the date on which he becomes such a partner be a member of that fund-holding practice notwithstanding that he did not participate in the making of an application under regulation 2.

(4) Where a person becomes a member of a fund-holding practice and paragraph (2) applies, the practice shall forthwith give written notice to the relevant Health Board of the fact, the date on which he became a partner, the name of the new member and shall send to that Board a copy of any Agreement entered into with the new member for the purposes of paragraph 4 of Schedule 1.

Withdrawal or death of a member of a fund-holding practice

8.—(1) Where a member of a fund-holding practice retires or dies, the recognition of the remaining members of the fund-holding practice shall not be affected if the conditions specified in Schedule 2 in relation to the kind of practice in question continue to be fulfilled in relation to the practice.

(2) Where a member of a fund-holding practice withdraws from the fund-holding practice in circumstances other than death or retirement, the remaining members of the practice shall give notice

(7) 1978 c. 29; section 20 was amended by the Health Services Act 1980 (c. 50), Schedule 6, paragraph 3 and Schedule 7 and by S.I. 1981/432, article 4(1).

to the Health Board stating the date on which the withdrawal is to take or took effect and paragraphs (3) to (6) shall apply.

(3) Where the remaining members of the fund-holding practice or one or more members who withdraw from the fund-holding practice wish to continue as a recognised fund-holding practice, they shall apply to the Health Board for recognition as a fund-holding practice in accordance with regulation 2, and in those circumstances—

- (a) where all the medical practitioners making the application have been members of a recognised fund-holding practice for at least one year, paragraph 1 of Schedule 1 shall not apply;
- (b) subject to regulation 14, they shall continue to be recognised or, as the case may be, shall be treated as recognised until the application is determined; and
- (c) if, as a result, there is more than one recognised fund-holding practice, the allotted sum of the original fund-holding practice shall be divided between them in proportions calculated by reference to the respective list sizes of the members of the practices.

(4) A member of a fund-holding practice who is a partner of another member of the fund-holding practice may not withdraw from the fund-holding practice unless he also ceases to be a partner of that other member.

(5) Where a member of a fund-holding practice (in this paragraph, and in paragraph (6) referred to as “the former member”) withdraws from the practice and—

- (a) he continues to be included in the medical list of the Health Board, and
- (b) on the date on which the withdrawal takes effect, there are savings in the fund-holding account,

such proportion of those savings as the remaining members of the fund-holding practice and the former member may agree (or where they do not agree, a proportion calculated by reference to their respective list sizes) shall be transferred to the Health Board.

(6) The Health Board shall apply that part of the savings transferred to it as mentioned in paragraph (5) in accordance with regulation 22 (savings from the allotted sum) for such purposes as the former member of the fund-holding practice may require, until such time as he ceases to retain responsibility for at least half the patients who were on his list at the time of his withdrawal from the fund-holding practice.

Application for change in status of recognised fund-holding practice

9.—(1) A primary care purchasing practice may apply to become a standard fund-holding practice and a standard fund-holding practice may apply to become a primary care purchasing practice.

(2) A purchasing co-operative may not apply to become a standard fund-holding practice or a primary care purchasing practice and neither a standard fund-holding practice nor a primary care purchasing practice may apply to become a purchasing co-operative.

(3) In this regulation, an application under paragraph (1) is referred to as an “application for change in fund-holding status”.

(4) An application for change in fund-holding status to take effect from 1st April in any year shall be made by 30th September in the preceding year or, in the case of an application from a standard fund-holding practice to become a primary care purchasing practice, such later date as the Health Board may agree.

(5) Regulation 2 (except for paragraph (4)), and regulations 3 and 4 shall apply to an application for change in fund-holding status as they apply to an application for recognition as a fund-holding practice but as if the references in those regulations—

- (a) to an application were references to an application for change in fund-holding status; and

- (b) to the grant or refusal of recognition were references to the grant or refusal of an application for change in fund-holding status.

PART III

RENUNCIATION OF RECOGNITION

Renunciation of recognition

10.—(1) The members of a fund-holding practice may renounce recognition by giving to the relevant Health Board a notice of their intention to renounce recognition in accordance with paragraph (2).

- (2) A notice of renunciation referred to in paragraph (1) shall—
- (a) be in writing;
 - (b) be signed by a majority of the members of the fund-holding practice;
 - (c) be given at least three months before the 31st March next occurring after the sending of the notice;
 - (d) be expressed to expire on 31st March; and
 - (e) be accompanied by a statement including the following information:—
 - (i) details of any NHS contracts into which the members of the practice have entered;
 - (ii) the amount of the current balance in the fund-holding account;
 - (iii) the amount standing at the credit of the practice in the fund-holding account which is available to be applied for the purposes specified in regulation 22;
 - (iv) the liabilities of the members of the practice in relation to the allotted sum.

(3) Health Boards shall at least once in every year send a notice to the Secretary of State stating how many fund-holding practices have renounced recognition during that year.

Consequences of renunciation of recognition

11.—(1) The consequences of renunciation are that subject to paragraphs (2), (3) and (4), the members of a fund-holding practice cease, as from 31st March specified in the notice referred to in regulation 10(2), to be recognised as a fund-holding practice.

(2) Notwithstanding renunciation of recognition and subject to paragraph (6), a former fund-holding practice shall continue to fulfil the conditions specified in paragraphs 7, 8, 9, 10, 11 and 12 of Schedule 2 until the relevant Health Board is satisfied that all the liabilities of the former fund-holding practice in relation to the allotted sum have been discharged.

(3) Where, on the date when the renunciation of recognition takes effect, the members of the fund-holding practice have any outstanding liabilities and the entire allotted sum payable in respect of the financial year ending on that date has been spent, such liabilities shall be met from any accumulated savings.

(4) When the relevant Health Board is satisfied that all liabilities of the fund-holding practice, have been discharged it shall send a notice to that effect to each member of the former fund-holding practice and as from receipt of that notice the practice shall no longer be required to fulfil any of the conditions set out in Schedule 2.

(5) If after a notice under the preceding paragraph has been sent, part of the allotted sum remains in the fund-holding account, the former fund-holding practice shall apply that sum as specified in regulation 22 for the benefit of the patients of the members of the former fund-holding practice in

such proportions as the members of the former fund-holding practice may agree or, where they do not agree, in proportion to the respective list sizes of the members of the former fund-holding practice.

(6) If, at any time after the renunciation of recognition has taken effect, the relevant Health Board is satisfied that—

- (a) no part of the allotted sum remains in the fund-holding account; and
- (b) the liabilities of the former fund-holding practice in relation to the allotted sum have not been discharged,

all rights and any such liabilities of the former fund-holding practice shall, upon notice being sent to such effect to each member of the former fund-holding practice, transfer to the relevant Health Board.

PART IV

REMOVAL OF RECOGNITION

Grounds for removal of recognition

12.—(1) Where, by 28th February in any year, the relevant Health Board has notified the members of a fund-holding practice of the amount of the allotted sum for the financial year beginning on the next 1st April and the members of the practice have not, within one month from the date on which the notice is sent, notified the relevant Health Board that they are prepared to accept that amount as their allotted sum, the relevant Health Board may remove recognition from them with effect from that 1st April (whether or not the recognition is one which has taken effect originally on 1st April).

(2) The relevant Health Board may remove recognition from the members of a standard fund-holding practice, a primary care purchasing practice or a purchasing co-operative (as the case may be) if a condition specified in Schedule 2 in relation to such a practice is no longer fulfilled in relation to the practice.

Procedure for removal of recognition

13.—(1) Except as provided by regulation 14 where a relevant Health Board propose to remove recognition from the members of a fund-holding practice on the ground specified in regulation 12(2) the relevant Health Board shall—

- (a) send to each member of the practice a notice in writing specifying—
 - (i) the reason for the proposal; and
 - (ii) the date, which shall be at least three months from the date on which the notice is sent, on which the removal of recognition is proposed to have effect; and
- (b) inform the members of the practice that they may, subject to paragraphs (2) and (3), make representations to the Board concerning the matter either orally or in writing.

(2) Representations in writing shall be sent to the relevant Health Board within two months of the date on which the notice referred to in paragraph (1) is sent.

(3) Where the members of the practice wish to make representations orally they shall, within two weeks of the date on which the notice referred to in paragraph (1) is sent, give notice to that effect to the relevant Health Board who shall, within six weeks of the date on which the members of the fund-holding practice give notice under this paragraph, give them an opportunity of appearing before and being heard by that Board.

(4) If the relevant Health Board decide, having taken into account any representations made by the members of the fund-holding practice, to adopt the proposal, that Board shall within the period

of four weeks from the expiry of the period of two months or, as the case may be, six weeks referred to in paragraphs (2) and (3) respectively send to each member of the fund-holding practice a notice in writing of its decision which shall include—

- (a) a statement of the reasons for the decision;
- (b) the date on which the removal of recognition takes effect;
- (c) details of the right to appeal to the Secretary of State against the removal of recognition; and
- (d) the consequences of removal of recognition.

(5) Where the relevant Health Board removes recognition from the members of a fund-holding practice in the circumstances specified in regulation 12(1), that Board shall send to each member of the practice a written notice of removal of recognition which shall include—

- (a) a statement of the reasons for the removal of recognition;
- (b) the date on which the removal of recognition has effect;
- (c) details of the right of appeal to the Secretary of State against removal of recognition; and
- (d) unless recognition has not taken effect in accordance with regulation 4(1)(a), the consequences of the removal of recognition.

Removal of recognition with immediate effect

14.—(1) Where it appears to a relevant Health Board—

- (a) that either—
 - (i) it is necessary in the interests of patients of members of the practice; or
 - (ii) the members of the practice have failed to maintain administrative and financial systems conducive to the effective and efficient management of the allotted sum; and
- (b) that recognition should be removed with immediate effect,

the relevant Health Board shall remove recognition under this regulation.

(2) In the circumstances specified in paragraph (1), the relevant Health Board shall send to each member of the practice notice of removal of recognition which shall include—

- (a) a statement of the reasons for the removal of recognition;
- (b) intimation that the removal has immediate effect;
- (c) details of the right to appeal to the Secretary of State against the removal of recognition; and
- (d) the consequences of the removal of recognition.

Appeals to the Secretary of State

15.—(1) The members of a fund-holding practice or, where removal of recognition has taken effect, a former fund-holding practice, may appeal to the Secretary of State against the removal of recognition by the relevant Health Board.

(2) Regulation 5(2) to (12) shall apply in relation to an appeal against removal of recognition as if—

- (a) a reference to the members of the practice were a reference to the members of a fund-holding practice or, where removal of recognition has taken effect, a former fund-holding practice; and
- (b) a reference to a decision to refuse to grant a practice recognition as a fund-holding practice were a reference to a decision to remove recognition as a fund-holding practice.

Consequences of removal

- 16.—(1) On the day on which the removal of recognition takes effect—
- (a) any liability of the relevant Health Board to pay to members of the former fund-holding practice an allotted sum shall cease;
 - (b) all the rights and liabilities of members of the fund-holding practice in relation to the allotted sum shall transfer to the relevant Health Board; and
 - (c) subject to paragraph (2), the fund-holding account shall be treated as having been opened by the relevant Health Board and that Board may deal with the allotted sum or any part of it standing at credit in that account as though it were the fund-holding practice.
- (2) Where, on the day on which the removal of recognition takes effect, there remains in the fund-holding account any part of the allotted sum which may apply for the purposes specified in regulation 22 the relevant Health Board shall apply that part of the allotted sum to such of those purposes as the former fund-holding practice may require.

PART V

ALLOTTED SUM-AUTHORISED PURPOSES

Payment for drugs, medicines and listed appliances

17.—(1) The members of a fund-holding practice shall, in respect of each month, pay to the relevant Health Board out of the allotted sum an amount determined in accordance with the following paragraphs of this regulation as the basic cost of the drugs, medicines and listed appliances supplied pursuant to orders given by or on behalf of members of the practice.

- (2) The amount referred to in paragraph (1) shall, subject to paragraph (5), be—
- (a) the net ingredient cost of the drugs, medicines or listed appliances calculated in accordance with paragraphs (3) and (4); minus
 - (b) an amount representing a percentage of the price of the drugs, medicines or listed appliances, which—
 - (i) the Common Services Agency, in its calculation of the remuneration payable to pharmacists in accordance with the Drug Tariff, has determined is the total discount value applicable to items dispensed in that month divided by the total net ingredient cost of those items, multiplied by 100, and
 - (ii) has been published by the Secretary of State.
- (3) The net ingredient cost referred to in paragraph (2)(a) of a drug or medicine shall be—
- (a) where the name of the drug or medicine is listed in a list in the Drug Tariff which specifies a price for a specified quantity of that drug or medicine, the price so specified;
 - (b) where the name of the drug or medicine is not so listed, the manufacturer's list price.
- (4) The net ingredient cost referred to in paragraph (2)(a) of a listed appliance shall be the price of the appliance specified in the Drug Tariff.
- (5) Where an amount calculated under paragraph (2)(a) or (b) is in any month not an exact number of pounds sterling, any amount of fifty pence or more shall be rounded up, and any amount less than fifty pence shall be rounded down, to the nearest whole pound sterling.
- (6) In this regulation—
- “the Common Services Agency” means the Common Services Agency for the Scottish Health Service constituted under section 10 of the Act;

“the Drug Tariff” means the statement published under regulation 9 of the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995⁽⁸⁾;

“listed appliance” means an appliance which is included in a list for the time being approved by the Secretary of State for the purposes of section 27(1) of the Act⁽⁹⁾;

“manufacturer’s list price” means the price which the manufacturer of a drug or medicine or his agent publishes as being the price of that drug or medicine;

“medicine” includes such chemical re-agents as are included in a list for the time being approved by the Secretary of State for the purposes of section 27(1) of the Act.

Payment for goods and services

18.—(1) Subject to paragraphs (3) to (9) the members of a fund-holding practice shall apply the allotted sum to secure the purchase of such goods and services, other than general medical services, referred to in paragraph (2) as are necessary for the proper treatment of individuals on the lists of patients of the members of the practice and are appropriate in all the circumstances having regard, in particular, to the needs of all those individuals.

(2) The goods and services referred to in paragraph (1) are the goods and services specified, in the case of standard fund-holding practices in Part I, in the case of primary care purchasing practices in Part II, and in the case of purchasing co-operatives in Part III, of a list approved from time to time by the Secretary of State for the purposes of this regulation.

(3) Where—

- (a) the list mentioned in paragraph (2) includes services in connection with the termination of pregnancy; and
- (b) the members of a fund-holding practice do not wish to purchase such services in any financial year,

they may give notice to that effect to the Health Board not later than 6 months from the date on which their grant of recognition had effect, or in any other case by 30th September in the preceding year.

(4) Where—

- (a) the members of the practice have given notice as mentioned in paragraph (3); or
- (b) a patient of a member of a practice either refers herself for such services to a Health Board or an NHS Trust or is referred by a doctor who is not a member of the fund-holding practice,

the cost of any such services as are provided to individuals on the lists of patients of members of the practice in the financial year in question shall be met by the Health Board whose primary functions include the provision of goods and services to those individuals.

(5) The members of a fund-holding practice shall enter into at least one contract for the purchase of such community nursing services as are specified in the list mentioned in paragraph (2) and shall obtain the written consent of the relevant Health Board to that contract.

(6) The relevant Health Board shall consent to a contract for the purchase of the community nursing services mentioned in paragraph (5) if it is satisfied that the proposed provider—

- (a) is either a Health Board or an NHS Trust; and
- (b) has either itself provided, or has assumed responsibility for the relevant establishments or facilities of a body which provided, such community nursing services, whether under an NHS contract or not and whether to the patients of the members of the fund-holding

⁽⁸⁾ S.I. 1995/414 to which there are amendments not relevant to this instrument.

⁽⁹⁾ 1978 c. 29; section 27(1) was amended by the Health Services Act 1980, section 20(2) and by the National Health Service and Community Care Act 1990, Schedule 9, paragraph 19(7).

practice or not, for the whole of the calendar year ending on the date from which the proposed services are to be purchased.

(7) The members of a fund-holding practice shall not purchase any of the goods or services specified in a list approved under paragraph (2) for an individual who is on the list of patients of a member of the practice from any person or body in relation to which any member of the practice has a conflict of interest unless—

- (a) the relevant Health Board has consented in writing to the purchase of those goods or services from that person or body, or
- (b) it is impracticable, having regard to the condition of the patient, to obtain the consent and no alternative is available, or
- (c) the body is a health service body other than a fund-holding practice.

(8) The relevant Health Board shall not consent to the purchase of any goods or services from any person or body in relation to which any member of the practice has a conflict of interest unless it is satisfied that no member of the practice will receive any payment from the allotted sum, whether directly or indirectly, which is wholly or mainly attributable to treatment given to individuals who are on the lists of patients of members of the practice otherwise than in accordance with regulation 19.

(9) Where the members of a practice have obtained the consent of the relevant Health Board under paragraph (6) or (7), the members of the practice shall notify that Board in writing forthwith—

- (a) in the case of consent under paragraph (6), of any change in the nature or level of the services in respect of which the consent was given; and
- (b) in the case of consent under paragraph (7), of any change either in the facilities made available, or the charges made for the services provided by the person or body in respect of which the consent was given.

(10) Where a Health Board receives notice as mentioned in paragraph (9), it shall either confirm or withdraw that consent.

(11) For the purposes of this regulation—

- (a) “community nursing services” means—
 - (i) services provided by a health visitor, or
 - (ii) services provided by a nurse;
- (b) a member of a fund-holding practice shall be treated as having a conflict of interest in relation to a body if—
 - (i) he is a director of, or is in the employment of, the body, or
 - (ii) he is a partner of, or is in the employment of, or is a close relative of, a person who is a director of the body, or
 - (iii) where the body is a fund-holding practice, he is a close relative of a member of the practice, or
 - (iv) he is a close relative of a person in the employment of the body, or
 - (v) he has a beneficial interest in the securities of the body, or
 - (vi) he provides or has provided any services to that body;
- (c) a member of a fund-holding practice shall be treated as having a conflict of interest in relation to a person if—
 - (i) he is a close relative of the person, or
 - (ii) he is a partner of the person, or
 - (iii) he is in the employment of the person, or

- (iv) he provides or has provided any services to the person;
- (d) “close relative” means a husband, wife, brother, sister, father, mother, son or daughter.

Payments to members of the practice

19.—(1) The members of a fund-holding practice may apply the allotted sum for the purposes of paying a medical practitioner who is a member of the practice only—

- (a) in accordance with an arrangement made in pursuance of paragraph (2);
- (b) pursuant to regulation 21(8)(c)(ii); or
- (c) pursuant to regulation 22(2)(d) or (e).

(2) Subject to paragraphs (3) and (4), the members of a fund-holding practice may enter into an arrangement with a medical practitioner who is a member of the practice for the provision by that medical practitioner of services referred to in regulation 18(2) to patients who are on the lists of patients of members of the practice.

(3) No arrangement under paragraph (2) may be made unless the members of the fund-holding practice have obtained the written consent of the relevant Health Board.

(4) The relevant Health Board shall not consent to an arrangement made under paragraph (2) unless it is satisfied that—

- (a) the services to be provided are included in the list referred to in regulation 18(2);
- (b) the medical practitioner with whom the arrangement is to be made to provide those services is suitably qualified, competent and experienced;
- (c) the facilities, including premises, for the provision of those services pursuant to the arrangement are suitable;
- (d) the payments which it is proposed shall be made in respect of the provision of those services are—
 - (i) reasonable,
 - (ii) represent value for money, and
 - (iii) to be made directly to the medical practitioner who provided the services or to the partnership of which he is a member but not to any third party.

(5) Where the members of a practice have obtained the consent of the relevant Health Board under paragraph (3) they shall give notice to that Board of any change in the matters specified in paragraph (4) upon which the consent was based.

(6) Where a relevant Health Board receives notice as mentioned in paragraph (5), it shall either confirm or withdraw the consent.

Payment of salaries

20.—(1) Subject to paragraphs (2) and (3), the members of a fund-holding practice may apply the allotted sum for the purpose of making payments (including any redundancy payments which a member of the practice is required to make by virtue of the Employment Protection (Consolidation) Act 1978(**10**)) to those employees of members of the practice who are employed—

- (a) to provide treatment to the patients of the practice; or
- (b) in connection with the management or administration of the practice.

(2) Where a Health Board has, before the date on which the members of a fund-holding practice were granted recognition as a fund-holding practice, reimbursed a member of the practice in respect

of a proportion of the expenses of employing an employee of his, then the members of the fund-holding practice may apply the allotted sum for the purpose of paying, in respect of periods after that date, only that proportion of the salary of that employee or any person employed in place of that employee to perform substantially the same functions.

(3) The members of a fund-holding practice may apply the allotted sum for the purpose of paying fees to persons engaged to provide services which are necessary for the proper treatment of individuals who are on the lists of patients of the members of the practice, provided that such persons are engaged to provide those services at the practice premises.

(4) The members of a fund-holding practice shall not apply the allotted sum for the purpose of employing or engaging the services of a registered medical practitioner except for the purposes of providing to individuals who are on the lists of patients of members of the practice such services as are included in the list mentioned in regulation 18(2) or as mentioned in regulation 21(8)(c).

(5) The members of the fund-holding practice may apply the allotted sum for the purpose of training employees of members of the practice, provided that the training will be beneficial to the patients of the members of the practice and its cost represents value for money.

Payment for management expenses

21.—(1) Where the allotted sum is determined wholly or partly by reference to the management expenses of the members of the fund-holding practice as the case may be, the amount so determined (in this regulation referred to as the “management allowance”) may be applied in accordance with this regulation.

(2) The management allowance shall be applied only for the purposes of management expenses.

(3) The amount applied out of the allotted sum for the purposes of management expenses shall not exceed the management allowance and no more than 25% (or in the preparatory period 50%) of the management allowance may be applied for the purpose mentioned in paragraph (8)(d).

(4) Where the members of the practice propose to spend the management allowance in accordance with either paragraph (8)(d) for the purpose of buying computers or paragraph 8(i) they shall first obtain the written consent of the Health Board.

(5) The Health Board shall consent to the fund-holding practice’s proposals to buy computers provided it is satisfied that the equipment proposed is suitable for the needs of the fund-holding practice and represents value for money.

(6) The Health Board shall consent to the fund-holding practice’s proposals to spend its management allowance on rent provided it is satisfied that existing accommodation is being properly used, the proposed accommodation is suitable and that the proposed rent represents value for money.

(7) Where the cost of a computer is less than that agreed with the Health Board, any savings shall be spent only in accordance with regulation 22.

(8) For the purposes of this regulation, “management expenses” are—

- (a) the cost of employing staff in connection with the management of the allotted sum;
- (b) the cost of training members of the practice or their staff in connection with the management of the allotted sum;
- (c) the cost, not exceeding such sum as the Secretary of State may specify in directions under section 87B(1) of the Act, of either—
 - (i) employing or engaging (as an assistant or deputy) a registered medical practitioner to provide general medical services to the patients of a member of the practice who is engaged in the management of the allotted sum, or
 - (ii) paying a member of the practice for his time in connection with the management of the allotted sum;

- (d) the cost of acquiring office equipment (including computers);
- (e) the upkeep and running costs of office equipment required for the purposes of the management of the allotted sum, including computer hardware and software running costs not exceeding such sum as the Secretary of State may specify in directions as aforesaid;
- (f) the cost of specialist advice required in connection with the management of the allotted sum;
- (g) the cost of minor internal modifications to any premises from which the members of the practice carry on their practice which are required to provide office accommodation for staff employed in connection with the management of the allotted sum;
- (h) office expenses, including postage, stationery and telephone charges, which are necessarily incurred in connection with the management of the allotted sum; and
- (i) the rent payable on practice premises used by staff employed in connection with the management of the allotted sum.

Savings from the allotted sum

22.—(1) The members of the fund-holding practice may discharge their obligations under regulations 17 and 18 and exercise their powers under regulations 19 and 20 in such a way as to take into account any benefit to individuals on the lists of patients of the members of the practice, which in their opinion, would be derived from making savings to be applied in accordance with the following provisions of this regulation and regulations 17, 18, 19 and 20 shall be construed accordingly.

(2) Subject to paragraph (3) where the accounts relating to the allotted sum paid to members of a fund-holding practice in respect of a financial year have been audited in accordance with section 86(1A) of the Act⁽¹¹⁾, the members of the fund-holding practice may continue to apply any part of the allotted sum paid to them in respect of that financial year, for a period of four years after the end thereof, for the purposes specified in regulations 17, 18, 19 and 20 and, in addition, with the consent of the Health Board for any one or more of the following purposes:—

- (a) the purchase of material or equipment which—
 - (i) can be used for the treatment of patients of the practice; or
 - (ii) enhances the comfort or convenience of patients of the practice; or
 - (iii) enables the practice to be managed more effectively and efficiently; or
 - (iv) relates to health education;
- (b) in relation to any premises from which the members of the practice carry on their practice—
 - (i) improvements to the premises, including alterations to or decoration of the premises and the purchase of furniture and furnishings; and
 - (ii) building an extension provided that no acquisition of land is involved;
- (c) the purchase of services in connection with an audit of clinical practice which relates to any of the goods and services which are included in the relevant part of the list of goods and services mentioned in regulation 18(2);
- (d) commissioning research which relates to any of the goods and services included in the relevant part of the list mentioned in regulation 18(2); or
- (e) training for members or employees of the practice which is required in connection with their membership of the practice or, in the case of employees, their duties arising in the course of their employment.

⁽¹¹⁾ Section 86(1A) was inserted by the National Health Service and Community Care Act 1990 (c. 19), section 36(4).

(3) The Health Board shall not consent to the application of any part of an allotted sum for any of the purposes specified in paragraph (2)(a) to (e) unless it is satisfied that the expenditure would—

- (a) be for the benefit of the patients of the members of the practice; and
- (b) represent value for money.

(4) Where the Health Board refuses its consent under paragraph (3), it shall send to the members of the fund-holding practice a notice stating the reasons for its refusal and informing them of their right to appeal to the Secretary of State under paragraph (5).

(5) The members of the fund-holding practice may, within 28 days beginning with the day on which the notice referred to in paragraph (4) was sent, appeal to the Secretary of State against the Health Board's refusal of consent under paragraph (3).

(6) an appeal to the Secretary of State shall be made in writing and shall include a statement of the grounds of appeal.

(7) On any appeal under paragraph (5), the Secretary of State—

- (a) may, if he thinks fit, hold an oral hearing of the appeal and in such a case shall—
 - (i) appoint one or more persons to hear the appeal and to report to him on it; and
 - (ii) not less than 14 days before the date fixed for the hearing, give notice in writing to the members of the fund-holding practice and to the Health Board; and
- (b) in determining the appeal, shall either confirm or reverse the decision of the Health Board and shall communicate his decision, together with the reasons for it, to the members of the fund-holding practice and to the Health Board.

Recovery of mis-applied amounts

23.—(1) Where it appears to a Health Board that any part of an allotted sum has been applied by the members of a fund-holding practice (or any one or more of them) otherwise than in accordance with regulations 17, 18, 19, 20, 21 or 22, it shall send to each member of the practice notice in writing informing them of the amount which it is alleged has been misapplied and the nature and circumstances of the alleged misapplication and that they may make representations to the Board concerning the matter, either orally or in writing.

(2) Where the members of a fund-holding practice wish to make representations in writing, they shall do so within 2 months of the date on which the notice referred to in paragraph (1) was sent.

(3) Where the members of the practice wish to make representations orally they shall, within 2 weeks of the date on which the notice referred to in paragraph (1) was sent, give notice to that effect to the Health Board and the Board shall, within 6 weeks of the date on which the members of the fund-holding practice sent notice under this paragraph, give them an opportunity of appearing before the Board or a committee, sub-committee, or officer of the Board appointed for the purpose.

(4) Where the Health Board, having taken into account any representations made by the members of the fund-holding practice, is satisfied that any part of an allotted sum has been mis-applied as mentioned in paragraph (1), it shall—

- (a) send to each member of the practice a notice of its determination to that effect;
- (b) include in the notice a statement of the reasons for its decision; and
- (c) inform each member of the practice of the right to appeal to the Secretary of State.

(5) The members of a fund-holding practice may appeal to the Secretary of State against the determination of a Health Board that any part of an allotted sum has been mis-applied as mentioned in paragraph 1(1).

(6) Regulation 5(2) to (12) shall apply in relation to an appeal under paragraph (5) as if—

- (a) a reference to the members of the practice were a reference to the members of the fund-holding practice; and
 - (b) a reference to a decision to grant a practice recognition were a reference to a decision that any part of the allotted sum had been mis-applied as mentioned in paragraph (1).
- (7) An amount equal to that part of the allotted sum which the Health Board or, on appeal, the Secretary of State has determined has been mis-applied as mentioned in paragraph (1) shall be recoverable by the Health Board as a debt.

PART VI

REVOCATIONS

Revocations

- 24.** The Regulations specified in Schedule 3 are revoked.

St Andrew's House Edinburgh
19th March 1997

James Douglas-Hamilton
Minister of State, Scottish Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 1

Regulation 3

CONDITIONS FOR OBTAINING RECOGNITION AS A FUND-HOLDING PRACTICE

1. In the case of an application for recognition as a standard fund-holding practice on the date on which the application is made there will be a total of at least 4,000 patients on the lists of patients of members of the practice or in the opinion of the relevant Health Board it is likely that there will be a total of at least 4,000 patients on those lists during the period of twelve months commencing on that date.

2. Where some or all of the members of the practice are practising in partnership, the application is made (whether or not with the other persons) by all the members practising in partnership.

3. The members of the practice have shown themselves capable of managing their medical practices in general in an effective and efficient manner and that they possess, or have access to or are likely to possess or have access to, such equipment including computers and ancillary equipment and such expertise including appropriate staff resources as are necessary to assist them, and so are likely to be able to manage effectively and efficiently an allotted sum.

4. Where the members of the practice are not partners in a single partnership, the members of the practice have entered into an agreement, approved by the relevant Health Board, which provides that any act of a member of the practice with respect to the allotted sum binds the other members of the practice, and also provides for the determination of how much of the allotted sum, including any savings, is to be allocated to each member of the practice.

SCHEDULE 2

Regulation 6

CONDITIONS FOR CONTINUING RECOGNITION AS A FUND-HOLDING PRACTICE

1. In the case of a standard fund-holding practice there is a total of at least 4,000 patients on the lists of patients of the members of the practice or, although there is a total of less than 4,000 patients on those lists, in the opinion of the relevant Health Board, there is likely to be a total of at least 4,000 on those lists within the period of twelve months following the date on which it came to the notice of the relevant Health Board that the total number of patients on the lists of members of the practice was less than 4,000.

2. Where the members of the practice are not partners in a single partnership there is in force an agreement such as is mentioned in paragraph 4 of Schedule 1.

3. The allotted sum is applied in accordance with regulations 17 to 22.

4. The members of a fund-holding practice are, and in the opinion of the Secretary of State will continue to be, capable of managing the allotted sum effectively and efficiently.

5. Where the members of a fund-holding practice employ a person or purchase any services, they first satisfy themselves that the employee has such qualifications, training and experience as are necessary for that employment or, as the case may be, that the provider of the services is suitably competent to provide those services.

6. The members of the practice maintain a bank account (“the fund-holding account”) for the purpose of receiving an allotted sum or any part of it.

7. Except where liability to pay an allotted sum to the members of the fund-holding practice is discharged pursuant to section 87B(2)(b) of the Act, the members of the practice deal with the allotted sum or any part of it only through the fund-holding account.

8. No sums are paid into the fund-holding account other than the allotted sum or any part of it.

9. The members of the practice send to the relevant Health Board, before the end of each month, such information relating to the preceding month as the relevant Health Board may reasonably require in relation to the management of the allotted sum and in particular to—

- (a) transactions effected through the fund-holding account;
- (b) the amount standing in the fund-holding account at the end of the preceding month;
- (c) whether any such amount includes an amount which may be applied for the purposes specified in regulation 22; and
- (d) the referrals of patients of members of the practice for treatment to be provided other than by members of the practice and in particular the arrangements made for the purchase of goods and services specified in the list referred to in regulation 18(2).

10. The members of the practice send to the relevant Health Board—

- (a) before the beginning of each financial year, a practice plan outlining how the practice proposes to spend its allotted sum; and
- (b) by 30th June in any year, an annual report summarising how its allotted sum has been spent in the most recent financial year.

11. The members of the practice submit to the relevant Health Board not later than six weeks after the end of the financial year to which they relate, the accounts which the practice is required to keep under sub-section 86(1A)(a) of the Act.

12. Except in the circumstances specified in sub-paragraph (1)(a), (d), (e), (h), (i), (j), (k), (l), (n), (o) and (p) of paragraph 36 (acceptance of fees) of Schedule 1 (terms of service for doctors) to the National Health Service (General Medical Services) (Scotland) Regulations 1995(12), the members of the practice do not demand or accept from any patient of a member of the practice a payment (including a payment in kind) in respect of any treatment—

- (a) provided by a member of the practice; or
- (b) which a member of the practice has arranged to be provided for the patient under the Act.

13. The members of the fund-holding practice secure that the procedure to investigate complaints established and operated under paragraph 12A, and the requirement to co-operate with investigation of complaints by Health Boards under paragraph 12B, of Schedule 1 to the National Health Service (General Medical Services) (Scotland) Regulations 1995 apply in relation to complaints about their use of the allotted sum.

SCHEDULE 3

Regulation 24

REVOCATIONS

<i>(1)</i> <i>Regulations revoked</i>	<i>(2)</i> <i>References</i>
The National Health Service (Fund-Holding Practices) (Scotland) Regulations 1993	S.I. 1993/488
The National Health Service (Fund-Holding Practices) (Scotland) Amendment Regulations 1993	S.I. 1993/1369

(12) [S.I. 1995/416](#).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>(1)</i> <i>Regulations revoked</i>	<i>(2)</i> <i>References</i>
The National Health Service (Fund-Holding Practices) (Scotland) Amendment Regulations 1995	S.I. 1995/1571
The National Health Service (Fund-Holding Practices) (Scotland) Amendment Regulations 1996	S.I. 1996/748

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate the National Health Service (Fund-holding Practices) (Scotland) Regulations 1993 ([S.I. 1993/488](#)), the National Health Service (Fund-holding Practices) (Scotland) Amendment Regulations 1993 ([S.I. 1993/1369](#)), the National Health Service (Fund-holding Practices) (Scotland) Amendment Regulations 1995 ([S.I. 1995/1571](#)) and the National Health Service (Fund-holding Practices) (Scotland) Amendment Regulations 1996 ([S.I. 1996/748](#)).

The Regulations contain provision relating to the recognition and operation of fund-holding practices. A fund-holding practice means a practice of one or more medical practitioners who are providing general medical services in accordance with arrangements under section 19 of the National Health Service (Scotland) Act 1978 (“the Act”) and which has been recognised as a fund-holding practice in accordance with section 87A of the Act.

A fund-holding practice is entitled to be paid an allotted sum in accordance with section 87B of the Act and may use that sum for purposes specified in these Regulations.

The Regulations include provision about:

- the interpretation of the Regulations (Part I),
- recognition as a fund-holding practice, including applications for recognition, the conditions for obtaining and continuing recognition and determination of applications (Part II),
- renunciation of recognition including the procedure for renunciation and its consequences (Part III),
- removal of recognition as a fund-holding practice, including the grounds for removal, the procedure for removal and the consequences of removal (Part IV, and
- the purposes for which allotted sums may be applied (Part V).

The Regulations also contain provisions creating a third type of fund-holding practice known as a purchasing co-operative. A purchasing co-operative will allow GPs to work together as a group and hold a budget for prescribing and for a range of healthcare services.

The Regulations also make a number of amendments which are minor or consequential drafting amendments.