

HEALTH AND SOCIAL CARE ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Pharmaceutical Services

Chapter 1: Local Pharmaceutical Services

NHS contracts and financial provision

Section 33: NHS Contracts

172. Under *section 33*, persons providing pilot services may apply to become a health service body. The effect of such an application being granted is that the contracts entered into between the Health Authority and the health service body will be NHS contracts within the meaning of the National Health Service and Community Care Act 1990, rather than legal contracts.
173. Where a pilot scheme involves a single individual or body corporate, *subsection (1)* provides for that individual or body to apply to become a health service body. Where a pilot scheme involves more than one person, *subsection (2)* permits all the people involved to apply collectively. In both cases, applications must be made in accordance with regulations under *subsection (3)*. Regulations under *subsection (4)* may provide for applications to be granted except in specified cases. If an application is granted, *subsection (5)* requires the Secretary of State or National Assembly for Wales to specify when it is to come into effect.
174. From a specified day following grant of an application, the applicant or applicants are to be treated as a health service body for the purposes of section 4 of the 1990 Act. *Subsection (7)* provides that where an application has been granted to pilot scheme providers collectively, it is the providers in that scheme at any given time who are to be considered the health service body, even if they have changed since the original application. Regulations under *subsection (9)* may provide for people to cease to be health services bodies in specified circumstances.
175. *Subsections (10) and (11)* require the Secretary of State and National Assembly for Wales to maintain and keep up to date a list of pilot scheme providers who have been awarded health service body status, and to publish it in such manner as they consider appropriate.
176. *Subsection (6)* has the effect that contracts between pilot scheme providers which have been granted the status of health service bodies and other health service bodies (including other pilot scheme providers) are to be treated as NHS contracts if they are for the provision of goods or services in connection with the scheme .
177. NHS contracts are not normally enforceable in the courts. Instead, any disputes can be put to the Secretary of State or National Assembly for Wales for resolution. However, because most pilot scheme providers will be rather different from other health service bodies, *subsection (8)* provides that the County Court may enforce directions issued

as a result of that dispute resolution procedure in favour of or against a pilot scheme provider.

Section 34: Funding of preparatory work

178. *Section 34* deals with financial support for people developing proposals for pilot schemes and preparing to provide services under them. *Subsection (1)* provides that regulations may make provision for Health Authorities to give people financial assistance in respect of preparatory work, as defined by *subsection (2)*. *Subsection (3)* sets out matters which may in particular be included in those regulations.

Section 35: Charges, recovery of payments and penalties

179. *Section 35* deals with charges. The Government's policy is that arrangements for prescription charges under Local Pharmaceutical Services will be the same as those which apply in relation to Part 2 Pharmaceutical Services. People who are exempt, or who otherwise are not required to pay prescription charges, will receive free prescriptions whether they use a pilot scheme provider or a Part 2 provider. Similarly, there will be no difference in the level of prescription charges, or in the cost of pre-payment certificates. Such certificates will be valid for both services interchangeably. To that end, *subsection (1)* provides that regulations may be made about the making and recovery of charges for Local Pharmaceutical Services. *Subsection (2)* specifies matters which may in particular be included in regulations, including the application to Local Pharmaceutical Services of sections 122A and 122B of the 1977 Act, which deal with the recovery of certain charges and the imposition of penalty charges in certain cases. *Subsection (3)* requires the regulations to secure that any charges in respect of Local Pharmaceutical Services will be the same as those which would apply had the service been provided under Part 2 of the 1977 Act.