

HEALTH ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 4 CHAPTER 1

Pharmaceutical Services

Section 34: Power to charge

163. *Section 34(1)* inserts new sections 42A and 42B into the 1977 Act. These sections give the Secretary of State for Health (section 42A in relation to England) and the Assembly (section 42B in relation to Wales) powers to enable charges to be levied in respect of an application to be included in a pharmaceutical list. The fee may be determined either by the Secretary of State (or the Assembly) or by PCTs (or LHBs) where the Secretary of State (or Assembly) so directs.
164. New section 42A(1) enables the Secretary of State to give directions to PCTs requiring them to charge a fee for two types of applications to the pharmaceutical list. First, an application from a person who is not already included in a pharmaceutical list (section 42(2)(c)(i) of the 1977 Act). Secondly, an application from a person who is already included in a pharmaceutical list, but who wants to provide different services or to provide services from different premises (section 42(2)(c)(ii)).
165. New section 42A(4) requires the Secretary of State to publish any directions he gives under this section. Publication may be by electronic means.
166. Section 42A(5) requires a Primary Care Trust, where it determines the fee, to publish the fee. This would most likely be achieved by publishing the amounts of fees on the PCT website or, where the PCT does not have one, on the website of its Strategic Health Authority.
167. Section 42B makes equivalent provision in relation to Wales, save that section 42B(2) additionally enables the Assembly to specify the level of the fee or fees and, as the powers within section 126(4) of the 1977 Act would not be available if the Assembly were to specify the level of the fee or fees payable, it also contains power to enable the Assembly to vary the level of any fee or fees charged and to make different provision for different cases or descriptions of cases.
168. Additionally, section 42B(3) makes provision for the operation of sections 42B(4) and (5) in circumstances where the Assembly delegates its functions of receiving or determining the applications referred to in section 42(2)(c)(i) or (ii) of the 1977 Act. Sections 42B(4) and 42B(5) are in analogous terms to sections 42A(1) and 42B(2).
169. *Section 34(2)* makes a minor amendment to section 126(4) of the 1977 Act which will in particular allow directions under section 42A or 42B to make different provision for different cases or classes of cases.