

1990 No. 1754 (S.167)

NATIONAL HEALTH SERVICE, SCOTLAND

**The National Health Service (Fund-Holding Practices)
(Applications and Recognition) (Scotland) Regulations
1990**

Made *23rd August 1990*

Laid before Parliament *24th August 1990*

Coming into force *17th September 1990*

The Secretary of State, in exercise of powers conferred on him by sections 2(5), 87A(2) and (4), 105(7), 106(a) and 108(1) of the National Health Service (Scotland) Act 1978(a) and of all other powers enabling him in that behalf, and having consulted the Council of Tribunals and its Scottish Committee in accordance with section 10 of the Tribunals and Inquiries Act 1971(b) hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Fund-Holding Practices) (Applications and Recognition) (Scotland) Regulations 1990 and shall come into force on 17th September 1990.

(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;

“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—

(i) as individuals;

(ii) partly as individuals and partly in partnership; or

(iii) in partnership with each other,

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

“relevant Health Board” has the meaning given in regulation 2;

(a) 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); section 87A was 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 provisions, and section 108(1) contains definitions of “prescribed” and “regulations”, relevant to the exercise of the statutory powers under which these Regulations are made.

(b) 1971 c.62; see paragraph 41 of Part II of Schedule 1 to that Act, as amended by the National Health Service (Scotland) Act 1972 (c.58), Schedule 6, paragraph 152 and the National Health Service (Scotland) Act 1978 (c.29), Schedule 16, paragraph 35.

“Family Health Services Authority” has the meaning indicated by section 10 of the National Health Service Act 1977(a);

(3) 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.

(4) 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 3.

(5) In these Regulations any reference to the sending of a document is a reference to the sending of a 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.

Meaning of “relevant Health Board”

2.—(1) Except in a case to which regulation 3(3) applies “relevant Health Board” has the meaning given in section 19(8) of the Act(b).

(2) In a case to which regulation 3(3) applies 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.

Applications for recognition as a fund-holding practice

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

(3) Where a member of a practice is on both the medical list of a Health Board and the medical list of a Family Health Services Authority, or the members of the practice include a member who is only on the medical list of a Health Board and a member who is only on the medical list of a Family Health Services Authority, then the application shall be made to the relevant Health Board if more patients on the lists of the members of the practice reside in Scotland than in England(c).

Grant and conditions for recognition as a fund-holding practice

4.—(1) A Health Board shall not grant recognition as a fund-holding practice unless it is satisfied that the conditions specified in paragraph (2) are fulfilled.

(2) The conditions referred to in paragraph (1) are that—

(a) on the date on which the application is made there will be a total of at least 9,000 patients on the lists of patients of members of the practice, or it is likely that there will be a total of at least 9,000 patients on those lists during the period of twelve months commencing on that date;

(b) the practice does not include both—

(i) a member who practises in a partnership where the total number of patients on the lists of patients of the medical practitioners in the partnership exceeds 9,000; and

(ii) a member who practises in another such partnership;

(c) where some or all of the members of the practice are practising in partnership, the application is made by all the members practising in partnership;

(a) 1977 c.49; section 10 was amended by the National Health Service and Community Care Act 1990 (c.19), section 2 which also made provision for the use generally of the expression Family Health Services Authority.

(b) Section 19(8) was inserted by the National Health Service and Community Care Act 1990 (c.19), section 37.

(c) See S.I. 1990/1753 for applications by practices with more patients residing in England than in Scotland.

- (d) 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; and
- (e) 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.

Determination of application

5.—(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 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

6.—(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 5(2) applies, on the date one month after the end of the period of three months specified in regulation 5(1).

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

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

(5) 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.

(6) 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.

(7) All members of the practice may attend the hearing and, the practice may be represented by a member of the practice 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.

(8) Subject to paragraph (7), procedure at the hearing shall be as considered by the person or persons appointed to hear the appeal to be appropriate in the circumstances.

(9) 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.

(10) 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 of, including a statement of the reasons for, his determination.

(11) 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.

St Andrew's House, Edinburgh
23rd August 1990

James Douglas-Hamilton
Parliamentary Under Secretary of State,
Scottish Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 17th September 1990, make provision in relation to Scotland for general medical practitioners to apply for recognition as fund-holding practices and the grant of recognition by Health Boards or, on appeal, by the Secretary of State.

Regulations 1 and 2 make provision in relation to interpretation for the Regulations and regulation 3 makes general provision in relation to the making of applications for recognition by each member of the practice or group of practitioners concerned. Regulation 4 provides the conditions which must exist for a Health Board to be able to grant recognition, in particular that the practice, or practitioners making application for fundholding purposes, should have a minimum patient list size of 9,000, and makes further provision in relation to partnership applicants.

Regulation 5 makes provision in relation to the determination of applications by Health Boards and for notification of the determinations to be made. Regulation 6 makes provision for appeals to the Secretary of State against refusal of recognition by the Health Board and sets out the arrangements for such appeals.

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