
STATUTORY INSTRUMENTS

1993 No. 488 (S.53)

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (Fund-Holding Practices) (Scotland) Regulations 1993

<i>Made</i>	- - - -	<i>5th March 1993</i>
<i>Laid before Parliament</i>		<i>11th March 1993</i>
<i>Coming into force</i>	- -	<i>1st April 1993</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 1993 and shall come into force on 1st April 1993.

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

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;

“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;

“Family Health Services Authority” has the meaning indicated by section 10 of the National Health Service Act 1977⁽⁶⁾.

(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.

(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 10 was amended by the 1990 Act, section 2 which also made provision for the use generally of the expression Family Health Service Authority.

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

(3) Where at least one of the members of a practice wishing to make an application is on the medical list of a Family Health Services 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(7), where more patients on the lists of members of the practice reside in England than in Scotland”.

Grant of recognition as a fund-holding practice

3. A Health Board shall not grant recognition as a fund-holding practice unless it is satisfied that the conditions specified in Schedule 1 to these Regulations are fulfilled.

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 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).

(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 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 (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.

(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. The members of a fund-holding practice shall continue to be entitled to recognition as a fund-holding practice if and for so long as the conditions specified in Schedule 2 are fulfilled in relation to the 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⁽⁸⁾ 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 5 of Schedule 1.

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

8.—(1) Subject to paragraph (2), a member of a fund-holding practice may withdraw from the practice and if he does so the remaining members of the practice shall continue to be recognised as a fund-holding practice unless and until the members of the practice renounce recognition or the relevant Health Board removes recognition from the practice in accordance with these Regulations.

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

(3) Where a member of a fund-holding practice dies, the remaining members of the practice shall continue to be recognised as a fund-holding practice unless and until the members of the practice renounce recognition or the relevant Health Board removes recognition from the practice in accordance with these Regulations.

(8) 1978 c. 29, section 20 was amended by the Health Services Act 1980, Schedule 6, paragraph 3 and Schedule 7 and by S.I. 1981/432, article 4(1).

PART III

RENUNCIATION OF RECOGNITION

Renunciation of recognition

9.—(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 20 (savings from the allotted sum);
 - (iv) the liabilities of the members of the practice in relation to the allotted sum.

Consequences of renunciation of recognition

10.—(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 9(2), to be recognised as a fund-holding practice.

(2) Notwithstanding renunciation of recognition and subject to paragraph (5), a former fund-holding practice shall continue to fulfil the conditions specified in paragraphs 7, 8, 9, 10 and 11 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) When the relevant Health Board is satisfied that all liabilities of the fund-holding practice, other than any liabilities in relation to the application of the allotted sum for the purposes specified in regulation 20 (savings from the allotted sum), 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.

(4) 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—

- (a) continue to maintain the fund-holding account until no amount remains in that account;
- (b) apply that sum only for the purposes specified in regulation 20 (savings from the allotted sum); and
- (c) each month send to the relevant Health Board a statement specifying any withdrawal from the fund-holding account.

(5) 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

11.—(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 fund-holding practice if a condition specified in Schedule 2 is no longer fulfilled in relation to the practice.

Procedure for removal of recognition

12.—(1) Except as provided by regulation 13 where a relevant Health Board propose to remove recognition from the members of a fund-holding practice on the ground specified in regulation 11(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 11(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

13.—(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

14.—(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

15.—(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 20 (savings from the allotted sum) 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

16.—(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 price 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 32 of the National Health Service (General Medical and Pharmaceutical Services) (Scotland) Regulations 1974(9);

“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⁽¹⁰⁾;

“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

17.—(1) Subject to paragraphs (3) to (8) the members of a fund-holding practice shall apply the allotted sum to secure the purchase of such of the 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.

(2) The goods and services referred to in paragraph (1) shall be the goods and services specified in a list approved from time to time by the Secretary of State for the purposes of this regulation.

(3) 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.

(4) The relevant Health Board shall consent to a contract for the purchase of the community nursing services mentioned in paragraph (3) if it is satisfied that the proposed provider—

- (a) is either a Health Board or an NHS Trust;
- (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 practice or not, for the whole of the calendar year ending on the date from which the proposed services are to be purchased; and
- (c) that the community nursing services which the members of the practice propose to purchase include those which the Health Board, in its determination of the allotted sum payable to the members of the fund-holding practice in accordance with section 87B of the 1978 Act, determined were expected to be purchased for the benefit of individuals on the lists of patients of members of the fund-holding practice.

(5) 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.

(6) 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 18.

(10) 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).

(7) Where the members of a practice have obtained the consent of the relevant Health Board under paragraph (4) or (5), the members of the practice shall inform that Board in writing forthwith—

- (a) in the case of consent under paragraph (4), 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 (5), 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.

(8) Where a Health Board receives notice as mentioned in paragraph (7), it shall either confirm or withdraw that consent.

(9) 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

18.—(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 in accordance with an arrangement made in pursuance of paragraph (2).

(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 specified in Schedule 3 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 lists specified in Schedule 3;

- (b) the medical practitioner with whom the arrangement is to be made to provide those services is suitably qualified, competent and experienced;
 - (c) in any one month the medical practitioner with whom the arrangement is to be made does not propose to spend more than 30 hours on the provision of those services;
 - (d) the facilities, including premises, for the provision of those services pursuant to the arrangement are suitable;
 - (e) 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

19.—(1) Subject to paragraphs (2) and (3), the members of a fund-holding practice may apply the allotted sum for the purpose of paying the salaries of 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 salary of 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 of 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 17(2).

Savings from the allotted sum

20. 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 one or more of the following:—

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

- (a) the purposes specified in regulations 16, 17, 18 and 19,
- (b) 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; or
- (c) the improvement of any premises from which the members of the practice carry on their practice whether by improving the structure of the premises or the purchase of furniture and furnishings for the premises.

Recovery of mis-applied amounts

21.—(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 16, 17, 18, 19 or 20, 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 (11) 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

- 22.** The Regulations specified in Schedule 4 are revoked.

St Andrew's House,
Edinburgh
5th March 1993

Fraser of Carmyllie
Minister of State, Scottish Office

SCHEDULE 1

Regulation 3

CONDITIONS FOR OBTAINING RECOGNITION AS A FUND-HOLDING PRACTICE

1. On the date on which the application is made there will be a total of at least 6,000 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 6,000 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 other persons) by all the members practising in partnership.
3. The practice does not include both—
 - (a) 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 6,000, and
 - (b) a member who practises in another such partnership.
4. 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.
5. 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.

SCHEDULE 2

Regulation 6

CONDITIONS FOR CONTINUING RECOGNITION AS A FUND-HOLDING PRACTICE

1. There is a total of at least 6,000 patients on the lists of patients of the members of the practice or, although there is a total of less than 6,000 patients on those lists, in the opinion of the relevant Health Board, there is likely to be a total of at least 6,000 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 6,000.
2. The practice does not include both—
 - (a) 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 6,000, and
 - (b) a member who practises in another such partnership.
3. 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 5 of Schedule 1.
4. The allotted sum is applied as required by regulations 16 and 17 and is not applied for purposes other than those specified in regulations 16, 17, 18, 19 and 20.
5. The members of a fund-holding practice have in place administrative and financial systems conducive to the effective and efficient management of the allotted sum.
6. 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

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necessary for that employment or, as the case may be, that the provider of the services is suitably competent to provide those services.

7. 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.

8. 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(12), the members of the practice deal with the allotted sum or any part of it only through the fund-holding account.

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

10. 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 20 (savings from the allotted sum), 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 17(2).

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), (i), (j), (k), (l), (m) and (o) of paragraph 20 (acceptance of fees) of Part I of Schedule 1 (terms of service for doctors) to the National Health Service (General Medical and Pharmaceutical Services) (Scotland) Regulations 1974(13), 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.

SCHEDULE 3

Regulation 18

SERVICES IN RESPECT OF WHICH A MEMBER OF A FUND-HOLDING PRACTICE MAY RECEIVE PAYMENT PURSUANT TO AN ARRANGEMENT UNDER REGULATION 18

Pathology

Blood counts

Liver function and electrolytes

Ophthalmology

Chalazion operation

Operations for obstruction of the nasolacrimal duct

(12) Section 87B was inserted by the National Health Service and Community Care Act 1990, section 34.

(13) S.I. 1974/506, relevant amending instruments are S.I. 1981/56, 1982/1279 and 1989/1990.

Ear Nose and Throat

Audiometry
Puncture of maxillary antrum with washout
Pharyngoscopy
Laryngoscopy

General surgery

Endoscopy (upper gastrointestinal tract)
Sigmoidoscopy
Ligation of varicose veins (below knee)

Genito-Urinary surgery

Diagnostic flexible cystoscopy
Vasectomy

Gynaecology

Colposcopy
Endometrial biopsy
Marsupialisation of Bartholin's cyst

Orthopaedics

Excision of ganglion
Carpal tunnel release
Zadek's operation

Other

Diagnostic ultrasound (not obstetric)

SCHEDULE 4

Regulation 22

REVOCATIONS

(1) Regulations revoked	(2) References
The National Health Service (Fund-Holding Practices) Applications and Recognition) (Scotland) Regulations 1990	S.I. 1990/1754
The National Health Service (Fund-Holding Practices) (General) (Scotland) Regulations 1991	S.I. 1991/573

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(1) Regulations revoked	(2) References
The National Health Service (Fund-Holding Practices) (Applications and Recognition) (Scotland) Amendment Regulations 1992	S.I. 1992/2379

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate the following Regulations:—

- (a) NHS (Fund-Holding Practices) (Applications and Recognition) (Scotland) Regulations 1990;
- (b) NHS (Fund-Holding Practices) (General) (Scotland) Regulations 1991;
- (c) NHS (Fund-Holding Practices) (Applications and Recognition) (Scotland) Amendment Regulations 1992.

The Regulations also incorporate new provisions specifying the additional purposes for which members of a recognised fundholding practice may use the sum allotted to them for the purchase of health care for their patients, and for the recovery of amounts applied by the members of a recognised fundholding practice otherwise than in accordance with the regulations.