
STATUTORY INSTRUMENTS

1999 No. 365 (S. 19)

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (Fund-Holding Practices) (Scotland) Amendment Regulations 1999

<i>Made</i>	- - - -	<i>15th February 1999</i>
<i>Laid before Parliament</i>		<i>17th February 1999</i>
<i>Coming into force</i>		
<i>Part I and regulation 26</i>		<i>18th February 1999</i>
<i>Parts II and IV except regulation 26</i>		<i>10th March 1999</i>
<i>Part III</i>		<i>1st April 1999</i>

The Secretary of State, in exercise of the powers conferred on him by sections 87A (2) and (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
INTRODUCTORY

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Fund-Holding Practices) (Scotland) Amendment Regulations 1999.

(2) Part I and regulation 26 shall come into force on 18th February 1999, Parts II and IV, except regulation 26, shall come into force on 10th March 1999 and Part III shall come into force on 1st April 1999.

(1) 1978 c. 29; sections 87A, 87B and 87C were inserted by the National Health Service and Community Care Act 1990 (c. 19), section 34 and sections 87A and 87B were amended by the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraphs 53 and 54; 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 a definition of “regulations”, relevant to the exercise of the statutory powers under which these Regulations are made.

(3) In these Regulations, “the principal Regulations” means the National Health Service (Fund-Holding Practices) (Scotland) Regulations 1997(2).

PART II

AMENDMENTS TO TAKE EFFECT ON 10TH MARCH 1999

Amendment of regulation 1 of the principal Regulations

2. In regulation 1 of the principal Regulations (citation, commencement and interpretation) in paragraph (2) after the definition of “relevant Health Board” there is inserted the following definition:–

““residual fund-holding practice” means a fund-holding practice recognised as from 1st April 1999.”.

Amendment of regulation 2 of the principal Regulations

3. In regulation 2 of the principal Regulations (application for recognition as a fund-holding practice), paragraph (4) is omitted.

Amendment of regulation 12 of the principal Regulations

4. In regulation 12 of the principal Regulations (grounds for removal of recognition), in paragraph (1)–

- (a) after “the next 1st April” insert “or, if 1st April has passed, for the current financial year (beginning on 1st April immediately past),”; and
- (b) for “that 1st April” substitute “midnight on 31st March immediately preceding that 1st April, or, if that date has passed, forthwith”.

Amendment of regulation 13 of the principal Regulations

5.—(1) Regulation 13 of the principal Regulations (procedure for removal of recognition) is amended as follows.

- (2) In paragraph (1)–
 - (a) in sub-paragraph (a)(ii), for “three months” substitute “three weeks”; and
 - (b) in sub-paragraph (b), omit “either orally or”.
- (3) In paragraph (2), for “two months” substitute “two weeks”.
- (4) Omit paragraph (3).

Amendment of regulation 22 of the principal Regulations

6.—(1) Regulation 22 of the principal Regulations (savings from the allotted sum) is amended as follows.

- (2) In paragraph (1)–
 - (a) for “regulations 17 and 18” substitute “regulation 18”;
 - (b) omit “17”.
- (3) For paragraph (2) substitute–

“(2) Subject to paragraph (3), where the accounts for a financial year of members of a fund-holding practice have been audited in accordance with section 86(1A) of the Act, the members of a fund-holding practice may, within the period of two years after the end of that financial year, with the consent of the Health Board apply any part of the allotted sum paid to them in respect of that financial year for the purposes specified in regulations 18 and 19 or 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; or
 - (ii) enhances the comfort or convenience of patients; or
- (b) the purchase of material or equipment relating to health education; or
- (c) in relation to any premises from which general medical services are provided—
 - (i) improvements to the premises, including alterations to or decoration of the premises and the purchase of furniture and furnishings; or
 - (ii) building an extension provided that no acquisition of land is involved; provided that the improvements or extensions as the case may be are in accordance with the premises strategy of the relevant Health Board; or
- (d) the purchase of goods and services as part of an initiative to improve prescribing practices; or
- (e) training for members or employees of the practice which in the case of members is required in connection with their membership of the practice, or in the case of employees is required in connection with duties arising in the course of their employment; or
- (f) the cost of employing temporary staff.”.

(4) In paragraph (3) omit “(a) to (e)”.

Revocations

7. Regulation 9 of the principal Regulations is hereby revoked.

PART III

AMENDMENTS EFFECTING RESIDUAL FUND-HOLDING PRACTICES AS FROM 1ST APRIL 1999

Amendment of regulation 1 of the principal Regulations

8. In regulation 1 (citation, commencement and interpretation) in paragraph (2) omit the definitions of “primary care purchasing practice”, “purchasing co-operative” and “standard fund-holding practice”.

Amendment of regulation 2 of the principal Regulations

9. In regulation 2 of the principal Regulations (application for recognition as a fund-holding practice) omit paragraph (2).

Amendment of regulation 3 of the principal Regulations

10. In regulation 3 of the principal Regulations (grant of recognition as a fund-holding practice) in paragraph (1), for “as a standard fund-holding practice, primary care purchasing practice or a purchasing co-operative (as the case may be)”, substitute “as a residual fund-holding practice”.

Amendment of regulation 6 of the principal Regulations

11. In regulation 6 of the principal Regulations (conditions for continuing recognition) in paragraph (1), for “of a standard fund-holding practice, a primary care purchasing practice or a purchasing co-operative (as the case may be)”, substitute “of a residual fund-holding practice”.

Amendment of regulation 8 of the principal Regulations

12. In regulation 8 of the principal Regulations (withdrawal or death of a member of a fund-holding practice)–

- (a) in paragraph (1), omit “in relation to the kind of practice in question”; and
- (b) omit paragraphs (2) to (6).

Amendment of regulation 11 of the principal Regulations

13. In regulation 11 of the principal Regulations (consequences of renunciation of recognition) in paragraph (3), for “ending on that date”, substitute “in which that date falls”.

Amendment of regulation 12 of the principal Regulations

14. In regulation 12 of the principal Regulations (grounds for removal of recognition), in paragraph (2), for the words “a standard fund-holding practice, a primary care purchasing practice or a purchasing co-operative (as the case may be)” substitute “a fund-holding practice”.

Amendment of regulation 18 of the principal Regulations

15.—(1) Regulation 18 of the principal Regulations (payment for goods and services) is amended as follows.

- (2) Omit paragraphs (3) to (6) and (11)(a).
- (3) In paragraph (1), for “Subject to paragraphs (3) to (9)” substitute “Subject to paragraphs (7) to (10) and to regulation 19A”.
- (4) For paragraph (2) substitute–
 - “(2) The goods and services referred to in paragraph (1) are the goods and services specified in the list set out in Schedule 4 to these Regulations.”.
- (5) After paragraph (2), insert–
 - “(2A) Except where goods and services are purchased pursuant to an agreement entered into before 1st April 1999, fund-holding practices shall purchase goods and services only from providers which are health service bodies.”.

Amendment of regulation 19 of the principal Regulations

16.—(1) Regulation 19 of the principal Regulations (payments to members of the practice) is amended as follows.

- (2) In paragraph (1)–
 - (a) at the beginning insert “Subject to regulation 19A,”;

- (b) at the end of sub-paragraph (a) insert “or”;
- (c) omit sub-paragraph (b).

Limit on period of agreements

17. After regulation 19 insert–

“Limit on period of agreements

19A.—(1) Any agreement entered into on or after 1st April 1999 by the members of a fund-holding practice whereby the allotted sum would be applied as provided for in regulation 18, 19, 20 or 21, must comply with the requirements of paragraph (2).

(2) The agreement shall contain terms the effect of which shall be that–

- (a) it shall come to an end not later than the end of the period of 6 months beginning with the date the agreement was made and that the duration of the agreement may not be extended; and
- (b) without prejudice to the availability of any remedy for breach of the agreement, no rights, liabilities or obligations are imposed beyond the end of that period.”.

Amendment of regulation 21 of the principal Regulations

18.—(1) Regulation 21 of the principal Regulations (payment for management expenses) is amended as follows.

- (2) In paragraph (1), at the beginning insert “Subject to regulation 19A”.
- (3) Omit paragraph (7).
- (4) In paragraph (8) omit sub-paragraph (c).

Amendment of regulation 23 of the principal Regulations

19. In regulation 23 of the principal Regulations (recovery of mis-applied amounts), in paragraph (1) omit “17”.

Amendment of Schedule 1 to the principal Regulations

20. In Schedule 1 to the principal Regulations (conditions for obtaining recognition as a fund-holding practice)–

- (a) omit paragraph 1; and
- (b) in paragraph 5(c)(3), for “, in the case of standard fund-holding practices in Part I, and in the case of primary care purchasing practices in Part II, of” substitute “in”.

Amendment of Schedule 2 to the principal Regulations

21.—(1) Schedule 2 to the principal Regulations (conditions for continuing recognition as a fund-holding practice) is amended as follows.

- (2) Omit paragraph 1.
- (3) In paragraph 3, for “17 to 22” substitute “18 to 22”.

(3) Paragraph 5 was inserted by S.I. 1998/658.

(4) In paragraph 14(c)(4), for “, in the case of standard fund-holding practices in Part I, and in the case of primary care purchasing practices in Part II, of” substitute “in”.

(5) After paragraph 14 insert the following—

“15. There shall be no changes to the membership of the fund-holding practice, either by addition of new members or withdrawal of existing members, except in circumstances of death or retirement of a member.

16. The members of the practice shall not let the fund-holding account become overdrawn.”.

New Schedule 4 to the principal Regulations

22. After Schedule 3 to the principal Regulations, insert the new Schedule 4 set out in the Schedule to these Regulations.

Revocations

23. Regulations 7 and 17 of the principal Regulations are hereby revoked.

Saving

24.—(1) The amendments made by regulation 12 do not affect the members of any fund-holding practice from which a member has withdrawn before 1st April 1999 in circumstances other than death or retirement provided that the notice required in accordance with regulation 8(2) of the principal Regulations has been sent before 1st April 1999 and in such cases regulation 8 of the principal Regulations shall continue to apply in relation to members and former members of such practices as if the amendment referred to above had not been made.

(2) In respect of any part of an allotted sum applied before 1st April 1999, regulation 23 of the principal Regulations shall continue to have effect as though the amendments made by regulations 19 and 23 of these Regulations had not been made, notwithstanding that the Secretary of State does not make his determination until on or after that date.

PART IV

TRANSITION TO RESIDUAL FUND-HOLDING SCHEME

Applications for recognition as a residual fund-holding practice

25.—(1) Where the relevant Health Board has granted recognition in accordance with regulation 3(1) as a standard fund-holding practice, a primary care purchasing practice or a purchasing co-operative, but the recognition has not taken effect before 1st April 1999, such recognition shall lapse.

(2) Where, by midnight on 31st March 1999, the relevant Health Board has neither granted nor refused recognition in respect of any outstanding application for recognition as a standard fund-holding practice, or as a primary care purchasing practice or as a purchasing co-operative that application shall lapse.

(3) In this regulation, “residual fund-holding practice” means a fund-holding practice recognised as from 1st April 1999, in accordance with the principal Regulations as amended by these Regulations.

(4) Paragraph 14 was inserted by S.I. [1998/658](#).

Change in status of recognised fund-holding practices

26. Where the members of a standard fund-holding practice, a primary care purchasing practice or a purchasing co-operative wish the practice to continue to be recognised as a fund-holding practice on and after 1st April 1999, they shall send a written notice of their intention to remain a fund-holding practice to the relevant Health Board to be received no later than 11th March 1999.

Removal of recognition

27.—(1) Subject to paragraph (4) where the notice referred to in regulation 26 has not been received on or before 11th March 1999 from the members of any fund-holding practice, recognition shall be removed from them with effect from midnight on 31st March 1999.

(2) Where recognition is to be removed in circumstances specified in this regulation the relevant Health Board shall—

- (a) send to each member of the practice notice of removal of recognition;
- (b) include in the notice a statement of the reason for removal of recognition and that the removal takes effect from midnight on 31st March 1999;
- (c) inform the members of the practice that they may, subject to paragraphs (3) and (4), make representations in writing to the Secretary of State concerning the matter; and
- (d) inform each member of the practice of the consequences of removal of recognition.

(3) Where the members of the practice wish to make representations in writing against the removal of recognition, the representations may be sent to the Secretary of State within the period of three weeks beginning with the date on which the notice referred to in paragraph (2) was sent.

(4) Where the Secretary of State decides, having taken into account the representations of the members of the fund-holding practice, not to remove recognition he shall—

- (a) write to each member of the fund-holding practice withdrawing the notice referred to in paragraph (2); and
- (b) inform them of a new date by which the notice referred to in regulation 26, must be received by the relevant Health Board.

(5) Where the Secretary of State informs the members of a fund-holding practice that their notice or application must be received by a new date in accordance with paragraph (4)(b), and the notice or application is not received by that new date the relevant Health Board shall remove recognition from them forthwith and paragraph 2(a), (b) and (d) shall apply, save that paragraph (b) shall apply as if “forthwith” were substituted for “from midnight on 31st March 1999”.

Consequences of removal of recognition

28. Where recognition is removed from a practice in accordance with regulation 27(1) the consequences shall be the same as the consequences of the practice’s having renounced recognition and—

- (a) regulation 11(2) to (6) of the principal Regulations shall apply as if the references in those paragraphs to renunciation of recognition were references to removal of recognition; and
- (b) regulation 14 of the principal Regulations shall not apply.

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St Andrew's House,
Edinburgh
15th February 1999

Sam Galbraith
Minister for Health, Scottish Office

SCHEDULE

Regulation 22.

“SCHEDULE 4

Regulation 18

SERVICES WHICH MAY BE PURCHASED BY A RESIDUAL FUND-HOLDING PRACTICE

Payment of salaries of 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.

The following therapy services provided by the National Health Service—

- Speech and language therapy;
- Occupational therapy;
- Chiropody;
- Dietetics”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Fund-Holding Practices) Regulations 1997 which contain provisions relating to the recognition and operation of fund-holding practices.

As from 1st April 1999, the three existing types of fund-holding practice, standard fund-holding practices, primary care purchasing practices and purchasing co-operatives will be replaced by a single type of fund-holding practice to which the amended regulations will apply.

Part II of these Regulations makes changes to the principal Regulations which come into force before the three types of practice cease to exist. These changes include –

regulation 3, amending regulation 2 of the principal Regulations (application for recognition as a fund-holding practice) and regulation 7, which revokes regulation 9 of the principal Regulations, prevent practices changing between the three types of fund-holding practice between the coming into force of these Regulations and the types of practice ceasing to exist on 1st April 1999. Regulation 6 amends regulation 22 of the principal Regulations to amend the list of items on which savings from the allotted sum may be spent, requiring that Health Board consent is to be obtained before any savings are spent.

Part III sets out the new rules which will apply to the single type of fund-holding practice to be known as a residual fund-holding practice from 1st April 1999—

regulation 12 amends regulation 8 of the principal Regulations so that the membership of a fund-holding practice shall not change, except by death or retirement of a member;

regulation 15 amends regulation 18 so that the only goods and services which may be bought are those listed in a new Schedule 4 to the principal Regulations (inserted by regulation 22 of these Regulations). Goods and services are only to be purchased from health service bodies;

regulation 17 inserts a new regulation 19A limiting the duration of new contracts entered into by fund-holding practices to 6 months;

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regulation 20 amends Schedule 1 to the principal Regulations (conditions for obtaining recognition) and regulation 21 amends Schedule 2 (conditions for continuing recognition) so that the number of patients on a practice's list do not affect recognition. New conditions are inserted in Schedule 2 making it a condition of continued recognition that there be no changes in the membership of a fund-holding practice (other than because of death or retirement) and that the fund-holding account not become overdrawn;

regulations 24 makes saving provisions in respect of regulations 8 (withdrawal or death of a member of a fund-holding practice), and 23 (recovery of misapplied sums) of the principal Regulations.

Part IV sets out the steps which fund-holding practices will have to follow to retain recognition beyond 1st April 1999.