



National Health Service in Scotland  
Management Executive

St. Andrew's House  
Edinburgh EH1 3DG

Dear Colleague

**REGULATION**

1. The attached paper sets out the Management Executive's role in the regulation of the NHS in Scotland. The paper has been prepared following extensive consultations with the Service and incorporates many of the principles proposed in the comments made. The paper can only give an overview. How these responsibilities will be carried out in practice in any specific area, has been or will be the subject of detailed guidance documents.

**Action**

2. Health Boards and NHS Trusts should note this guidance.
3. Can Health Boards please copy this guidance to Fundholding GP's in their area for information.

Yours sincerely

**ALEC CUMMING**  
Acting Director of Finance

10 June 1994

Addressees

For action:

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Health Boards

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To be copied to  
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## REGULATION

### 1. Introduction

The paper sets out to inform Health Boards, Trusts and GP Fundholders of the role of the Management Executive in regulating the market and setting out what that regulation consists of.

### 2. Purpose of Regulation

- i) Regulation should provide assurance that the NHS market operates for the overall benefit of the population and to the standards expected of a public service.
- ii) Regulation will support the internal market and will allow purchasers and providers of NHS services as much freedom to negotiate and agree contracts as is consistent with a nationally funded service and with the long-term strategic aims of the service.
- iii) Regulation will therefore be a framework, with the ME making clear that having set the framework in place, it will allow the players in the internal market to negotiate with confidence that they will not suffer interference, provided they operate within the framework.

### 3. Nature of Regulation

Regulation should be set at the minimum level consistent with achieving the purposes set out above. The Management Executive has a responsibility to manage the Scottish Health Service and this management process will influence relationships between purchasers and providers in a number of ways set out at section 4. These should not be confused with the simple framework for regulation. This will consist of:-

#### i) Regulation of Services

The Management Executive (and, in some cases, Ministers) will continue to approve all significant changes in services. Such changes are likely to be a result of significant changes of purchasing by Health Boards. They may involve the closure of hospitals, significant changes in their use and the decision to purchase new services (or to cease to purchase existing ones) including screening programmes.

This form of regulation is required to avoid wasteful proliferation of services, to ensure comprehensive provision of services, including national specialised services, and to maintain strategic direction of services.

The means of delivering and monitoring this aspect of regulation currently exist through the circular on hospital closures, the submission of purchasers' strategic plans and NHS Trust business plans to the Management Executive and the capital programme approval process. All of these aspects are currently being reviewed and new guidance will be issued in the near future after consultation with the Service.

ii) Regulation of Internal Market Structures

The Management Executive will consider all proposals for the creation, merger, and takeover of Trusts. The ME will also continue to control the setting of entry criteria for GP Fundholders, who will continue to be accountable through Health Boards. Any proposals to merge or change the boundaries of Health Boards will also be matters for consideration by the Management Executive.

This part of the regulatory framework is necessary to ensure that, in so far as geography permits, a competitive internal market is developed and maintained.

The mechanisms for the establishment of this part of the framework already exist in the form of regulations establishing Boards, Trusts and Fundholders. The private sector exists alongside NHS players in the market place, but largely outside the regulatory framework (other than for accreditation ie achievement of minimum standards).

iii) Regulation of Conduct

The Management Executive sets "rules of engagement" which ensure fair play in the internal market. These cover the nature and development of contracts, the principles of costing and pricing underlying contracts, the requirement to provide information on an open basis and the payment of invoices. The principle of openness should mean that there is no such concept as "Commercial In-Confidence" information in the internal NHS market.

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Regulation of conduct has the aim of promoting the operation of the market by ensuring that long term relationships are developed, and that no participant can gain unfair advantage by preserving the status quo or abusing market position. It also aims to ensure that the operation of the market is socially acceptable.

Guidance has in fact already substantially been issued in the form of Contract Manuals, GP Fundholding Manual and Circulars on information and openness.

Guidance has also been issued on Corporate Governance, which places emphasis on the public accountability of the NHS. This guidance also re-states the importance of public sector values which should underpin the conduct of all who use publicly funded resources.

iv) Arbitration

Arbitration takes the form of intervention at the request of one or both parties to a dispute, when it has not proved possible to resolve the dispute bi-laterally.

The purpose of arbitration is to give assurance to participants in the contracting process that a fair hearing will be provided where necessary, which will resolve disputes quickly and effectively.

The mechanism for arbitration is described in Contracts Manuals.

#### 4. Other ME interventions and influences on the contracts process

The regulatory framework described above is intended to facilitate the contracts process. The ME has other more active means of intervention in the internal market. These interventions are effected through Health Boards which are accountable to the ME for the efficient and effective deployment of the resources made available to them for the purchase of health and health care for their resident populations, and through NHS Trusts being accountable for the financial performance of their Trust.

##### i) Strategic Framework

The ME needs to be satisfied that the contracts process is contributing towards the achievement of the strategic goals of the NHS in Scotland. Contracts will therefore be examined in terms of efficiency and effectiveness in the delivery of acute services strategy, in terms of resource movement towards primary care and care in the community and in terms of delivery of health promotion targets.

##### ii) Allocations Process

The annual allocations process determines the total resource available for contracts. In particular the process of allocating capital funds directly impacts on the services which can be offered by providers.

##### iii) Accountability Review/Contracts Review

The ME will take a very active interest through the accountability reviews with Boards in the effectiveness of the contracts process in terms of delivery of strategic objectives. At a more detailed level, a review of contracts after they have been placed is carried out by the ME and this results in recommendations for future action where appropriate.

##### iv) Financial Audit

The contracts process is subject to external audit. This includes contracts negotiated by GP Fundholders, whose accounts are incorporated in Health Board accounts. External audit, together with the normal internal audit process, should assure propriety in the conduct of contracts and will also periodically look at value for money in the contracts process.

##### v) Private Finance Initiative

Opportunities for involvement of private finance in the provision of NHS facilities and services are likely to require a more flexible approach to contracting than at present. Guidance on opportunities for involvement of private finance was issued recently.

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