STATUTORY INSTRUMENTS

1977 No. 644

HEALTH SERVICES

The Health Services Board (Authorisation and Notification) Regulations 1977

Made - - - -	*5th April* 1977
Laid before Parliament	*5th April* 1977
Coming into Operation	*6th April* 1977

The Secretary of State for Social Services, as respects England, the Secretary of State for Wales, as respects Wales, and the Secretary of State for Scotland, as respects Scotland, with the consent of the Treasury as to the fee prescribed by regulation 3, in exercise of powers conferred on them by sections 14 and 16 of the Health Services Act 1976(**a**), and of all other powers enabling them in that behalf, after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971(**b**), and after consultation with the Health Services Board, bodies representative of medical and dental practitioners and other bodies representative of interests likely to be substantially affected by these regulations in accordance with section 22(2) of the Health Services Act 1976, hereby make the following regulations:—

Citation and Commencement

1. These regulations may be cited as the Health Services Board (Authorisation and Notification) Regulations 1977 and shall come into operation on 6th April 1977.

Interpretation

2.—(1) In these regulations the following expressions have the respective meanings hereby assigned to them:—

"the Act" means the Health Services Act 1976;

"application" (except in regulation 11) means an application for an authorisation;

"authorisation" has the meaning assigned by section 20 of the Act;

"the Board" means the Health Services Board;

"controlled works" has the meaning assigned by section 12(2) of the Act;

"day surgery" means the performance of surgical procedures which do not require patients to stay overnight;

"notifiable works" has the meaning assigned by section 14(7) of the Act;

"the Scottish Committee" means the Scottish Committee of the Board;

"the Welsh Committee" means the Welsh Committee of the Board.

(**a**) 1976 c. 83. (**b**) 1971 c. 62.

(2) Any notice or other document required or authorised to be given or sent to any person under the provisions of these regulations may be sent by post or delivered to or at—

(*a*) in the case of a document directed to the Secretary of State, the office of the Department of Health and Social Security, Alexander Fleming House, Elephant and Castle, London SE1 6BY, or the office of the Scottish Home and Health Department, St Andrew's House, Edinburgh EH1 3DE, or the office of the Welsh Office, Cathays Park, Cardiff CF1 3NQ, as the case may be;

(*b*) in the case of a document directed to the Board or the Scottish or Welsh Committee, the principal office of the Board or the Committee;

(*c*) in the case of a document directed to an applicant, his address as stated in his application, or his last known address or place of business in the United Kingdom or, if the applicant is a corporation, the corporation's registered or principal office;

(*d*) in the case of a document directed to any person (other than a person specified in the foregoing provisions of this paragraph), the address (if any) given by him for the purpose of the proceedings in question or his last known address or place of business in the United Kingdom or, if such a person is a corporation, the corporation's registered or principal office;

and if sent or given to the authorised representative of any person shall be deemed to have been sent or given to that person.

(3) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(**a**) shall apply for the purposes of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

Application for authorisation

3. Any person applying for an authorisation shall deliver or send to the Board—

(*a*) an application duly completed in the form set out in Schedule 1 to these regulations; and

(*b*) a fee of £100.

Procedure on receiving an application

4.—(1) If, on receiving an application, the Board decide that it is not duly made in accordance with regulation 3 above, the Board shall return it to the applicant with a statement saying in what respects, in their view, it does not comply with the said regulation 3.

(2) If an application relates to controlled works to be executed in either Scotland or Wales, the Board shall send the duly completed application to the Scottish or Welsh Committee, as the case may be, for their advice.

(3) The Board or the Scottish or Welsh Committee, as the case may be, shall as soon as may be after a duly completed application has been received—

(*a*) take such steps as are reasonably practicable—

(i) to bring it to the notice of any persons whose interests appear to them likely to be substantially affected by the grant or refusal of the authorisation applied for, or to bodies representative of such persons; and

(**a**) 1889 c. 63.

(ii) to notify such persons or bodies that they may within 28 days give or send to the Board or the Committee any observations or evidence they wish to submit for the purposes of the determination of the application;

(*b*) make a copy of the application available at its principal office for inspection by any person at any reasonable time.

(4) The Board or the Scottish or Welsh Committee may hold a hearing for the purposes of the determination of any application and the following provisions shall apply:—

(*a*) the Board shall not refuse an application unless the applicant has been afforded a hearing by the Board or by the Scottish or Welsh Committee;

(*b*) the Board may, if it thinks fit, hold a hearing notwithstanding the fact that a hearing has been held by the Scottish or Welsh Committee in connection with that application;

(*c*) any such hearing shall be held at a place reasonably accessible to the applicant and any persons or bodies notified of such hearing.

(5) At least 21 days' notice in writing, of the date and time and place of the holding of a hearing, and the names and addresses of other persons so notified, together with a copy of any observations or evidence submitted, shall be given to the applicant, the Secretary of State and any persons or bodies notified of the application in accordance with paragraph (3) of this regulation, and if such notice is given by post the recorded delivery service shall be used.

(6) The Board or the Scottish or Welsh Committee, as the case may be, may by summons require the attendance of any person to give evidence or produce documents reasonably required for the purpose of a hearing, and any such summons shall specify the date, time and place of the holding of the hearing at which attendance is so required.

(7) No person shall be required to attend at a hearing to give any evidence or produce any document which he could not be required to give or produce on the trial of an action in a court of law.

(8) No person upon whom a summons shall be served under this regulation shall be required to attend to give evidence or produce any document at the hearing therein specified unless, upon such service, there is paid or tendered to him a sum sufficient to cover his reasonable expenses of travelling to and from, and of his attendance at, such hearing.

(9) If any person or body desires to submit representations in writing for consideration by the Board or the Scottish or Welsh Committee at any hearing that person shall send such representations to the Board or Committee not less than 7 days before the hearing and shall at the same time send a copy of them to every person or body to whom notice has been given under paragraph (5) of this regulation.

Procedure at hearings

5.—(1) At a hearing for the purposes of the determination of any application every person or body to whom notice has been given under paragraph 4(5) of these regulations, and any other person appearing to the Board or the Scottish or Welsh Committee, as the case may be, to be directly interested in the application shall be entitled to attend and conduct his case for himself or be represented by any person whom he may appoint for the purpose.

(2) At any such hearing by the Board or the Scottish or Welsh Committee, as the case may be, any person so entitled to attend, or his representative shall be entitled to make an opening statement, to give evidence, to call witnesses, to cross-examine any witnesses called by any other person and to address the Board or Committee.

(3) The Board or the Scottish or Welsh Committee, as the case may be, may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

(4) The Board or the Scottish or Welsh Committee, as the case may be, may direct or allow evidence of any fact to be given in any manner it may think fit and shall not refuse to admit evidence tendered to it on the ground only that such evidence would be inadmissible in a court of law.

(5) If any person or body to whom notice has been duly given shall fail to attend or to be represented at the time and place fixed for a hearing, the Board or the Scottish or Welsh Committee, after considering any representations submitted by that person or body in pursuance of regulation 4(9) of these regulations, may proceed with the hearing or may postpone or adjourn it to a later date.

(6) The procedure and quorum at a hearing or meeting of the Board or the Scottish or Welsh Committee for the consideration or determination of an application shall (subject to the provisions of the Act and these regulations) be such as the Board or the Scottish or Welsh Committee, as the case may be. shall determine.

Hearings in public or in private

6.—(1) Any hearing for the purposes of the determination of an application by the Board or the Scottish or Welsh Committee, as the case may be, shall be in public unless the Board or Committee, on the application of any person entitled to attend and be heard, directs that the hearing or any part of it shall take place in private.

(2) Any member of the Council on Tribunals or the Scottish Committee of the Council on Tribunals in his capacity as such a member may attend the hearing notwithstanding that it is in private.

Decision of the Board

7.—(1) In any case in which a hearing has been held under these regulations a member of the Board who was not present at the hearing but is to participate in the consideration of the case by the Board, or in the determination of the application, shall be supplied with a report of the hearing which may, in the case of a hearing by the Scottish or Welsh Committee, be incorporated in the advice of that Committee.

(2) A decision of the Board may be taken by a majority thereof and, if the Board are equally divided, the Chairman shall have a second or casting vote.

(3) The decision of the Board shall be recorded in a document signed by the Chairman which shall contain the reasons for the decision.

(4) The Board shall give notice in writing of their decision to the applicant, to the Secretary of State, to any person who appeared (in person or not) and was heard at any hearing for the purposes of the determination of the application and to any other person appearing to them to be directly interested therein and may publish their decision in such manner as they think fit.

(5) The Chairman of the Board shall have power by certificate under his hand to correct mistakes or errors arising from any accidental slip or omission in the record of any decision of the Board.

Assessors

8.—(1) At any hearing held under these regulations or at any meeting held by the Board or the Scottish or Welsh Committee for the purpose of considering or dealing with an application the Board or Committee, as the case may be, shall be assisted by four assessors selected in accordance with Part III of Schedule 1 to the Act.

(2) An assessor at any such hearing or meeting shall not take part in the determination or decision of the Board or Committee except in an advisory capacity.

Appeals to the High Court or Court of Session

9. The applicant (if the application is refused), any other person who appeared (in person or not) and was heard at any hearing for the purposes of the determination of an application and any other person appearing to the Board to be directly interested shall, on request made not later than 3 months after the date on which the applicant was notified of the Board's decision, be furnished with such a statement of the grounds of the Board's decision as will enable him to determine whether any question of law has arisen upon which he may wish to appeal to the High Court or the Court of Session under section 17(1) of the Act.

Miscellaneous powers

10. In any proceeding pending before it the Board or the Scottish or Welsh Committee may, if it thinks fit—

(*a*) extend the time appointed by these regulations for doing any Act notwithstanding that the time appointed may have expired;

(*b*) postpone or adjourn any hearing;

(*c*) if the applicant shall at any time give notice of the withdrawal of his application, dismiss the proceedings.

Notifiable works

11.—(1) Any person notifying the Board of a proposed application for planning permission for any notifiable works shall deliver or send to the Board a notice in the form set out in Schedule 2 to these regulations which shall contain the information therein indicated.

(2) The acknowledgement which the Board is required by section 14(3) of the Act to issue on receiving such a notice shall be in the form set out in Schedule 3 to these regulations.

Penalties

12. Any person who, having been summoned under regulation 4(6) above, without reasonable excuse fails to attend and give evidence or produce documents at a hearing held by the Board or the Scottish or Welsh Committee shall be liable on summary conviction to a fine not exceeding £100.

David Ennals,
Secretary of State for Social Services.

24th March 1977.

John Morris,
Secretary of State for Wales.

28th March 1977.

Bruce Millan,
Secretary of State for Scotland.

31st March 1977.

We consent,

David Stoddart,
J. Dormand,
Two of the Lords Commissioners of Her Majesty's Treasury.

5th April 1977.

SCHEDULE 1 Regulation 3

APPLICATION FOR AUTHORISATION OF CONTROLLED WORKS UNDER PART III OF THE HEALTH SERVICES ACT 1976

Applicants are requested to answer the following questions as accurately as possible; where they can only give estimates, they are asked to make this clear.

1. Name and address of the person or company applying for the authorisation

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2. Postal address of the place at which it is proposed the works will be executed or, if there is no address, an exact description

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3. Please give a general description of the proposed works.

   Please attach to this application an ordnance-survey-based map on which the proposed works are clearly shown; or if the works cannot be shown on an ordnance-survey-based map (eg if the works would involve building an additional storey on to existing premises) please attach a building plan which makes it possible to identify the works clearly.

4. Has an application been made for planning permission in respect of the controlled works?

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   If the answer to this question is 'Yes', please attach to this application a copy of the planning authority's acknowledgement of the application for planning permission.

5. (a) Subject to the issue of planning permission, when do you hope to start the proposed works?

   .....

   (b) and how long do you estimate the building works will take to complete?

   .....

6. How many beds, or additional beds, will the proposed works provide for patients? .....

7. What special accommodation or facilities will the proposed works enable to be provided for each of the following services: —

   (a) surgery (eg operating theatres, recovery rooms, etc)

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(b) obstetrics (eg labour wards, special care units, etc)

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(c) radiotherapy

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(d) renal dialysis

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(e) diagnostic radiology

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(f) pathology

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8. Please say (if possible) whether it is intended:—

(a) to employ resident medical or dental staff? .....

If so, please give as accurate an estimate as possible of the numbers and grades.

.....

(b) to employ non-resident medical or dental practitioners on a sessional basis? .....

If so, please give as accurate an estimate as possible of the numbers and grades.

.....

(c) to pay retainers to medical or dental practitioners for stand-by cover? .....

If so, please give as accurate an estimate as possible of the numbers and grades.

.....

(d) to impose any limitations on the access of medical or dental practitioners to the accommodation and facilities it is proposed to provide? .....

If so, please describe the nature of these limitations.

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9. Please give as accurate an estimate as possible of how many staff, or additional staff (in whole-time equivalents) of the following kinds will be required at the controlled premises:—

(a) nursing and midwifery staff

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(b) other qualified health care staff (eg radiographers, physiotherapists, laboratory technicians—please specify which kind)

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(c) domestic and other ancillary staff (please specify which kind of staff)

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(d) administrative and clerical staff (please describe briefly)

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10. If there is anything you would like to add to the information given in Section 1 to 19 of this form, please write in this section.

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Signed .....

Status of Signatory.....

Date.....

Regulation 11(1) SCHEDULE 2

NOTICE OF A PROPOSAL TO APPLY FOR PLANNING PERMISSION FOR NOTIFIABLE WORKS

This notice is submitted in accordance with Section 14 of the Health Services Act 1976.

1. Name and address of person or company submitting this notice:

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2. Postal address of the place in respect of which the proposed planning application to carry out notifiable works is to be made or, if there is no address, please give an exact description of the place.

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3. What are the notifiable works for which planning permission is to be applied for?

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If for any reason the postal address does not permit precise identification of the place of the proposed works, please attach to this notice an ordnance-survey-based map or a building plan on which the proposed works are clearly delineated.

4. How many beds, or additional beds, will the proposed works provide for patients? .....

5. What special accommodation or facilities, if any, will the proposed works enable to be provided for each of the following services:—

(a) surgery, including day surgery (other than dental surgery and orthodontics provided by a medical or dental practitioner at his consulting-rooms)—eg operating theatres.

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(b) recovery room facilities

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(c) obstetrics

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(d) radiotherapy

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(e) any other services for the diagnosis or treatment of illness (please see Note A).

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DECLARATION:

I declare that the information contained in this Notice is true. I understand that if I have stated in this Notice anything which I know to be false or do not believe to be true, I may render myself liable to prosecution under Section 18(2)(b) of the Health Services Act 1976.

Signed .....

Status of Signatory.....

Date.....

NOTE A.

Other services for the diagnosis or treatment of illness do not include services provided at:—

(i) any hospital provided, or to be provided, by the Secretary of State under the National Health Services Acts;

(ii) any accommodation provided, or to be provided, by a local authority and used or to be used as a hospital by or on behalf of the Secretary of State under the National Health Services Acts;

(iii) any premises managed or to be managed by a Government department or provided by a local authority;

(iv) any sanatorium provided, or to be provided, by a school or other educational establishment and used or to be used solely for the purpose of persons attending such school or establishment;

(v) any first-aid room maintained or intended to be maintained at, or in conjunction with, a factory within the meaning of Section 175 of the Factories Act 1961 or at, or in conjunction with, premises to which the Offices, Shops, and Railway Premises Act 1963 applies;

(vi) any first-aid or treatment room maintained or intended to be maintained at a sports club, showground or place of public entertainment;

(vii) any premises used, or intended to be used, by a medical or dental practitioner wholly or mainly for the purpose of consultation;

(viii) any disabled persons' or old persons' home registered or intended to be registered under Section 37 of the National Assistance Act 1948;

(ix) any residential home for mentally disordered patients registered or intended to be registered by virtue of Section 19 of the Mental Health Act 1959;

(x) any residential establishment registered or intended to be registered under Part IV of the Social Work (Scotland) Act 1968;

(xi) any premises used or intended to be used wholly or mainly for the terminal or long-term care of the elderly; or

(xii) any controlled premises within the meaning of Section 12(2) of the Health Services Act 1976.

SCHEDULE 3 Regulation 11(2)

ACKNOWLEDGEMENT OF A NOTICE OF PROPOSAL TO APPLY FOR PLANNING PERMISSION FOR NOTIFIABLE WORKS

This acknowledgement is issued in accordance with Section 14(3) of the Health Services Act 1976.

The Health Services Board hereby acknowledges that

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gave notice which the Board received on

.....

of his/its intention to apply for planning permission for works of the following description:—

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..... at .....

and that the Notice complied with the requirements of Section 14 of the Health Services Act 1976.

Signed .....
on behalf of the Health Services Board

Date.....

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations relate to applications for authorisations of controlled works and notification of notifiable works under Part III of the Health Services Act 1976. These will be made to the Health Services Board. The Regulations include provisions for the procedures to be followed and the forms to be used.

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