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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 39**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2004**

*Made* - - - - 2nd February 2004  
*Laid before the Scottish Parliament* - - - - 3rd February 2004  
*Coming into force* - - 4th March 2004

The Scottish Ministers, in exercise of the powers conferred by sections 27, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2004 and shall come into force on 4th March 2004.

**Amendment of the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995**

2.—(1) The National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995(2) are amended as follows.

(2) In regulation 5(1)(3) (pharmaceutical list) after “of” in the first place where it occurs, insert “, subject to the provisions of regulation 26(1) (practitioners subject to inquiry in a fraud case) of the National Health Service (Tribunal) (Scotland) Regulations 2004(4),”.

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- (1) 1978 c. 29; section 27 was amended by the Health Services Act 1980 (c. 53) (“the 1980 Act”), section 20(2), by the National Health Service (Amendment) Act 1986 (c. 66), section 3(3), by S.I. 1987/2202, by the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 19(7), by the Medicinal Products: Prescription by Nurses etc. Act 1992 (c. 28), section 3, by the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, Part I, paragraph 44, by the Health and Social Care Act 2001 (c. 15), section 44 and was extended by the Health and Medicines Act 1988 (c. 49), section 17; section 105(7), which contains provisions relevant to the making of regulations, was amended by the 1980 Act, Schedule 6, paragraph 5 and Schedule 7, by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24 and by the Health Act 1999 (c. 8), Schedule 4, paragraph 60; section 108(1) contains definitions of “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
- (2) S.I. 1995/414. Relevant amending instruments are S.I. 1996/840 and S.S.I. 1999/57.
- (3) Regulation 5(1) was amended by S.S.I. 1999/57.
- (4) S.S.I. 2004/38.

(3) In regulation 6(1)(5) (provisional pharmaceutical lists) after “included” insert “, subject to the provisions of regulation 26(1) (practitioners subject to inquiry in a fraud case) of the National Health Service (Tribunal) (Scotland) Regulations 2004.”.

(4) In Schedule 1 (terms of service for pharmacists)–

(a) In paragraph 5(2)(a) (dispensing of medicines)(6)–

(i) for “section 29(3)(b)” substitute “sections 29B(2)(b) or 30(2) or (5)”(7); and

(ii) for “section 29(3)(c)” substitute “sections 29B(3) or 30(6)”;

(b) In paragraph 9(2) (withdrawal from pharmaceutical list)–

(i) for “(disqualification of persons providing services) that the continued inclusion of a pharmacist in the pharmaceutical list would be prejudicial to the efficiency of the service” substitute “(the NHS Tribunal), or a request for a review has been made to the Tribunal or a review is to be made by the Tribunal under section 30 of the Act (review etc. of disqualification)”;

(ii) after “representations” in the second place where it occurs insert “, request for review or review”.

St Andrew’s House, Edinburgh  
2nd February 2004

*MALCOLM CHISHOLM*  
Authorised to sign by the Scottish Ministers

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(5) Regulation 6(1) was amended by [S.S.I. 1999/57](#).

(6) Paragraph 5(2)(a) was inserted by [S.I. 1996/840](#) and amended by [S.S.I. 1999/57](#).

(7) Section 29B was inserted by the [Health Act 1999 \(c. 8\)](#) (“the 1999 Act”), section 58(1) and amended by the [Community Care and Health \(Scotland\) Act 2002 asp 5](#) (“the 2002 Act”), schedule 2, paragraph 2(6). Section 30 was substituted by the 1999 Act, section 58(2) and amended by the 2002 Act, schedule 2, paragraph 2(7).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995 (“the 1995 Regulations”), which regulate the provision of pharmaceutical services under the National Health Service (Scotland) Act 1978 (“the Act”).

These Regulations make amendments to regulations 5 (pharmaceutical list) and 6 (provisional pharmaceutical list) of, and paragraphs 5 (dispensing of medicines) and 9 (withdrawal from pharmaceutical list) of Schedule 1 (terms of service for pharmacists) to, the 1995 Regulations. These amendments are consequential upon the National Health Service (Tribunal) (Scotland) Regulations 2004 (“the 2004 Regulations”) and amendments made to the Act by the Health Act 1999 (“the 1999 Act”) relating to the NHS Tribunal and the disqualification of practitioners providing services under Part II of the Act.

In particular, these Regulations—

- (a) clarify that a Health Board or primary care NHS Trust shall not add to the pharmaceutical or provisional pharmaceutical list persons who may not be added to those lists, by virtue of the provisions of regulation 26 of the 2004 Regulations, because they are subject to an inquiry in a fraud case, until proceedings in that case are finally concluded; and
- (b) replace references to provisions of the Act, with references to provisions of the Act as amended by the 1999 Act.