
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 183

The National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009

Pharmaceutical list

5.—(1) The Board shall prepare a list to be called “the pharmaceutical list” of, subject to the provisions of regulation 26 (practitioners subject to inquiry) of the National Health Service (Tribunal) (Scotland) Regulations 2004⁽¹⁾, the names of persons, other than doctors and dentists, who undertake to provide pharmaceutical services and of the addresses of the premises within the Board’s area from which these persons undertake to provide such services. The said list shall also state the nature of the pharmaceutical services to be provided, and the days and hours during which the premises are open, and show pharmacists as a separate category of persons within that list.

(2) A person (hereinafter referred to in this regulation as an “applicant”)—

- (a) who wishes to be included in the pharmaceutical list for the provision of pharmaceutical services; or
- (b) whose name is already included in the pharmaceutical list, but who intends—
 - (i) to open within the Board’s area additional premises from which to provide pharmaceutical services, or
 - (ii) to relocate within the Board’s area the premises from which the applicant provides pharmaceutical services

[^{F1}shall (except in the instance of an application to which paragraph (3) or (4) applies) complete [^{F2}a pre-application and joint consultation in accordance with regulation 5A] before making an application, and an application in every instance shall be in accordance with whichever version of Form A set out in Schedule 2 is appropriate].

^{F3}(2A)

[^{F4}(2B) Subject to paragraph (2E), an application made in any case other than one to which paragraph (3) or (4) applies shall be summarily refused (without being subject to the procedures in Schedule 3) by the Board unless it includes an applicant’s assessment which meets the requirements set out in paragraph (2C).

(2C) An applicant’s assessment in terms of Form A must include—

- (a) a written statement from the person who may grant possession of the premises that (without prejudice to any negotiation in relation to any such grant) the premises may be used for the provision of pharmaceutical services;
- (b) a description of any adjustments the applicant intends to make to the premises to ensure that the applicant will comply with the duties incumbent upon a provider of pharmaceutical services under section 29 of the Equality Act 2010;
- (c) a description of the boundaries of the neighbourhood within which the applicant intends to provide pharmaceutical services;

(1) S.S.I. 2004/38. Regulation 26 was amended by S.S.I. 2004/122 and 2006/122.

- (d) an assessment (in sufficient detail so as to assist the Board to make a determination) of the current provision in the neighbourhood described by the applicant of services for which the applicant believes there is not adequate provision by persons on the pharmaceutical list and evidence in support of that belief;
- (e) a description of the pharmaceutical services which the applicant will provide;
- (f) the date by which the applicant intends to commence the provision of such services;
- (g) the hours in each day that the applicant intends to provide such services;

^{F5}(h)

- (i) (where the provisions of paragraph (2D) apply) evidence of the significant change that has occurred (which evidence will be of sufficient detail so as to assist the Board to make a determination) that means in the applicant's view that it is now necessary or desirable that an application be granted in order to secure adequate provision, by persons on the pharmaceutical list, of pharmaceutical services by the applicant in the neighbourhood in which the premises are to be located;

[(where the provisions of paragraph (10B) apply) evidence of the significant change that ^{F6}(j) has occurred (which evidence will be of sufficient detail so as to assist the Board to make a determination) that means in the applicant's view that the granting of the application will now not prejudice the provision of NHS funded services in the controlled locality.]

(2D) The provisions of this paragraph apply where—

- (a) an application for the provision of pharmaceutical services was refused by—
 - (i) the Board (and not overturned by the National Appeal Panel); or
 - (ii) the National Appeal Panel,in the previous 12 months;
- (b) that application was in relation to a neighbourhood that encompassed the same, or substantially the same, area encompassed by the neighbourhood to which the application that is now being submitted relates; and
- (c) in the case of a refusal by the Board, the refusal of the application was not under paragraph (2B).

(2E) If, in the opinion of the Board, the applicant's assessment submitted with the application does not comply with the requirements of paragraph (2C), the Board is not bound to refuse the application if the applicant within 5 working days of being asked by the Board provides further information that in the opinion of the Board meets the requirements set out in paragraph (2C).]

(3) Where an application is made and—

- (a) the applicant intends to provide the same pharmaceutical services from premises from which, at the time of the application, another person whose name is included in the pharmaceutical list provides those services, in place of that person; and
- (b) the condition specified in paragraph (5) is fulfilled,

the Board shall grant the application.

(4) Where an application is made and—

- (a) the applicant intends to relocate to new premises, within the neighbourhood in which the applicant provides pharmaceutical services, from the premises already listed in relation to such applicant, and to provide from those new premises the same pharmaceutical services which such applicant is listed as providing from the applicant's existing premises;
- (b) the Board is satisfied that the relocation is a minor relocation; and
- (c) the condition specified in paragraph (5) is fulfilled,

the Board shall grant the application.

(5) The condition referred to in paragraphs (3)(b) and (4)(c) is that in either case the provision of the particular pharmaceutical services by the applicant will not be interrupted, except for any period during which, in terms of any scheme made under regulation 11(1) that applies to the applicant, or any such longer period as the Board may for good cause allow, the provision of such services is not required.

(6) In this regulation the reference to a minor relocation is to one where there will be no significant change in the neighbourhood population in respect of which pharmaceutical services are provided by the applicant and other circumstances are such that there will be no [F7significant] effect on the pharmaceutical services provided by the applicant or any other person whose name is included in the pharmaceutical list of the Board.

(7) Before satisfying itself that a relocation is a minor relocation the Board shall seek and take into account the views of the Area Pharmaceutical Committee and of the most senior pharmaceutical adviser, or equivalent, of the Board.

(8) In the case of an application to which paragraph (4)(a) applies, where the Board is not satisfied that the relocation is a minor relocation, it shall not grant the application but shall notify the applicant in writing of its decision and of its reasons.

F8(9)

[F9(10) An application made in any case other than one to which paragraph (3) or (4) applies shall be assessed in accordance with the procedures set out in Schedule 3, and shall be granted by the Board—

- (a) only if it is satisfied that the provision of pharmaceutical services at the premises named in the application is necessary or desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood in which the premises are located by persons whose names are included in the pharmaceutical list; and
- (b) if the boundaries of the neighbourhood within which the applicant intends to provide pharmaceutical services falls within any part of a controlled locality, only if it is satisfied that the granting of such an application, in its opinion, would not prejudice the provision of NHS funded services in the controlled locality.]

[F10(10A) When considering an application to which paragraph (10) applies, which is of the type described in paragraph (2)(b)(ii), the Board shall disregard premises already listed in relation to such applicant.]

[F11(10B) The provisions of this paragraph apply where—

- (a) an application for the provision of pharmaceutical services to which regulation 5(10)(b) applies was refused by—
 - (i) the Board (and not overturned by the National Appeal Panel); or
 - (ii) the National Appeal Panel,in the previous 3 years;
- (b) that application was in relation to a neighbourhood that encompassed the same, or substantially the same, area encompassed by the neighbourhood to which the application that is now being submitted relates; and
- (c) in the case of a refusal by the Board, the refusal of the application was not under paragraph (2B).]

[F12(11) Where an application is granted it shall be notified on Form C set out in Schedule 2.]

(12) Where an application is granted in accordance with paragraph (10), it shall be competent for the Board to grant it only in respect of some of the pharmaceutical services specified in that application.

(13) An application, in any case other than one to which paragraph (4) applies, which is made by a person who qualified as a pharmacist in an EEA State other than the United Kingdom, or in Switzerland, shall not be granted unless the applicant satisfies the Board that the applicant has the knowledge of English, which, in the interests of the applicant and persons making use of the services to which the application relates, is necessary for the provision of pharmaceutical services in the Board's area.

(14) Where an application is granted, the Board shall make the relevant entries in the pharmaceutical list only after the expiry of the period within which an appeal against the decision to grant the application might be intimated or the conclusion of all the appeal procedures, whichever is appropriate.

Textual Amendments

- F1** Words in reg. 5(2) substituted (1.4.2011) by The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **4(2)** (with reg. 10)
- F2** Words in reg. 5(2) substituted (28.6.2014) by The National Health Service (Pharmaceutical Services) (Scotland) (Miscellaneous Amendments) Regulations 2014 (S.S.I. 2014/148), regs. 1(1), **4(a)** (with reg. 14)
- F3** Reg. 5(2A) omitted (28.6.2014) by virtue of The National Health Service (Pharmaceutical Services) (Scotland) (Miscellaneous Amendments) Regulations 2014 (S.S.I. 2014/148), regs. 1(1), **4(b)** (with reg. 14)
- F4** Reg. 5(2A)-(2E) inserted (1.4.2011) by The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **4(3)** (with reg. 10)
- F5** Reg. 5(2C)(h) omitted (28.6.2014) by virtue of The National Health Service (Pharmaceutical Services) (Scotland) (Miscellaneous Amendments) Regulations 2014 (S.S.I. 2014/148), regs. 1(1), **4(c)** (with reg. 14)
- F6** Reg. 5(2C)(j) inserted (28.6.2014) by The National Health Service (Pharmaceutical Services) (Scotland) (Miscellaneous Amendments) Regulations 2014 (S.S.I. 2014/148), regs. 1(1), **4(d)** (with reg. 14)
- F7** Word in reg. 5(6) substituted (1.4.2011) by The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **4(4)** (with reg. 10)
- F8** Reg. 5(9) omitted (1.4.2011) by virtue of The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **4(5)** (with reg. 10)
- F9** Reg. 5(10) substituted (28.6.2014) by The National Health Service (Pharmaceutical Services) (Scotland) (Miscellaneous Amendments) Regulations 2014 (S.S.I. 2014/148), regs. 1(1), **4(e)** (with reg. 14)
- F10** Reg. 5(10A) inserted (1.4.2011) by The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **4(6)** (with reg. 10)
- F11** Reg. 5(10B) inserted (28.6.2014) by The National Health Service (Pharmaceutical Services) (Scotland) (Miscellaneous Amendments) Regulations 2014 (S.S.I. 2014/148), regs. 1(1), **4(f)** (with reg. 14)
- F12** Reg. 5(11) substituted (1.4.2011) by The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **4(7)** (with reg. 10)

Commencement Information

- I1** Reg. 5 in force at 1.7.2009, see **reg. 1**

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009, Section 5.