

SCHEDULE 2

Regulation 3

PART I GENERAL

Interpretation

1. In this Schedule, unless the context otherwise requires, any reference in a paragraph to a numbered sub-paragraph is a reference to the sub-paragraph bearing that number in that paragraph.

Incorporation of provisions

2. Any provisions of the following affecting the rights and obligations of chemists or doctors who provide pharmaceutical services shall be deemed to form part of the terms of service for chemists or, as the case may be, of the terms of service for doctors who provide pharmaceutical services—

- (a) the Regulations;
- (b) the Drug Tariff in so far as it lists drugs and appliances for the purposes of section 41 of the Act;
- (c) so much of Part II of the National Health Service (Service Committees and Tribunal) Regulations 1992(1) as relates to—
 - (i) the investigation of questions arising between chemists and persons receiving pharmaceutical services and other investigations to be made by the pharmaceutical service committee and the joint services committee and the action which may be taken by the FHSA as a result of such investigations, and,
 - (ii) appeals to the Secretary of State from decisions of the FHSA.

PART II TERMS OF SERVICE FOR CHEMISTS

Provision of pharmaceutical services

- 3.—(1) Where any person presents on a prescription form—
- (a) an order for drugs, not being Scheduled drugs, or appliances, signed by a doctor; or
 - (b) an order for a drug specified in Schedule 11 to the Medical Regulations, signed by, and endorsed on its face with the reference “SLS” by, a doctor; or
 - (c) an order for listed drugs or medicines, signed by a dentist or his deputy or assistant,
- a chemist shall, with reasonable promptness, provide the drugs or medicines so ordered, and such of the appliances so ordered as he supplies in the normal course of his business.
- (2) Any drug which is provided as part of pharmaceutical services and included in the Drug Tariff, the British National Formulary, the Dental Practitioner’s Formulary, the European Pharmacopoeia or the British Pharmaceutical Codex, shall comply with the standard or formula specified therein.

(1) [S.I. 1992/664](#).

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(3) Subject to any regulations in force under the Weights and Measures Act 1985⁽²⁾ and subject to sub-paragraphs (3), (4) and (5) a chemist shall provide pharmaceutical services only in response to and in accordance with an order on a prescription form, signed as specified in sub-paragraph (1).

(4) Where an order, not being an order to which the Poisons Rules 1982⁽³⁾ or the Misuse of Drugs Regulations 1985⁽⁴⁾ applies, which is issued by a doctor or a dentist on a prescription form for drugs does not prescribe their quantity, strength or dosage, a chemist may provide the drugs in such strength and dosage as in the exercise of his professional skill, knowledge and care he considers to be appropriate and, subject to sub-paragraph (3), in such quantity as he considers to be appropriate for a course of treatment, for the patient to whom the order relates, for a period not exceeding five days.

(5) Where an order to which sub-paragraph (3) applies is for—

- (a) an oral contraceptive substance;
- (b) a drug, which is available for supply as part of pharmaceutical services only together with one or more drugs; or
- (c) an antibiotic in a liquid form for oral administration in respect of which pharmaceutical considerations require its provision in an unopened package,

which is not available for provision as part of pharmaceutical services except in such packages that the minimum available package contains a quantity appropriate to a course of treatment for a patient for a period of more than 5 days, the chemist may provide that minimum available package.

(6) Where any drug, not being one to which the Misuse of Drugs Regulations 1985 apply, ordered by a doctor or dentist on a prescription form, is available for provision by a chemist in a pack in a quantity which is different to the quantity which has been so ordered, and that drug is—

- (a) sterile;
- (b) effervescent or hygroscopic;
- (c) a liquid preparation for addition to bath water;
- (d) a coal tar preparation;
- (e) a viscous preparation; or
- (f) packed at the time of its manufacture in a calendar pack or special container,

the chemist shall, subject to sub-paragraph (7), provide the drug in the pack whose quantity is nearest to the quantity which has been so ordered.

(7) A chemist shall not provide, pursuant to sub-paragraph (6), a drug in a calendar pack where, in his opinion, it was the intention of the doctor or dentist who ordered the drug that it should be provided only in the exact quantity ordered.

(8) In this paragraph—

- (a) “calendar pack” means a blister or strip pack showing the days of the week or month against each of the several units in the pack; and
- (b) “special container” means any container with an integral means of application or from which it is not practicable to dispense an exact quantity.

(9) Where, in a case of urgency, a doctor personally known to a chemist requests him to provide a drug, the chemist may provide that drug before receiving a prescription form, provided that—

- (a) that drug is not a Scheduled drug;

(2) 1985 c. 72.

(3) S.I. 1982/218, amended by S.I. 1985/1077, 1986/10 and 1986/1704.

(4) S.I. 1985/2066, amended by S.I. 1986/2330, 1988/916 and 1989/1460. the chemist shall, subject to sub-paragraph (7), provide the drug in the pack whose quantity is nearest to the quantity which has been so ordered.

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(b) that drug is not a controlled drug within the meaning of the Misuse of Drugs Act 1971⁽⁵⁾, other than a drug which is for the time being specified in Schedule 1 to the Misuse of Drugs Regulations 1985⁽⁶⁾; and

(c) the doctor undertakes to give the chemist such a prescription form within 72 hours.

(10) Except as provided in sub-paragraph (11), a chemist shall not provide a Scheduled drug, by way of pharmaceutical services or otherwise, in response to an order by name, formula or other description on a prescription form.

(11) Where a drug has an appropriate non-proprietary name and it is ordered on a prescription form either by that name or by its formula, a chemist may provide a drug which has the same specification notwithstanding that it is a Scheduled drug, provided that where a Scheduled drug is a pack which consists of a drug in more than one strength, such provision does not involve the supply of part only of the pack.

(12) Where a drug which is ordered as specified in sub-paragraph (11) combines more than one drug, that sub-paragraph shall apply only if the combination has an appropriate non-proprietary name, whether the individual drugs which it combines do so or not.

(13) A chemist shall provide any drug which he is required to provide under this paragraph in a suitable container.

(14) A chemist shall not give, promise or offer to any person any gift or reward (whether by way of a share of or dividend on the profits of the business or by way of discount or rebate or otherwise) as an inducement to or in consideration of his presenting an order for drugs or appliances on a prescription form.

Premises and hours

4.—(1) Pharmaceutical services shall be provided at each of the premises from which the chemist has undertaken to provide pharmaceutical services at such times as, following an application in writing by the chemist, shall have been approved in his case by an FHSA or, on appeal, the Secretary of State, in accordance with the following provisions of this paragraph.

(2) An FHSA shall not approve any application submitted by a chemist in relation to the times at which he is to provide pharmaceutical services unless it is satisfied that—

(a) the times proposed are such that a pharmacist will normally be available—

- (i) subject to sub-paragraph (4), for no less than 30 hours in any week, and
- (ii) on 5 days in any such week; and

(b) the hours when a pharmacist will normally be available in any week are to be allocated between the days on which he will normally be available in that week in such a manner as is likely to meet the needs of persons in the neighbourhood for pharmaceutical services.

(3) In this paragraph “available” means, in relation to a pharmacist, available to provide pharmaceutical services of the kind he has undertaken to provide and “availability” shall be construed accordingly.

(4) The FHSA may approve an application to provide pharmaceutical services for less than 30 hours in any week provided that it is satisfied that the provision of pharmaceutical services in the neighbourhood is likely to be adequate to meet the need for such services at times when the pharmacist is not available.

(5) An application for approval pursuant to sub-paragraph (2) shall be made in writing to an FHSA.

⁽⁵⁾ 1971 c. 38.

⁽⁶⁾ S.I. 1985/2066.

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- (6) The FHSA shall determine an application within 30 days of receiving it.
- (7) Subject to sub-paragraph (8), in determining any application, the FHSA shall either—
- (a) grant approval;
 - (b) grant approval subject to any requirements that it considers appropriate for the purpose of ensuring that a chemist is available for the provision of pharmaceutical services at such times as are necessary to meet the need for such services; or
 - (c) refuse approval.
- (8) Where the FHSA is considering whether to grant approval subject to any requirements, as mentioned in sub-paragraph (7)(b), it shall consult the Local Pharmaceutical Committee before determining the application.
- (9) An FHSA shall notify the chemist in writing of its determination, and, where it refuses an application or grants an application subject to any requirements under sub-paragraph 7(b), it shall send the chemist a statement in writing of the reasons for its determination or, as the case may be, for the imposition of the requirements and of the chemist's right of appeal under sub-paragraph (10).
- (10) A chemist may, within 30 days of receiving a notification pursuant to sub-paragraph (9), appeal in writing to the Secretary of State against any refusal of approval or against any condition imposed pursuant to sub-paragraph (7)(b).
- (11) The Secretary of State may, when determining an appeal, either confirm the determination of the FHSA or substitute his own determination for that of the FHSA.
- (12) The Secretary of State shall notify the chemist in writing of his determination and shall in every case include with the notification a written statement of the reasons for the determination.
- (13) At each of the premises at which a chemist provides pharmaceutical services he shall exhibit—
- (a) a notice provided by the FHSA specifying the times at which the premises are open for the provision of drugs and appliances; and
 - (b) at times when the premises are not open, a notice, where practicable legible from outside the premises, to be provided by the FHSA in the form prescribed in Part IV of Schedule 3 specifying the addresses of other chemists included in the pharmaceutical list and the times at which drugs and appliances may be obtained from those addresses.
- (14) An FHSA shall notify the chemist in writing of the names and addresses of other chemists included in the pharmaceutical list whose premises are in the neighbourhood and of the times at which they are required to provide pharmaceutical services.
- (15) Where a chemist is prevented by illness or other reasonable cause from complying with his obligations under this paragraph, he shall, where practicable, make arrangements with one or more chemists whose premises are situated in the neighbourhood for the provision of pharmaceutical services during that time.
- (16) A chemist may apply to an FHSA for a variation of the times at which, in accordance with a determination under this paragraph (“the earlier determination”), a pharmacist is required to be normally available, and sub-paragraphs (3) to (13) shall apply to the making and determination (“the subsequent determination”) of an application under this sub-paragraph as if it were the first application by that chemist for the purposes of this paragraph.
- (17) Where an application made under sub-paragraph (16) is approved, the earlier determination mentioned in sub-paragraph (16) shall cease to have effect and the subsequent determination mentioned in that sub-paragraph shall have effect instead—
- (a) where the subsequent determination is made by an FHSA and no appeal is made, from the day falling 8 weeks after the date on which the chemist receives notification of that FHSA's determination; or

- (b) where the subsequent determination is made on appeal, from the day falling 8 weeks after the date on which the chemist receives notification of the Secretary of State's determination.
- (18) Where it appears to the FHSA, after consultation with or at the request of the Local Pharmaceutical Committee, that the times at which a pharmacist is available no longer meet the needs of persons in the neighbourhood for pharmaceutical services, it may review the terms of—
- (a) any approval granted by the FHSA under sub-paragraph (7)(a) or (b) or by the Secretary of State under sub-paragraph (12); or
 - (b) any direction given under sub-paragraph (20)(a) by the FHSA or, on appeal, by the Secretary of State.
- (19) On any review under sub-paragraph (18) the FHSA shall—
- (a) give notice to the chemist of its proposed changes in the times at which the pharmacist is to be available; and
 - (b) allow him 30 days within which to make representations to the FHSA about its proposals.
- (20) After considering any representations made in accordance with sub-paragraph (19)(b), the FHSA shall either—
- (a) direct the chemist to revise the times at which the pharmacist is to be available in the manner specified in the direction; or
 - (b) confirm that the existing times of availability continue to meet the need for pharmaceutical services.
- (21) The FHSA shall notify the chemist in writing of its determination under sub-paragraph (20), and where it gives a direction under head (a) of that sub-paragraph it shall include with the notification a statement in writing of the reasons for its determination and of the chemist's right of appeal under sub-paragraph (22).
- (22) A chemist may, within 30 days of receiving notification under sub-paragraph (21), appeal in writing to the Secretary of State against a direction under sub-paragraph (20)(a).
- (23) Sub-paragraphs (11) and (12) shall apply to any appeal made under sub-paragraph (22) but as though in sub-paragraph (12) any reference to a determination were a reference to a decision.
- (24) A chemist in respect of whom a direction is given under sub-paragraph (20) shall revise the times of availability of the pharmacist so as to give effect to the direction—
- (a) where the direction is given by the FHSA and no appeal is made, not later than 8 weeks after the date on which he receives notification under sub-paragraph (21); or
 - (b) where the direction is given or confirmed on appeal, not later than 8 weeks after the date on which he receives notification of the Secretary of State's decision.

Provision of drugs and fitting of appliances

- 5.—(1) Drugs shall be provided either by or under the direct supervision of a pharmacist who shall not be a person disqualified for inclusion in a pharmaceutical list under section 46 of the Act(7).
- (2) Subject to paragraph 3(1), a chemist shall make all necessary arrangements—
- (a) for measuring a person who presents a prescription for a truss or other appliance of a type requiring measurement and fitting by the chemist; and
 - (b) for fitting the appliance.

(7) Section 46 was amended by Schedule 8 to the Health and Social Security Act 1984 (c. 48) and by S.I. 1985/39, article 7(16).

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Particulars of chemists

6. A chemist shall give the FHSA, if it so requires, the name of any pharmacist employed by him for the provision of drugs for persons from whom he has accepted an order for the provision of pharmaceutical services under paragraph 3.

Charges for drugs

7.—(1) Subject to regulations made under section 77 of the Act⁽⁸⁾, all drugs, containers and appliances provided under these terms of service shall be provided free of charge.

(2) Where a chemist supplies a container in response to an order for drugs signed by a doctor under paragraph 43 of Schedule 2 to the Medical Regulations or supplies an oxygen container or oxygen equipment, other than equipment specified in the Drug Tariff as not returnable to the chemist, the container and equipment shall remain the property of the chemist.

Remuneration of chemists

8.—(1) A chemist who has undertaken to provide supplemental services within the meaning of regulation 16 shall, on request, make available to the FHSA all records kept in accordance with regulation 16(2)(b).

(2) The FHSA shall make payments, calculated in the manner provided by the Drug Tariff (subject to any deduction required to be made by regulations made under section 77 of the Act) to chemists in respect of drugs and appliances, containers, medicines measures and dispensing fees.

(3) Where a chemist so requires, the FHSA shall afford him reasonable facilities for examining all or any of the forms on which the drugs or appliances provided by him were ordered, together with particulars of the amounts calculated to be payable in respect of such drugs and appliances and the FHSA shall take into consideration any objections made by the chemist in relation to those amounts.

(4) Where so required by the Local Pharmaceutical Committee or any organisation which is, in the opinion of the Secretary of State, representative of the general body of chemists, the FHSA shall give the Local Pharmaceutical Committee or the organisation in question similar facilities for examining such forms and particulars relating to all or any of the chemists which it represents.

Fair wages for staff

9. Where a chemist employs any person belonging to a category whose wages and conditions of work are approved by the National Joint Industrial Council for Retail Pharmacy, he shall not pay wages or require conditions of work which are less favourable than those for the time being so approved.

Withdrawal from pharmaceutical list

10.—(1) Subject to sub-paragraph (2), a chemist may at any time give notice in writing to the FHSA that he wishes to withdraw his name from the pharmaceutical list and his name shall be removed accordingly on the expiry of the period of three months from the date of such notice or of such shorter period as the FHSA may agree.

(2) Where representations are made to the Tribunal under section 46 of the Act (disqualification of practitioner) that the continued inclusion of a chemist in the pharmaceutical list would be prejudicial to the efficiency of pharmaceutical services, he shall not, except with the consent of the Secretary of State, be entitled to have his name removed from such a list pending the determination of the proceedings on those representations.

(8) See S.I. 1989/419 as amended by S.I. 1991/579.

PART III

TERMS OF SERVICE FOR DOCTORS WHO PROVIDE PHARMACEUTICAL SERVICES

11. Where a doctor is authorised or required by an FHSA under regulation 20 to provide drugs or appliances to a patient—

- (a) he shall record an order for the provision of any drugs, or appliances which are needed for the treatment of the patient on a prescription form completed in accordance with paragraph 43(2) of the doctors' terms of service;
- (b) he shall provide those drugs or appliances in a suitable container; and
- (c) he shall provide for the patient a drug specified in Schedule 11 to the General Medical Services Regulations only where the conditions in paragraph 44(2) of the doctor's terms of service are satisfied.

12.—(1) Subject to sub-paragraph (2), a doctor who is authorised or required by an FHSA under regulation 20 to provide drugs or appliances to a patient shall not provide for a patient any Scheduled drug, except that, where he has ordered a drug which has an appropriate non-proprietary name either by the name or by its formula, he may provide a drug which has the same specification notwithstanding that it is a Scheduled drug (but, in the case of a drug which combines more than one drug, only if the combination has an appropriate non-proprietary name).

(2) Nothing in this paragraph shall prevent a doctor providing, otherwise than under pharmaceutical services, a scheduled drug for a patient.

13.—(1) The provisions of paragraphs 38 to 42 of the doctors' terms of service (items of service relating to acceptance of fees) apply in respect of the provision of any drugs or appliances by a doctor as they apply in respect of prescriptions for drugs or appliances.

(2) Where paragraph 39 of those terms of service applies and the doctor has provided any drug or appliance for which, in the case of a person on his list, he would have been entitled to payment from the FHSA, the FHSA shall credit him with the appropriate amount.