
STATUTORY INSTRUMENTS

1996 No. 840 (S.95)

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 1996

<i>Made</i>	- - - -	<i>18th March 1996</i>
<i>Laid before Parliament</i>		<i>19th March 1996</i>
<i>Coming into force</i>	- -	<i>1st April 1996</i>

The Secretary of State, in exercise of powers conferred on him by sections 27, 28(1), 32E and 105(7) of the National Health Service (Scotland) Act 1978(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 1996 and shall come into force on 1st April 1996.

(2) In these Regulations, “the principal Regulations” means the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995(2).

(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) (“the 1986 Act”), section 3(3), by S.I. 1987/2202 and by the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 19(7) and is to be read with the Health and Medicines Act 1988 (c. 49), section 17; section 28(1) was amended by the 1986 Act, section 3(4); section 32E was inserted by the National Health Service (Amendment) Act 1995 (c. 31), section 8; section 105(7) was amended by the 1980 Act, Schedule 6, paragraph 5 and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24.

(2) S.I. 1995/414.

PART II

SUSPENSION BY THE NHS TRIBUNAL

Amendment of regulation 2 of the principal Regulations

2. In regulation 2 of the principal Regulations (interpretation), in paragraph (1)—
 - (a) after the definition of “supplemental services” insert—

““suspended by direction of the Tribunal” means suspended as respects the provision of pharmaceutical services by a direction of the Tribunal made pursuant to section 32A(2) or section 32B(1) of the Act⁽³⁾ or to any provisions in force in England and Wales or Northern Ireland corresponding to those provisions;”, and
 - (b) after the definition of “terms of service” insert—

““the Tribunal” means the Tribunal constituted under section 29 of the Act⁽⁴⁾.”.

Amendment of regulation 7 of the principal Regulations

- 3.—(1) Regulation 7 of the principal Regulations (removal from and amendment to pharmaceutical list) is amended as follows.
 - (2) After paragraph (1) insert—

“(1A) A period during which the person was suspended by direction of the Tribunal does not count towards the period of six months referred to in paragraph (1).”.
 - (3) In paragraph (3)(a) after the word “notice” insert the words “in writing”.

Payments to suspended pharmacists

4. After regulation 9 of the principal Regulations insert—

“Payments to suspended pharmacists

9A.—(1) The Board shall make payments to any pharmacist who is suspended by direction of the Tribunal in accordance with the Secretary of State’s determination in relation to such payments.

(2) The Secretary of State shall make the determination in accordance with paragraph (3) after consultation with the organisation referred to in regulation 9, and it shall be published with the Drug Tariff.

(3) The determination may be amended from time to time by the Secretary of State, after consultation with the organisation referred to in paragraph (2), and any amendments shall also be published with the Drug Tariff.

(4) Subject to paragraphs (5) and (6), the Secretary of State’s determination shall be such as to secure that, as far as reasonably practicable, and after making adjustments for any reduction in expenses, the suspended pharmacist receives payments at a rate corresponding to his remuneration under the Drug Tariff (but excluding any payments made by virtue of regulation 9(g)) during the 12 months ending with the direction for suspension by the Tribunal.

(3) Sections 32A and 32B were inserted by section 8 of the National Health Service (Amendment) Act 1995 (c. 31).

(4) Section 29 was amended by the Health and Social Security Act 1984 (c. 48), section 24 and Schedule 8, Part I and by the National Health Service (Amendment) Act 1995 (c. 31), sections 7 and 9 and the Schedule.

(5) The Secretary of State’s determination may include provision that payments in accordance with the determination are not to exceed a specified amount in any specified period.

(6) In a case to which section 32B(3)(5) of the Act applies, the determination shall provide for the payments to be reduced to take account of any payments which the suspended pharmacist receives for providing pharmaceutical services other than as a principal.”.

Prevention of employment of disqualified or suspended pharmacists

5.—(1) Paragraph 5 of Schedule 1 to the principal Regulations (dispensing of medicines) is amended as follows.

(2) The existing wording shall become sub-paragraph (1) and the words from “who” to the end shall be omitted.

(3) After sub-paragraph (1) insert—

“(2) Where the pharmacist referred to in sub-paragraph (1) is employed, the pharmacist must not be one—

- (a) who, having been disqualified under section 29(3)(b) of the Act (or under any corresponding provision in force in England and Wales or Northern Ireland) from inclusion in the pharmaceutical list of any Board (or in England and Wales of a Health Authority or in Northern Ireland of a Health and Social Services Board), is also the subject of a declaration under section 29(3)(c)(6) of the Act (or any corresponding provision in force in England and Wales or Northern Ireland) that he is not fit to be engaged in any capacity in the provision of pharmaceutical services; or
- (b) who is suspended by direction of the Tribunal, other than in a case falling within section 32B(3) of the Act.”.

PART III

COMPLAINTS

Complaints against pharmacists

6. In Schedule 1 to the principal Regulations (terms of service for pharmacists), after paragraph 9 insert—

“Complaints

9A.—(1) Subject to sub-paragraph (2), a pharmacist or a pharmacist contractor shall establish, and operate in accordance with this paragraph, a procedure (in this paragraph and in paragraph 9B referred to as a “complaints procedure”) to deal with any complaints made by or on behalf of any person to whom he has provided pharmaceutical services.

(2) The complaints procedure to be established by a pharmacist may be such that it also deals with complaints made in relation to one or more other pharmacists.

(5) Section 32B was inserted by section 8 of the National Health Service (Amendment) Act 1995 (c. 31).

(6) Section 29(3)(b) was created, and (c) was inserted, by section 7 of the National Health Service (Amendment) Act 1995.

(3) The complaints procedure to be established by a pharmacist or pharmacist contractor who provides pharmaceutical services from more than one set of premises may be such that it relates to all those premises together.

(4) A complaints procedure shall apply to complaints made in relation to any matter reasonably connected with the pharmacist's or pharmacist contractor's provision of pharmaceutical services and within the responsibility or control of—

- (a) the pharmacist;
- (b) where the pharmacist contractor is a body corporate, any of its directors or former directors;
- (c) a former partner of the pharmacist;
- (d) any pharmacist employed by the pharmacist contractor;
- (e) any employee of the pharmacist or pharmacist contractor, other than one falling within sub-paragraph (d),

and in this paragraph and paragraph 9B, references to complaints are to complaints falling within this sub-paragraph.

(5) A complaint may be made on behalf of any person with his consent, or—

- (a) where he is under 16 years of age—
 - (i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child; or
 - (ii) in the care of an authority under Part II of the Social Work (Scotland) Act 1968(7) or in the care of a voluntary organisation, by that authority or voluntary organisation; or
- (b) where he is incapable of making a complaint, by a relative or other adult person who has an interest in his welfare.

(6) A complaint may be made as respects a person who has died by a relative or other adult person who had an interest in his welfare, or where he was as described in head (a)(ii) of sub-paragraph (5), by the authority or voluntary organisation.

(7) A complaints procedure shall comply with the following requirements:—

- (a) the pharmacist or pharmacist contractor shall specify a person (who need not be connected with the pharmacist or pharmacist contractor and who, in the case of an individual may be specified by his job title) to be responsible for receiving and investigating all complaints;
- (b) all complaints shall be—
 - (i) recorded in writing,
 - (ii) acknowledged, either orally or in writing, within the period of three days (excluding Saturdays, Sundays, Christmas Day, New Year's Day and any other public or local holiday agreed with the Board) beginning with the day on which the complaint was received by the person specified in head (a) or, where that is not possible as soon as reasonably practicable, and
 - (iii) properly investigated;
- (c) within the period of 10 days (excluding Saturdays, Sundays, Christmas Day, New Year's Day and any other public or local holiday agreed with the Board) beginning with the day on which the complaint was received by the person specified in head (a) or,

where that is not possible as soon as reasonably practicable, the complainant must be given a written summary of the investigation and its conclusions;

- (d) where the investigation of the complaint requires consideration of any records relating to the person as respects whom the complaint is made, the person specified in head (a) shall inform him or the person acting on his behalf if the investigation will involve disclosure of information contained in those records to a person other than the pharmacist or a director, partner or employee of the pharmacist contractor; and
- (e) the pharmacist or pharmacist contractor shall keep a record of all complaints and copies of all correspondence relating to complaints, but such records must be kept separate from any records relating to the person as respects whom the complaint was made.

(8) At each of the premises at which a pharmacist or pharmacist contractor provides pharmaceutical services he shall provide information about his complaints procedure, and give the name (or title) and address of the person specified in sub-paragraph 7(a); and where he provides supplemental services he shall provide the same information to the persons referred to in regulation 3(3)(a).

9B.—(1) A pharmacist or pharmacist contractor shall cooperate with any investigation of a complaint by the Board in accordance with the procedures which it operates in accordance with directions given under section 2(5) of the Act⁽⁸⁾, whether the investigation follows one under the pharmacist’s or pharmacist contractor’s complaints procedure or not.

- (2) The cooperation required by sub-paragraph (1) includes—
 - (a) answering questions reasonably put to the pharmacist by the Board;
 - (b) providing any information relating to the complaint reasonably required by the Board; and
 - (c) attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given), if the pharmacist or pharmacist contractor’s presence at the meeting is reasonably required by the Board.”.

PART IV

MISCELLANEOUS

Changes to disciplinary arrangements for pharmacists

7.—(1) The principal Regulations are amended as follows.

- (2) In regulation 2 (interpretation), in paragraph (1)—
 - (a) after the definition of “hypodermic needle exchange services” insert—

““joint discipline committee” shall have the same meaning as in the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992⁽⁹⁾”.
 - (b) after the definition of “non-proprietary name” insert—

““pharmaceutical discipline committee” shall have the same meaning as in the National Health Service (Service Committees and Tribunal) Regulations 1992”.

(3) In paragraph 2 of Schedule 1 (incorporation of provisions), in sub-paragraph (d)(i), for “the pharmaceutical service committee and the joint services committee” substitute “the pharmaceutical discipline committee and the joint discipline committee”.

⁽⁸⁾ Section 2(5) was amended by the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 19(1).

⁽⁹⁾ S.I. 1992/434, amended by S.I. 1994/3038 and 1995/3201.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

St Andrew's House,
Edinburgh
18th March 1996

James Douglas-Hamilton
Minister of State, Scottish Office

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 govern the arrangements to be made by Health Boards for the provision in their area of pharmaceutical services under the National Health Service (Scotland) Act 1978.

Part II amends the 1995 Regulations to reflect the power of the NHS Tribunal to suspend a pharmacist or to declare a pharmacist not fit to be engaged in any capacity in the provision of pharmaceutical services. The terms of service for pharmacists are amended to prevent the employment of pharmacists in relation to whom such a declaration is in force. The amendments also provide for payments to suspended pharmacists.

Part III requires pharmacists to set up and operate (in accordance with the Regulations) a complaints procedure at each of their premises, and to cooperate with any investigation of a complaint by a Health Board in accordance with its procedures.

Part IV makes minor amendments in connection with pharmaceutical discipline committees.