

## SCHEDULE 1

### TERMS OF SERVICE OF PHARMACISTS

#### PART 3

#### HOURS OF OPENING

##### **Pharmacy opening hours: general**

**22.**—(1) A pharmacist shall ensure that pharmaceutical services are provided at each of the premises from which he has undertaken to provide pharmaceutical services—

- (a) for not less than 40 hours each week;
- (b) for not less than 100 hours each week, in the case of premises in respect of which the condition imposed by regulation 13(2)(a) applies as regards the pharmacist's inclusion in a pharmaceutical list;
- (c) if his Primary Care Trust, or on appeal the Secretary of State, has directed (either under this Part or paragraph 4 of Schedule 2 to the 1992 Regulations) that he may provide pharmaceutical services at the premises for fewer than 40 hours per week, provided that he provides those services at set times and on set days, at the times and on the days so set;
- (d) if his Primary Care Trust, or on appeal the Secretary of State, has directed under paragraph 4 of Schedule 2 to the 1992 Regulations that he must provide pharmaceutical services at the premises for more than 40 hours per week, and at set times and on set days, at the times and on the days so set; or
- (e) if his Primary Care Trust, or on appeal the Secretary of State, has directed under this Part that he must provide pharmaceutical services at the premises for more than 40 hours each week—
  - (i) for the total number of hours each week required by virtue of that direction, and
  - (ii) as regards the additional hours for which he is required to provide pharmaceutical services by virtue of that direction, at the days on which and times at which he is required to provide pharmaceutical services during those additional hours, as set out in that direction,

but a Primary Care Trust may, in appropriate circumstances, agree a temporary suspension of services for a set period, where it has received three months notice of the proposed suspension.

(2) Subject to sub-paragraph (3), at each of the premises from which a pharmacist has undertaken to provide pharmaceutical services, he shall exhibit—

- (a) a notice specifying the days on which and times at which the premises are open for the provision of drugs and appliances;
- (b) at times when the premises are not open, a notice based on information provided by the Primary Care Trust, where practicable legible from outside the premises, specifying the addresses of other pharmacists included in the pharmaceutical list and the days on which and times at which drugs and appliances may be obtained from those addresses; and
- (c) at times when the premises are not open, a notice based on information provided by the Primary Care Trust, where practicable legible from outside the premises, specifying the addresses of LPS chemists in the neighbourhood, the type of local pharmaceutical services which those LPS chemists provide, and the days on which and times at which their premises are open.

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(3) Sub-paragraph (2) shall not apply in respect of premises at which pharmaceutical services are provided by a distance selling chemist.

(4) A pharmacist shall, on request, submit a return to the Primary Care Trust setting out—

(a) the days on which and times at which pharmaceutical services are provided at each of the premises from which he has undertaken to provide pharmaceutical services (including times at which he is providing pharmaceutical services when he is not obliged to do so by virtue of sub-paragraph (1)); and

(b) the pharmaceutical services which he ordinarily provides at each of those premises,

but all pharmacists, if they are on a pharmaceutical list on 1st April 2005, shall supply such a return to their Primary Care Trusts by 1st July 2005 and shall state in that return if the days and times submitted represent a change to the days on which and times at which they provided pharmaceutical services at those premises prior to 1st April 2005.

(5) Where a pharmacist changes—

(a) the days on which or times at which pharmaceutical services are to be provided at premises from which he has undertaken to provide pharmaceutical services; or

(b) the pharmaceutical services which he is ordinarily to provide at those premises,

he shall supply the Primary Care Trust with a return informing it of the change.

(6) Where a pharmacist has submitted a return under sub-paragraph (4) or (5) in respect of any premises, or where he has set out in an application under these Regulations for inclusion in a pharmaceutical list the days on which and times at which pharmaceutical services will be provided at the premises to which the application relates if the application is granted—

(a) he shall ensure that pharmaceutical services are provided at the premises to which the return or application relates on the days and at the times set out in the return or application (unless the return or application has been superseded by a return, or a further return, under sub-paragraph (5)); and

(b) he shall not change—

(i) the days on which or the times at which pharmaceutical services are to be provided at those premises; or

(ii) the pharmaceutical services which he is ordinarily to provide at those premises,

as set out in that return or application, for a period of at least three months after that return or application was received by the Primary Care Trust.

(7) Subject to sub-paragraph (8), where a pharmacist is prevented by illness or other reasonable cause from complying with his obligations under sub-paragraph (1), he shall, where practicable, make arrangements with one or more pharmacists or LPS chemists whose premises are situated in the neighbourhood for the provision of pharmaceutical services or local pharmaceutical services during that time.

(8) A pharmacist may make an arrangement with an LPS chemist under sub-paragraph (7) only where that LPS chemist provides local pharmaceutical services which are of a similar description as, and a similar extent to, the pharmaceutical services which he ordinarily provides.

(9) Where there is a temporary suspension in the provision of pharmaceutical services by a pharmacist for a reason beyond the control of the pharmacist, the pharmacist shall not be in breach of sub-paragraphs (1) and (2), provided that—

(a) he notifies the Primary Care Trust of that suspension as soon as practical; and

(b) he uses all reasonable endeavours to resume provision of pharmaceutical services as soon as is practicable.

(10) Planned refurbishment of a pharmacy is neither a “reasonable cause” for the purposes of sub-paragraph (7) nor a “reason beyond the control of the pharmacist” for the purposes of sub-paragraph (9).

(11) For the purposes of calculating the number of hours that a pharmacy is open during a week that includes Christmas Day, Good Friday or a bank holiday, it shall be deemed that the pharmacy was open on that day at the times at which it would ordinarily have been open on that day of the week.

(12) In this Part, the “additional hours” for which a pharmacist is to be required to provide pharmaceutical services are those hours during which the pharmacist would not be providing pharmaceutical services, were he subject to the condition set out in sub-paragraph (1)(a) and not the condition set out in sub-paragraph (1)(e).

### **Matters to be considered when issuing directions in respect of pharmacy opening hours**

**23.**—(1) Where a Primary Care Trust issues a direction setting any days or times under this Part, it shall in doing so seek to ensure that the hours at which premises are open for the provision of pharmaceutical services are such as to ensure that pharmaceutical services are provided on such days and at such times as are necessary to meet the needs of people in the neighbourhood, or other likely users of the pharmacy, for pharmaceutical services.

(2) In considering the matters mentioned in sub-paragraph (1), the Primary Care Trust—

- (a) shall treat any local pharmaceutical services being provided in that neighbourhood at the days and times in question as if they were pharmaceutical services being so provided; and
- (b) may have regard to any pharmaceutical services that are being provided in that neighbourhood in circumstances where the pharmacist is not obliged to provide those services.

(3) The Primary Care Trust may only direct that a pharmacist may provide pharmaceutical services at premises for less than 40 hours in any week if 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 providing pharmaceutical services.

(4) The Primary Care Trust may only direct that a pharmacist must provide pharmaceutical services at premises for more than 40 hours in any week where it is satisfied that he will receive reasonable remuneration in respect of the additional hours for which he is required to provide pharmaceutical services (and any additional remuneration payable under the Drug Tariff in respect of those hours is “reasonable remuneration” for these purposes).

### **Determination of pharmacy opening hours instigated by the Primary Care Trust**

**24.**—(1) Where it appears to the Primary Care Trust, after consultation with or having considered the matter at the request of the Local Pharmaceutical Committee, that the days on which or times at which a pharmacy is or will be open for the provision of pharmaceutical services will not, or no longer meet, the needs of—

- (a) people in the neighbourhood; or
- (b) other likely users of his pharmacy,

for pharmaceutical services, it shall carry out an assessment as to whether to issue a direction requiring the pharmacist whose pharmacy it is to provide pharmaceutical services at the pharmacy at set times and on set days (which may include Christmas Day, Good Friday and bank holidays).

(2) Before concluding the assessment under sub-paragraph (1) the Primary Care Trust shall—

- (a) give notice to the pharmacist of any proposed changes to the days on which or times at which the pharmacy is to be open; and

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- (b) allow him 30 days within which to make written representations to the Primary Care Trust about the proposed changes.
- (3) After considering any representations made in accordance with sub-paragraph (2)(b), the Primary Care Trust shall—
  - (a) issue a direction (which will replace any existing direction) which meets the requirements of sub-paragraphs (4) and (5);
  - (b) confirm any existing direction in respect of the times at which the pharmacist must provide pharmaceutical services at the pharmacy, provided that the existing direction, whether issued under this Part or paragraph 4 of Schedule 2 to the 1992 Regulations, would meet the requirements of sub-paragraphs (4) and (5) if it were issued under this paragraph;
  - (c) either—
    - (i) revoke (without replacing it) any existing direction in respect of the times at which the pharmacist must provide pharmaceutical services at the pharmacy, whether issued under this Part or paragraph 4 of Schedule 2 to the 1992 Regulations, or
    - (ii) in a case where there is no existing direction, issue no direction, in which case, by virtue of paragraph 22(1)(a), the pharmacy will need to be open for not less than 40 hours each week.
- (4) Where a Primary Care Trust issues a direction under sub-paragraph (3) in respect of a pharmacy that is to be required to be open—
  - (a) for more than 40 hours each week, it shall set out in that direction—
    - (i) the total number of hours each week for which the pharmacist shall provide pharmaceutical services at the pharmacy, and
    - (ii) as regards the additional hours for which he is to provide pharmaceutical services, the days on which and the times at which he is required to provide those services during those additional hours,but it shall not set out in that direction the days on which or times at which he is to provide pharmaceutical services during hours which are not additional hours; or
  - (b) for less than 40 hours each week, it shall set out in that direction the days on which and times at which pharmaceutical services are to be provided at that pharmacy.
- (5) The Primary Care Trust shall not issue a direction under sub-paragraph (3) that has the effect simply of requiring a pharmacy to be open for 40 hours each week on set days and at set times (that is, the direction must have the effect of requiring a pharmacy to be open for either more or less than 40 hours each week).
- (6) The Primary Care Trust shall notify the pharmacist in writing of any direction issued or any other action taken under sub-paragraph (3), and where it sets new days on which or times at which the pharmacist is to provide pharmaceutical services at the pharmacy, it shall include with the notification a statement in writing of—
  - (a) the reasons for the change; and
  - (b) the pharmacist's right of appeal under paragraph (7).
- (7) A pharmacist may, within 30 days of receiving notification under sub-paragraph (6), appeal in writing to the Secretary of State against any direction issued or any other action taken under sub-paragraph (3) which sets new days on which or times at which the pharmacist is to provide pharmaceutical services.
- (8) The Secretary of State may, when determining an appeal, either confirm the action taken by the Primary Care Trust or take any action that the Primary Care Trust could have taken under paragraph (3).

(9) The Secretary of State shall notify the pharmacist in writing of his determination and shall in every case include with the notification a written statement of the reasons for the determination.

(10) If the days on which or times at which a pharmacist is to provide pharmaceutical services at a pharmacy have been changed in accordance with this paragraph, the pharmacist shall introduce the changes—

- (a) if he has not appealed under sub-paragraph (7), not later than 8 weeks after the date on which he receives his notification under sub-paragraph (6); or
- (b) if he has appealed under sub-paragraph (7), not later than 8 weeks after the date on which he receives his notification under sub-paragraph (9).

### **Determination of pharmacy opening hours instigated by the pharmacist**

**25.**—(1) A pharmacist may apply to a Primary Care Trust for it to change the days on which or times at which he is obliged to provide pharmaceutical services at his pharmacy in a way that—

- (a) reduces the total number of hours for which the pharmacist is obliged to provide pharmaceutical services each week; or
- (b) keeps that total number of hours the same.

(2) Where a pharmacist makes an application under paragraph (1), as part of that application he shall provide the Primary Care Trust with such information as the Primary Care Trust may reasonably request in respect of any changes to the needs of the people in the neighbourhood, or other likely users of the pharmacy, for pharmaceutical services that are material to the application.

(3) The Primary Care Trust shall determine an application under sub-paragraph (1) within 60 days of receiving it (including any information required of the applicant in accordance with paragraph (2)).

(4) In determining the application, the Primary Care Trust shall—

- (a) issue a direction (which will replace any existing direction) which meets the requirements of sub-paragraphs (5) and (6) and which has the effect of either granting the application under this paragraph or granting it only in part;
- (b) confirm any existing direction in respect of the times at which the pharmacist must provide pharmaceutical services at the pharmacy, provided that the existing direction, whether issued under this Part or paragraph 4 of Schedule 2 to the 1992 Regulations, would meet the requirements of sub-paragraphs (5) and (6);
- (c) either—

- (i) revoke (without replacing it) any existing direction in respect of the times at which the pharmacist must provide pharmaceutical services at the pharmacy, whether issued under this Part or paragraph 4 of Schedule 2 to the 1992 Regulations, where this has the effect of granting the application under this paragraph or granting it only in part, or

- (ii) in a case where there is no existing direction, issue no direction,

in which case, by virtue of paragraph 22(1)(a), the pharmacy will need to be open for not less than 40 hours each week.

(5) Where a Primary Care Trust issues a direction under sub-paragraph (4) in respect of a pharmacy that is to be required to be open—

(a) for more than 40 hours each week, it shall set out in that direction—

- (i) the total number of hours each week for which the pharmacist shall provide pharmaceutical services at the pharmacy, and

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(ii) as regards the additional hours for which he is to provide pharmaceutical services, the days on which and the times at which he is required to provide those services during those additional hours,

but it shall not set out in that direction the days on which or times at which he is to provide pharmaceutical services during hours which are not additional hours; or

(b) for less than 40 hours each week, it shall set out in that direction the days on which and times at which pharmaceutical services are to be provided at that pharmacy.

(6) The Primary Care Trust shall not issue a direction under sub-paragraph (4) that has the effect simply of requiring a pharmacy to be open for 40 hours each week on set days and at set times (that is, the direction must have the effect of requiring a pharmacy to be open for either more or less than 40 hours each week).

(7) Where the Primary Care Trust is considering taking action under sub-paragraph (4)(a) or (c) (i), it shall consult the Local Pharmaceutical Committee before determining the application.

(8) A Primary Care Trust shall notify the pharmacist in writing of any direction issued or any other action taken under sub-paragraph (4), and where this has the effect of refusing an application under this paragraph or granting it in part, it shall send the pharmacist a statement in writing setting out—

(a) the reasons for the refusal or, as the case may be, for granting the application only in part; and

(b) the pharmacist's right of appeal under sub-paragraph (9).

(9) A pharmacist may, within 30 days of receiving a notification pursuant to sub-paragraph (8), appeal in writing to the Secretary of State against any action under sub-paragraph (4) which has the effect of refusing an application under this paragraph or granting it only in part.

(10) The Secretary of State may, when determining an appeal, either confirm the action taken by the Primary Care Trust or take any action that the Primary Care Trust could have taken under sub-paragraph (4).

(11) The Secretary of State shall notify the pharmacist in writing of his determination and shall in every case include with the notification a written statement of the reasons for the determination.

(12) If the days on which or times at which a pharmacist is to provide pharmaceutical services at a pharmacy have been changed in accordance with this paragraph, the pharmacist shall introduce the changes—

(a) if he has not appealed under sub-paragraph (9), not earlier than 30 days after the date on which he receives his notification under sub-paragraph (4); or

(b) if he has appealed under sub-paragraph (9), not earlier than 30 days after the date on which he receives his notification under sub-paragraph (11).

(13) Where an application under sub-paragraph (1)—

(a) is received by 1st July 2005; and

(b) is in respect of a direction under paragraph 4 of Schedule 2 to the 1992 Regulations to require the applicant to provide pharmaceutical services at a pharmacy for more than 40 hours per week, and at set times and on set days,

if the Primary Care Trust fails to determine the application within 60 days of receiving it, in accordance with sub-paragraph (3), that application shall be deemed to have been granted, as from three months from the date on which the application was received by the Primary Care Trust.

(14) Where an application under sub-paragraph (1)—

(a) is received by 1st July 2005; and

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(b) is in respect of a direction under paragraph 4 of Schedule 2 to the 1992 Regulations to require the applicant to provide pharmaceutical services at a pharmacy for more than 40 hours per week, and at set times and on set days,  
until that application (including any appeal) is determined or deemed to have been granted, paragraph 22(1)(a) shall apply in respect of the application as if for “40” there were substituted “30”.