
STATUTORY INSTRUMENTS

2012 No. 1909

**The National Health Service
(Pharmaceutical Services) Regulations 2012**

PART 10

Performance related sanctions and market exit

Removal of listings: cases relating to death, incapacity or cessation of service

74.—(1) Subject to paragraphs (2) and (4), if an NHS chemist (C)—

- (a) dies;
- (b) in the case of an NHS pharmacist, ceases to carry on a retail pharmacy business; or
- (c) in the case of an NHS appliance contractor, ceases to carry on a business in the course of which C supplies appliances either by retail sale or in circumstances corresponding to retail sale,

the Primary Care Trust (PCT1) in whose pharmaceutical list C is included must remove C from that list.

(2) Paragraph (1)(a) or (b) shall not apply in the case of an NHS pharmacist, if—

- (a) a representative of C (as defined in section 72 of the 1968 Act⁽¹⁾ (representative of pharmacist in case of death or disability)) is carrying on the retail pharmacy business of C that is included in PCT1's pharmaceutical list ("the business");
- (b) the conditions specified in section 72(2) of the 1968 Act are fulfilled in relation to the representative and the business;
- (c) the period applicable in accordance with section 72(3) of the 1968 Act has not expired; and
- (d) the representative has agreed to be bound by, and continues to agree to be bound by, C's terms of service.

(3) If PCT1 determines that C has not, during the preceding 6 months, provided pharmaceutical services at particular listed chemist premises ("the particular premises")—

- (a) if there are other chemist premises listed in its pharmaceutical list in relation to C, PCT1 must remove the listing of the particular premises in relation to C; or
- (b) if there are no other chemist premises listed in its pharmaceutical list in relation to C, PCT1 must remove C from its pharmaceutical list.

(4) When determining, for the purposes of paragraph (1) or (3), whether C has ceased to carry on a business or ceased to provide pharmaceutical services, no account is to be taken of any time spent by C—

(1) Section 72 has been amended by: the Insolvency Act 1985 (c. 65), Schedule 8, paragraph 15; the Insolvency Act 1986 (c. 45), Schedule 14; the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 12, and Schedule 6; the Mental Incapacity Act 2005 (c. 9), Schedule 6, paragraph 14; the Health Act 2006 (c. 28), section 29; and S.I. 1989/ 2405, 2007/289 and 2010/231

- (a) suspended from PCT1's pharmaceutical list;
- (b) in whole-time service in the armed forces of the Crown in a national emergency;
- (c) in compulsory whole-time service in the armed forces of the Crown (including service resulting from reserve liability); or
- (d) where C is liable for compulsory whole-time service in the armed forces of the Crown, in any equivalent service,

and in a case of C ceasing to carry on a business, no account is to be taken of the first 6 months after C completes that whole-time service in the armed forces of the Crown or equivalent service.

(5) Before taking a decision to remove C, or chemist premises listed in relation to C, from its pharmaceutical list under paragraph (1) or (3), PCT1 must—

- (a) give notice to C (or, in appropriate circumstances, a person whom PCT1 reasonably believes is representing C or is an executor of C) of the decision that PCT1 is minded to take;
- (b) as part of that notification, advise C (or the representative or executor) that they may make—
 - (i) written representations to PCT1 with regard to that action, provided they notify PCT1 with those representations within 30 days beginning with the date of the notification by PCT1, and
 - (ii) oral representations to PCT1 with regard to that action, provided—
 - (aa) they notify PCT1 of their wish to do so within 30 days beginning with the date of the notification by PCT1, and
 - (bb) C (or the representative or executor, or someone representing the representative or executor) attends the hearing that PCT1 arranges for the purpose of hearing those representations, which PCT1 must give C reasonable notice of; and
- (c) consult any Local Pharmaceutical Committee for its area.

(6) If PCT1 does decide to remove C from its pharmaceutical list under paragraph (1) or (3), it must, when it notifies C of that decision, include in that notification—

- (a) a statement of the reasons for the decision; and
- (b) an explanation of how C's rights of appeal under regulation 77(1)(d) may be exercised.