WELSH STATUTORY INSTRUMENTS

2005 No. 1013 (W.67)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (Pharmaceutical Services) (Amendment) (Wales) Regulations 2005

Made - - - -	*31 March 2005*
Coming into force - -	*1 April 2005*

The National Assembly for Wales in exercise of the powers conferred by sections 41, 42, 43 and 126(4) of the National Health Service Act 1977(**1**) hereby makes the following Regulations:

Citation, commencement, interpretation and application

1.—(1) These Regulations are called the National Health Service (Pharmaceutical Services) (Amendment) (Wales) Regulations 2005 and will come into force on 1 April 2005.

(2) In these Regulations—

"the principal Regulations" means the National Health Service (Pharmaceutical Services) Regulations 1992(**2**);

(3) These Regulations apply in relation to Wales only.

(**1**) 1977 c. 49; Section 41 was substituted by the Health and Social Care Act 2001 (c. 15) ("the 2001 Act"), section 42(1); and amended by the National Health Service Reform and Healthcare Professions Act 2002 (c. 17) ("the 2002 Act"), Schedule 2, paragraph 13 and by the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) ("the 2003 Act").
Section 42 was substituted by the National Health Service (Amendment) Act 1986 (c. 66), section 3(1); extended by the Health and Medicines Act 1988 (c. 49), section 17; and amended by SI 1987/2202, article 4; by the National Health Service and Community Care Act 1990 (c. 19) ("the 1990 Act"), section 12(3) and by the Health Authorities 1995 (c. 17) ("the 1995 Act"), Schedule 1, paragraph 30; by the 2001 Act, sections 20(6), 23(5), 40(3), 43(2), (3) and (4) and by Schedule 6, Part 1; and by the 2002 Act, Schedule 2, paragraph 16.
Section 43 was amended by the Health Services Act 1980 (c. 53), Schedule 9, paragraph 18(2); by the 1995 Act, Schedule 1, paragraph 31; by the Pharmacists (Fitness to Practise) Act 1997 (c. 19), paragraph 6 of the Schedule; and by the National Health Service (Primary Care) Act 1997, section 29(1) and Schedule 2, paragraph 14; by the 1990 Act, Schedule 9, paragraph 18(2); by the 2001 Act, sections 20(7), 42(2) and 43(5); by the 2002 Act Schedule 2, paragraph 17; and by the 2003 Act, Schedule 11, paragraph 19.
See section 128(1) as amended by the 1990 Act, section 26(2)(g) and (i), and by the Health Act 1999 (c. 8) ("the 1999 Act), Schedule 4, paragraph 38(2)(b), for the definitions of "prescribed" and "regulations".
Section 126(4) was amended by the 1990 Act, section 65(2) and the 1999 Act , Schedule 4, paragraph 37(6).
The functions of the Secretary of State under sections 41, 42, 43, and 126(4) of the National Health Service Act 1977 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, S.I.1999/672, article 2 and Schedule 1, as amended by the 1999 Act, section 66(5), the Health and Social Care Act 2001 (c. 15), section 68(1), National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 40(1) and the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), section 197(1).

(**2**) SI 1992/662

Amendment of Regulation 2 of the principal Regulations

2.—(1) Regulation 2(1) of the principal Regulations is amended in accordance with the following provisions of this regulation.

(2) For the definition of "supplementary prescriber" substitute—

""supplementary prescriber" means a person—

(a) whose name is registered in—

(i) the Nursing and Midwifery Register,

(ii) the Register of Pharmaceutical Chemists maintained in pursuance of section 2(1) of (the registers and registration) of the Pharmacy Act 1954(**3**), or

(iii) the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976(**4**), or

(iv) the part of the register maintained by the Health Professions Council in pursuance of article 5 of the Health Professions Order 2001(**5**) relating to —

(aa) chiropodists and podiatrists,

(bb) physiotherapists,

(v) radiographers: diagnostic or therapeutic; and

(b) against whose name is recorded in the relevant register an annotation signifying that he is qualified to order drugs and appliances as a supplementary prescriber;".

(3) For the definition of "terms of service" substitute—

""terms of service" means the terms of service contained in or referred to—

(a) in relation to chemists, in Parts 1 to 5 of Schedule 2,

(b) in relation to doctors who provide pharmaceutical services, in Parts 1 and 6 of Schedule 2.".

(4) In the appropriate places in the alphabetical order, insert the following definitions—

""essential services" has the meaning given in paragraph 3 of Schedule 2;

"NHS services" means services provided as part of the health service continued under section 1(1) of the Act;

"suspended" means—

(a) suspended by a Primary Care Trust or equivalent body under sections 49I (suspension)(**6**) or 49J(suspension pending appeal) of the Act, regulations made under section 28DA (**7**)(lists of persons who may perform personal medical services or personal dental services) or 43D (**8**)supplementary lists) of the Act, or under section 8ZA (list of persons who may perform personal medical services or personal dental services) of the 1997 Act; or

(**3**) c.61
(**4**) SI 1976/1213 (NI 22)
(**5**) The register is maintained by the Health Professions Council in accordance with Article 6 of the Health Professions Order 2002 (SI 2002/254)
(**6**) Sections 49I and 49J of the National Health Service Act 1977 (c. 49) ("the Act") were inserted by the Health and Social Care Act 2001 (c. 15) ("the 2001 Act), section 25; and amended by the National Health Service Reform and Healthcare Professions Act 2002 (c. 17) ("the 2002 Act"), section 2(5) and Schedule 2. Section 49I was also amended by the 2003 Health and Social Care (Community Health and Standards) Act 2003 (c. 43) ("the 2003 Act"), section 196 and Schedule 14.
(**7**) Section 28DA was inserted into the Act by the National Health Service (Primary Care) Act 1997, section 21(1); and was amended by the 2002 Act, section 42 and Schedule 3; and by the 2003 Act, section 184 and Schedule 11.
(**8**) Section 43D was inserted by section 24 of the 2001 Act; was amended by section 2(5) of and Schedule 2 to the 2002 Act and by section 196 of and Schedule 14 to the 2003 Act.

(b) in relation to Scotland or Northern Ireland, suspended under provisions in force corresponding to those in or made under sections 28DA, 43D, 49I or 49J of the Act or under section 8ZA(**9**) of the 1997 Act,

and shall be treated as including a case where a person is treated as suspended by a Local Health Board, or prior to 1 April 2003, a Health Authority by virtue of regulation 6(2) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002(**10**), or, in England by a Primary Care Trust or, prior to 1 October 2002, by a Health Authority by virtue of regulation 6(2) of the Abolition of the National Health Service Tribunal (Consequential Provision) Regulations 2001(**11**), and "suspends" and "suspension" shall be construed accordingly;".

(5) Omit the following definition—

""repeat dispensing chemist"".

Amendment of regulation 4 of the principal Regulations

3.—(1) Regulation 4 of the principal Regulations is amended in accordance with the following provisions of this regulation.

(2) In paragraph (1), for "additional professional services under regulation 16A or repeat dispensing services under regulation 16B" substitute "directed services, and if he has, which services.".

(3) In paragraph (2)(b)(iii) omit the words "other than repeat dispensing services".

(4) For paragraph (6) substitute the following paragraph—

"(6) A Local Health Board shall refuse an application in which a chemist does not offer to provide all of the essential services, but may grant an application either in respect of all, or in respect of some only, of the directed services specified in it.".

Omission of regulation 16A of the principal Regulations.

4. Regulation 16A is omitted.

Omission of regulation 16B of the principal Regulations

5. Regulation 16B is omitted.

Amendment of regulation 18 of the principal Regulations

6. In regulation 18(1), for sub-paragraph (g) substitute the following sub-paragraph—

"(g) the dispensing or other fees or allowances payable in respect of the provision of pharmaceutical services.".

Amendment of Part I of Schedule 2 to the principal Regulations

7. In paragraph 2 of Part I to Schedule 2 to the principal Regulations (incorporation of provisions) after sub-paragraph (c) insert the following sub-paragraph—

"and

(**9**) Inserted by the 2001 Act, section 26(2), repealed in relation to personal medical services by the 2003 Act, sections 178, 196 and Schedule 14.
(**10**) SI 2002/1920
(**11**) SI 2001/3744

(d) so much of regulation 20 of the Community Health Councils Regulations 2004(**12**) as relate to the entry and inspection of premises either owned or controlled by the chemist or doctor or where pharmaceutical services are provided.".

Substitution of Part II of Schedule 2 to the principal Regulations

8. For Part II of Schedule 2 to the principal Regulations (Terms of Service for Chemists) substitute the following Parts—

"PART 2

ESSENTIAL SERVICES

Essential Services

3. For the purposes of these Regulations, "essential services" means—

(a) the services described in this Part; and

(b) the activities described in this Part to be carried out in connection with those services.

Dispensing services

4. A chemist shall, to the extent that paragraphs 5 to 9 require and in the manner described in those paragraphs, provide proper and sufficient drugs and appliances to persons presenting a prescription for that drug or appliance signed by a health care professional in pursuance of his functions in the health service, the Scottish health service or the Northern Ireland health service.

Dispensing of drugs and appliances

5.—(1) Subject to the following provisions of this Part, where a person presents on a prescription form—

(a) an order for drugs, not being Scheduled drugs, or for appliances, not being restricted availability appliances, signed by a prescriber;

(b) an order for a drug specified in Schedule 2 to the Prescription of Drugs Regulations, signed by, and endorsed on its face with the reference "SLS" by a prescriber; or

(c) an order for a restricted availability appliance, signed by and endorsed on its face with the reference "SLS" by a prescriber,

a chemist shall, with reasonable promptness and in accordance with any directions given by the prescriber in the prescription form, provide the drugs so ordered, and such of the appliances so ordered as he supplies in the normal course of his business.

(2) Subject to the following provisions of this Part, where any person—

(a) presents a repeatable prescription which contains—

(i) an order for drugs, not being Scheduled drugs or controlled drugs within the meaning of the Misuse of Drugs Act 1971, other than a drug which is for the

(**12**) S.I.2004/905 (W.89)

time being specified in Schedule 4 or 5 to the Misuse of Drugs Regulations 2001, signed by a repeatable prescriber,

(ii) an order for a drug specified in Schedule 2 to the Prescription of Drugs Regulations, not being a controlled drug within the meaning of the Misuse of Drugs Act 1971, other than a drug which is for the time being specified in Schedule 4 or 5 to the Misuse of Drugs Regulations 2001, signed by and endorsed on its face with the reference "SLS" by a repeatable prescriber,

(iii) an order for appliances, not being restricted availability appliances, signed by a repeatable prescriber, or

(iv) an order for a restricted availability appliance, signed by, and endorsed on its face with the reference "SLS" by a repeatable prescriber,

and also presents an associated batch issue; or

(b) requests the provision of drugs or appliances in accordance with a repeatable prescription of a kind specified in paragraph (a),

a chemist shall, with reasonable promptness and in accordance with any directions given by the repeatable prescriber in the repeatable prescription, provide the drugs so ordered, and such of the appliances so ordered as he supplies in the normal course of his business.

(3) For the purposes of this paragraph, a repeatable prescription for drugs or appliances shall be taken to be presented even if the person who wishes to obtain the drugs or appliances does not present that prescription, where—

(a) the chemist has that prescription in his possession; and

(b) that person presents, or the chemist has in his possession, an associated batch issue.

Urgent supply without a prescription

6. Where, in a case of urgency, a prescriber personally known to a chemist requests him to provide a drug, the chemist may provide that drug before receiving a prescription form or repeatable prescription, provided that—

(a) that drug is not a Scheduled drug;

(b) that drug is not a controlled drug within the meaning of the Misuse of Drugs Act 1971, other than a drug which is for the time being specified in Schedules 4 or 5 to the Misuse of Drugs Regulations 2001; and

the prescriber undertakes to give the chemist a prescription form or repeatable prescription in respect of the drug within 72 hours.

Preliminary matters before providing ordered drugs or appliances

7.—(1) If the person presenting the prescription form or repeatable prescription, or requesting the provision of drugs or appliances in accordance with a repeatable prescription, asks the chemist to do so—

(a) the chemist shall give an estimate of the time when the drugs or appliances will be ready; and

(b) if they are not ready by then, the chemist shall give a revised estimate of the time when they will be ready (and so on).

(2) Before providing any drugs or appliances in accordance with a prescription form or a repeatable prescription—