

2006 No. 143

NATIONAL HEALTH SERVICE

**The National Health Service (Pharmaceutical Services)
(Scotland) Amendment Regulations 2006**

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| <i>Made</i> - - - - | <i>10th March 2006</i> |
| <i>Laid before the Scottish Parliament</i> | <i>10th March 2006</i> |
| <i>Coming into force</i> - - | <i>1st April 2006</i> |

The Scottish Ministers in exercise of the powers conferred by sections 27(1) and (2), 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(a) and section 39 of the Smoking Health and Social Care (Scotland) Act 2005(b) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2006.

(2) These Regulations shall come into force on 1st April 2006.

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

Amendment of the principal Regulations

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

(2) In regulation 2(1) (interpretation and application)—

(a) insert the following definitions in the appropriate alphabetical places:

““corresponding decision” has same meaning as in section 32D of the Act(d);

“equivalent body” means—

(i) in England, a Primary Care Trust, or in relation to any time prior to 1 October 2002 a Health Authority;

(a) 1978 c.29; section 27(1) was amended by the Health Services Act 1980 (c.53) (“the 1980 Act”), section 20(2), the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), Schedule 9, paragraph 19(7)(a), the Medicinal Products; Prescription by Nurses etc Act 1992 (c.28), section 3, the National Health Services (Primary Care) Act 1997 (c.46), Schedule 2, Part 1, paragraph 44, and the Health and Social Care Act 2001 (c.15), section 44(2); section 27(2) was substituted by the National Health Service (Amendment) Act 1986 (c.66), section 3(3) and amended by the 1990 Act, Schedule 9, paragraph 19(7)(b); section 105(7) was amended by the 1980 Act, Schedule 6, paragraph 5(1) and Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, Part I, paragraph 24 and the Health Act 1999 (c.8), Schedule 4, paragraph 60; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) (asp 13) (“the 2005 Act”).

(c) S.I. 1995/414.

(d) Section 32D is substituted by the 2005 Act, section 27 with effect from 1st April 2006 by S.S.I. 2006/121.

- (ii) in Wales, a Local Health Board or in relation to any time prior to 1st April 2003 a Health Authority;
 - (iii) in Northern Ireland, a Health and Social Services Board;
- or any successor body;
- “equivalent list” means a list kept by an equivalent body;”;
- (b) in the definition of “prescription form”(a) insert–
 - (i) “either” after “means”; and
 - (ii) after paragraph (b)–
 - “;or
 - (c) a form on which domiciliary oxygen has been ordered–
 - (i) by a prescriber in England or Wales for a patient normally resident in England or Wales; and
 - (ii) in relation to which the patient named on the form (or a person on the patient’s behalf) completes and signs a declaration of entitlement to exemption or a statement that a charge has been paid,

and includes a prescription form provided and issued under equivalent arrangements having effect in England, Wales and Northern Ireland,;”;
 - (c) in the definition of “supplementary prescriber”(b)–
 - (i) omit “or” at the end of paragraph (c); and
 - (ii) insert at the end of paragraph (d)–
 - “;or
 - (e) the register of optometrists maintained by the General Optical Council in terms of section 7 (register of opticians) of the Opticians Act 1989(c).”.
- (3) In regulations 5(1)(d) and 6(1)(e) for “regulation 26(1) (practitioners subject to inquiry in a fraud case)”, substitute “regulation 26 (practitioners subject to inquiry)”(f).
- (4) After regulation 5, insert a new regulation as follows:

“Effect to be given to corresponding decisions in England, Wales and Northern Ireland

5(A).—(1) A Health Board shall not include the name of any person in its pharmaceutical list, and shall remove the name of any person from its pharmaceutical list, if any decision has been made in England, Wales or Northern Ireland to deal with that person in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under section 29B(2)(g), 30(2)(h) or (5)(i) or 32B(1)(j) of the Act, for so long as that decision is in force.

(a) The definition of “prescription form” was substituted by S.S.I. 2003/296, and amended by 2004/212.

(b) The definition of “supplementary prescriber” was inserted by S.S.I. 2003/296 and amended by S.I. 2004/1771 and S.S.I. 2005/327.

(c) (c.44). Section 7 was amended by S.I. 2005/848, Art 7.

(d) Regulation 5(1) was amended by S.S.I. 1999/57 and 2004/39.

(e) Regulation 6(1) was amended by S.S.I. 1999/57 and 2004/39.

(f) Regulation 26 is amended by S.S.I. 2006/121 with effect from 1st April 2006.

(g) Section 29B(2) was added by the Health Act 1999 (c.8) (“the 1999 Act”), section 58, and amended by the Community Care and Health (Scotland) Act 2002 (asp 5) (“the 2002 Act”), Schedule 2, paragraph 2, the Primary Medical Services (Scotland) Act 2004 (asp 1), Schedule 1, paragraph 1, and the 2005 Act, section 26(4) and Schedule 3.

(h) Section 30(2) was substituted by the 1999 Act, section 58, and is amended by the 2005 Act, Schedule 3 with effect from 1st April 2006 by S.S.I. 2006/121.

(i) Section 30(5) was substituted by the 1999 Act, section 58, and is amended by the 2005 Act, Schedule 3 with effect from 1st April 2006 by S.S.I. 2006/121.

(j) Section 32B(1) was substituted by the 1999 Act, section 65 and Schedule 4, paragraph 52, and is amended by the 2005 Act, Schedule 3 with effect from 1st April 2006 by S.S.I. 2006/121.

(2) Where any corresponding decision is made in England, Wales or Northern Ireland by an equivalent body that—

- (a) a person is to be included in an equivalent list subject to conditions;
- (b) a person is to be removed from an equivalent list contingent on conditions;
- (c) a person is to be disqualified from an equivalent list subject to conditions; or
- (d) any conditions so imposed are varied,

a Health Board shall impose those conditions in relation to the provision by that person of pharmaceutical services in the area of the Health Board.

(3) The Health Board may make such modifications of the conditions referred to in paragraph (2) as it considers necessary for them to have the like effect in relation to Scotland as they do in relation to England, Wales or (as the case may be) Northern Ireland, but only if the Health Board has previously given the person concerned written notice of the proposed modifications and an opportunity to make representations about them.”

(5) Omit regulation 9A(6)(a).

(6) In Schedule 1 (terms of service of pharmacists)—

- (a) in paragraph 5(2)(a)(b)—
 - (i) for “, having”, substitute “has”;
 - (ii) omit from “or primary care” to the end of the paragraph, and substitute “or any equivalent body”;
- (b) in paragraph 5(2)(b), for “, other than in” to the end, substitute “or any corresponding decision in England, Wales or Northern Ireland.

RHONA BRANKIN

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
10th March 2006

(a) Regulation 9A(6) was inserted by S.I. 1996/840.

(b) Paragraph 5(2)(a) was inserted by S.I. 1996/840, and amended by S.S.I. 1999/57 and 2004/39.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995 (“the principal Regulations”) which regulate the provision of pharmaceutical services under the National Health Service (Scotland) Act 1978 (“the 1978 Act”).

Regulations 2(2)(a), 3, 4, 5 and 6 make consequential amendments arising from amendments to the 1978 Act made by section 27 of the Smoking, Health and Social Care Act (Scotland) 2005 regarding the effect to be given in Scotland to decisions of bodies in England, Wales and Northern Ireland corresponding to the decisions which can be made by the NHS Tribunal in Scotland.

Regulation 2(2)(b) amends the definition of “prescription form” to provide for domiciliary oxygen ordered in England or Wales, but dispensed in Scotland.

£3.00

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