

HEALTH AND SOCIAL CARE ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Pharmaceutical Services

Chapter 2: Changes to existing arrangements

England and Wales

Section 42: Dispensing of NHS prescriptions and provision of pharmaceutical services

201. *Subsection (1)* of [section 42](#) substitutes a revised section 41 in the 1977 Act relating to the arrangements for pharmaceutical services.
202. *Subsection (1)(a)* of new section 41 requires Health Authorities, in accordance with regulations, to make arrangements for the supply to persons who are in their area, of drugs, medicines and listed appliances to those people for whom they have been prescribed by medical practitioners under the national health service (including the Scottish and Northern Ireland health services).
203. *Subsections (1)(b) and (c)* require Health Authorities similarly, in accordance with regulations, to make arrangements for the supply to persons who are in their area, of drugs and medicines to those people for whom they have been prescribed by dental practitioners.
204. *Subsection (1)(d)* makes provision for items prescribed by certain other categories of prescriber also to be dispensed as part of NHS pharmaceutical services. This subsection gives the Secretary of State powers to specify in regulations the categories of person whose prescriptions will be dispensed and any conditions in accordance with which they must prescribe. It also provides the Secretary of State with powers to determine the particular drugs, medicines and appliances which each of them may prescribe for NHS dispensing. In relation to prescription only medicines, this subsection needs to be read in conjunction with [section 63](#), which deals with the related issue of extension of the right to prescribe such medicines.
205. *Subsection (1)(e)* allows the Secretary of State to make regulations extending the scope of the services for which Health Authorities are required to make arrangements.
206. *Subsection (2)* of new section 41 defines these services together with the additional pharmaceutical services provided for under section 41A as “pharmaceutical services”.
207. *Subsection (3)* of new section 41 provides that the categories of persons under subsection (1)(d) whose prescriptions may be dispensed must be professionals regulated by law. It includes provision to ensure that prescriptions written by health professionals regulated under Scottish and Northern Irish legislation can be dispensed in England and Wales. *Subsection (4)* of new section 41 relates to the Secretary of State’s powers to determine the particular drugs, medicines and appliances which each category of prescriber may prescribe for NHS dispensing. It provides that a determination may

make different provision for different cases; specify the circumstances or cases in which a drug, medicine or appliance may be prescribed and allow for the dispensing of such items as the prescriber thinks necessary, in the exercise of their discretion.

208. *Subsection (5)* of new section 41 provides that the arrangements made by a Health Authority can include arrangements for the provision of a service by ‘remote’ means, so that the person receiving the service does so otherwise than at the premises from which it is provided. *Subsection (6)* of new section 41 makes provision to the effect that (subject to any limitations imposed by the Secretary of State in regulations) people with whom a Health Authority has made arrangements may also provide pharmaceutical services to people who are outside the Authority’s area. This might happen, for example, where patients send their prescriptions by post to the pharmacy of their choice, or where a pharmacy collects a prescription from a GP’s surgery on a patient’s behalf and then delivers the dispensed medicine to the patient’s home. The intention is to facilitate, and provide a means to control, the development of internet, mail order, home delivery and other arrangements. This will provide patients with greater flexibility in the way they can present their prescriptions and obtain the drugs or appliances that have been ordered for them.

Section 43: Remote provision of pharmaceutical, etc. services

209. Section 41A of the 1977 Act concerns the provision of “additional pharmaceutical services” which are in addition to those required by section 41. *Section 43* amends this section to give the Secretary of State powers to give directions to Health Authorities authorising or requiring them to arrange for the provision of services to any person, whether or not in their area. *Subsection (1)(b)* (of *section 43*) adds a new subsection (1A) to section 41A of the 1977 Act to allow the Secretary of State to authorise or require Health Authorities to arrange for the provision of these services by remote means so that the service is received otherwise than at the premises from which it is provided.
210. Section 42 of the 1977 Act provides powers to make regulations governing the arrangements made by a Health Authority for the provision of pharmaceutical services. In accordance with section 42(2), regulations require all Health Authorities to prepare and publish lists of persons (other than for medical and dental practitioners) who undertake to provide pharmaceutical services from premises in their area. Applications for inclusion in a pharmaceutical list are only to be granted if the Health Authority is satisfied that it is necessary or desirable to do so to secure the adequate provision of services in the neighbourhood in which the premises are located. *Subsection (3)* provides that regulations may be made exempting people from the ‘necessary or desirable’ test where they are to provide services solely by remote means.
211. *Subsection (4)* of *section 43* adds new subsections (3A) and (3B) to section 42 of the 1977 Act.
212. New subsection (3B) allows regulations to be made requiring people providing remote services to be approved for that purpose. It also provides a power to prescribe conditions to be imposed on the grant of an application for inclusion in a pharmaceutical list, where the applicant is to provide services by remote means.
213. *Subsection (5)* (of *section 43*) amends section 43(2A) of the 1977 Act, under which regulations are required to provide for the preparation by Health Authorities of lists of medical practitioners who supply drugs, medicines and appliances. The effect is to ensure that such dispensing doctors are included in the list of each Health Authority with whom they have arranged to dispense, even if they dispense from premises in another Health Authority’s area.
214. Section 44 of the 1977 Act permits a Health Authority to recognise a Local Pharmaceutical Committee (LPC) which it is satisfied is representative of persons providing pharmaceutical services in its area. *Subsection (6)* (of *section 43*) amends section 44 to clarify that notwithstanding that people in the Health Authority’s area may

receive pharmaceutical services from people whose premises are outside that area, the LPC need only be representative of persons who are included in a Health Authority's own pharmaceutical list, in order to be recognised by it.

Scotland

Section 44: Dispensing of NHS prescriptions

215. *Section 44* amends section 27 of the National Health Service (Scotland) Act 1978 to make provision for items prescribed by certain categories of prescriber to be dispensed as part of NHS community pharmaceutical services in Scotland. This section was requested by the Scottish Executive and approved by the Scottish Parliament on 17th January 2001. Section 27(1)(cc) as amended, gives Scottish Ministers powers to specify in regulations the categories of person whose prescriptions will be dispensed and conditions in accordance with which they must prescribe. Scottish Ministers may also determine the drugs, medicines and appliances which each of them may prescribe for NHS dispensing. Paragraph (cc) applies to persons other than doctors and dentists, for whom separate provision is made at paragraphs (a) to (c) of Section 27.
216. *Subsection (3)* limits the categories of person who may be prescribed in regulations under Section 27(1)(cc) to certain professionals regulated under statute. It includes provision to ensure that prescriptions written by health professionals regulated under legislation in Northern Ireland can be dispensed in Scotland. It also provides that determinations under that section may make different provision for different cases, specify the circumstances or cases in which a given drug, medicine or appliance may be prescribed, and specify types of prescriber who may prescribe such drugs, medicines and listed appliances as they see fit, in the exercise of their discretion.