



# National Health Service Act 2006

## 2006 CHAPTER 41

### PART 7

#### PHARMACEUTICAL SERVICES AND LOCAL PHARMACEUTICAL SERVICES

### CHAPTER 1

#### PROVISION OF PHARMACEUTICAL SERVICES

#### **126 Arrangements for pharmaceutical services**

- (1) Each Primary Care Trust must, in accordance with regulations, make the arrangements mentioned in subsection (3).
- (2) The Secretary of State must make regulations for the purpose of subsection (1).
- (3) The arrangements are arrangements as respects the area of the Primary Care Trust for the provision to persons who are in that area of—
  - (a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown,
  - (b) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of—
    - (i) his functions in the health service, the Scottish health service or the Northern Ireland health service (other than functions exercised in pursuance of the provision of services mentioned in paragraph (c)), or
    - (ii) his functions in the armed forces of the Crown,
  - (c) listed drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of the provision of primary dental services or equivalent services in the Scottish health service or the Northern Ireland health service,

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- (d) such drugs and medicines and such listed appliances as may be determined by the Secretary of State for the purposes of this paragraph and which are ordered for those persons by a prescribed description of person in accordance with such conditions, if any, as may be prescribed, in pursuance of functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown, and
  - (e) such other services as may be prescribed.
- (4) The descriptions of persons which may be prescribed for the purposes of subsection (3) (d) are the following, or any sub-category of such a description—
- (a) persons who are registered in the register maintained under article 5 of the Health Professions Order 2001,
  - (b) persons who are registered pharmacists,
  - (c) persons who are registered in the dental care professionals register established under section 36B of the Dentists Act 1984 (c. 24)
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  - (d) persons who are optometrists,
  - (e) persons who are registered osteopaths within the meaning of the Osteopaths Act 1993 (c. 21)
  - ,
  - (f) persons who are registered chiropractors within the meaning of the Chiropractors Act 1994 (c. 17)
  - ,
  - (g) persons who are registered nurses or registered midwives,
  - (h) persons not mentioned above who are registered in any register established, continued or maintained under an Order in Council under section 60(1) of the Health Act 1999 (c. 8)
  - ,
  - (i) any other description of persons which appears to the Secretary of State to be a description of persons whose profession is regulated by or under a provision of, or made under, an Act of the Scottish Parliament or Northern Ireland legislation and which the Secretary of State considers it appropriate to specify.
- (5) A determination under subsection (3)(d) may—
- (a) make different provision for different cases,
  - (b) provide for the circumstances or cases in which a drug, medicine or appliance may be ordered,
  - (c) provide that persons falling within a description specified in the determination may exercise discretion in accordance with any provision made by the determination in ordering drugs, medicines and listed appliances.
- (6) The arrangements which may be made by a Primary Care Trust under subsection (1) include arrangements for the provision of a service by means such that the person receiving it does so otherwise than at the premises from which it is provided.
- (7) Where a person with whom a Primary Care Trust makes arrangements under subsection (1) wishes to provide services to persons outside the area of the Primary

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Care Trust he may, subject to any provision made by regulations in respect of arrangements under this section, provide such services under the arrangements.

- (8) The services provided under this section are, together with additional pharmaceutical services provided in accordance with a direction under section 127, referred to in this Act as “pharmaceutical services”.
- (9) In this section—
- “armed forces of the Crown” does not include forces of a Commonwealth country or forces raised in a colony,
  - “listed” means included in a list approved by the Secretary of State for the purposes of this section,
  - “the Scottish health service” means the health service within the meaning of the National Health Service (Scotland) Act 1978 (c. 29), and
  - “the Northern Ireland health service” means the health service within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)).

## **127 Arrangements for additional pharmaceutical services**

- (1) The Secretary of State may—
- (a) give directions to a Primary Care Trust requiring it to arrange for the provision to persons within or outside its area of additional pharmaceutical services, or
  - (b) by giving directions to a Primary Care Trust authorise it to arrange for such provision if it wishes to do so.
- (2) Directions under this section may require or authorise a Primary Care Trust to arrange for the provision of a service by means such that the person receiving it does so otherwise than at the premises from which it is provided (whether those premises are inside or outside the area of the Primary Care Trust).
- (3) The Secretary of State must publish any directions under this section in the Drug Tariff or in such other manner as he considers appropriate.
- (4) In this section—
- “additional pharmaceutical services”, in relation to directions, means the services (of a kind that do not fall within section 126) which are specified in the directions, and
  - “Drug Tariff” means the Drug Tariff published under regulation 18 of the National Health Service (Pharmaceutical Services) Regulations 1992 (S.I. 1992/662) or under any corresponding provision replacing, or otherwise derived from, that regulation.

## **128 Terms and conditions, etc**

- (1) Directions under section 127 may require the Primary Care Trust to which they apply, when making arrangements—

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- (a) to include, in the terms on which the arrangements are made, such terms as may be specified in the directions,
  - (b) to impose, on any person providing a service in accordance with the arrangements, such conditions as may be so specified.
- (2) The arrangements must secure that any service to which they apply is provided only by a person—
- (a) whose name is included in a pharmaceutical list, or
  - (b) who has entered into a pharmaceutical care services contract under section 17Q of the National Health Service (Scotland) Act 1978.
- (3) Different arrangements may be made with respect to—
- (a) the provision of the same service by the same person but in different circumstances, or
  - (b) the provision of the same service by different persons.
- (4) A Primary Care Trust must provide details of proposed arrangements (including the remuneration to be offered for the provision of services) to any person who asks for them.
- (5) After making any arrangements, a Primary Care Trust must publish, in such manner as the Secretary of State may direct, such details of the arrangements as he may direct.
- (6) “Pharmaceutical list” includes, subject to any provision of the directions in question, a list published in accordance with regulations made under—
- (a) section 83(2)(a) of the National Health Service (Wales) Act 2006 (c. 42), or
  - (b) Article 63(2A)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)).

## **129 Regulations as to pharmaceutical services**

- (1) Regulations must provide for securing that arrangements made by a Primary Care Trust under section 126 will—
- (a) enable persons for whom drugs, medicines or appliances mentioned in that section are ordered as there mentioned to receive them from persons with whom such arrangements have been made, and
  - (b) ensure the provision of services prescribed under subsection (3)(e) of that section by persons with whom such arrangements have been made.
- (2) The regulations must include provision—
- (a) for the preparation and publication by a Primary Care Trust of one or more lists of persons, other than medical practitioners and dental practitioners, who undertake to provide pharmaceutical services from premises in the area of the Primary Care Trust,
  - (b) that an application to a Primary Care Trust for inclusion in a pharmaceutical list must be made in the prescribed manner and must state—

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- (i) the services which the applicant will undertake to provide and, if they consist of or include the supply of appliances, which appliances he will undertake to supply, and
    - (ii) the premises from which he will undertake to provide those services,
  - (c) that, except in prescribed cases (which may, in particular, include cases of applications for the provision only of services falling within subsection (7))—
    - (i) an application for inclusion in a pharmaceutical list by a person not already included, and
    - (ii) an application by a person already included in a pharmaceutical list for inclusion also in respect of services or premises other than those already listed in relation to him,may be granted only if the Primary Care Trust is satisfied, in accordance with the regulations, that it is necessary or expedient to grant the application in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included in the list of the services, or some of the services, specified in the application, and
  - (d) for the removal of an entry in respect of premises from a pharmaceutical list if it has been determined in the prescribed manner that the person to whom the entry relates—
    - (i) has never provided from those premises, or
    - (ii) has ceased to provide from them,the services, or any of the services, which he is listed as undertaking to provide from them.
- (3) The regulations may prescribe the extent to which the provision of LP services (within the meaning given by paragraph 1 of Schedule 12) must be taken into account in determining whether to grant an application for inclusion in a pharmaceutical list.
- (4) The regulations may include the provision mentioned in subsection (5) for the case where—
  - (a) two or more applications referred to in subsection (2)(c)(i) or (ii) relate to the same neighbourhood,
  - (b) they are considered together by the Primary Care Trust, and
  - (c) the Primary Care Trust would be satisfied as mentioned in subsection (2)(c) in relation to each application taken on its own, but is not so satisfied in relation to all of them taken together.
- (5) The provision mentioned in this subsection is provision for the Primary Care Trust, in determining which application (or applications) to grant, to take into account any proposals specified in the applications in relation to the sale or supply at the premises in question, otherwise than by way of pharmaceutical services or in accordance with a private prescription, of—
  - (a) drugs and medicines, and
  - (b) other products for, or advice in relation to, the prevention, diagnosis, monitoring or treatment of illness or handicap, or the promotion or protection of health.
- (6) The regulations may include provision—
  - (a) that an application to a Primary Care Trust may be granted in respect of some only of the services specified in it,

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- (b) that an application to a Primary Care Trust relating to services of a prescribed description may be granted only if it appears to the Primary Care Trust that the applicant has satisfied such conditions with regard to the provision of those services as may be prescribed,
  - (c) that an application to a Primary Care Trust by a person who qualified to have his name registered under the Pharmacy Act 1954 (c. 61) by virtue of section 4A of that Act (qualification by European diploma) may not be granted unless the applicant satisfies the Primary Care Trust that he has the knowledge of English which, in the interest of himself and persons making use of the services to which the application relates, is necessary for the provision of pharmaceutical services in the area of the Primary Care Trust,
  - (d) that the inclusion of a person in a pharmaceutical list in pursuance of such an application may be for a fixed period,
  - (e) that, where the premises from which an application states that the applicant will undertake to provide services are in an area of a prescribed description, the applicant may not be included in the pharmaceutical list unless his inclusion is approved by reference to prescribed criteria by the Primary Care Trust in whose area those premises are situated,
  - (f) that that Primary Care Trust may give its approval subject to conditions,
  - (g) as to other grounds on which a Primary Care Trust may, or must, refuse to grant an application (including grounds corresponding to the conditions referred to in section 151(2), (3) or (4) as read with section 153),
  - (h) as to information which must be supplied to a Primary Care Trust by a person included, or seeking inclusion, in a pharmaceutical list (or by arrangement with him),
  - (i) for the supply to a Primary Care Trust by an individual—
    - (i) who is included, or seeking inclusion, in a pharmaceutical list, or
    - (ii) who is a member of the body of persons controlling a body corporate included, or seeking inclusion, in a pharmaceutical list,
 of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50) , a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,
  - (j) for grounds on which a Primary Care Trust may defer a decision whether or not to grant an application,
  - (k) for the disclosure by a Primary Care Trust, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a pharmaceutical list, and refusals by the Primary Care Trust to grant such applications,
  - (l) as to criteria to be applied in making decisions under the regulations (other than decisions required by virtue of paragraph (e)),
  - (m) as to the making of declarations about—
    - (i) financial interests,
    - (ii) gifts above a prescribed value, and
    - (iii) other benefits received.
- (7) A service falls within this subsection if the means of providing it is such that the person receiving it does so otherwise than at the premises from which it is provided.

- (8) The regulations may, in respect of services falling within subsection (7), include provision—
  - (a) requiring persons to be approved for the purposes of providing such services, or
  - (b) requiring the Primary Care Trust to make the grant of an application subject to prescribed conditions.
- (9) The approval mentioned in subsection (8)(a) is approval by the Secretary of State or such other person as may be specified in the regulations, in accordance with criteria to be specified in or determined under the regulations (whether by the Secretary of State or by another person so specified).
- (10) Before making regulations by virtue of subsection (6)(m), the Secretary of State must consult such organisations as he considers appropriate appearing to him to represent persons providing pharmaceutical services.
- (11) In this Act a “pharmaceutical list” means a list published in accordance with regulations made under subsection (2)(a).

### **130 Regulations under section 129: appeals, etc**

- (1) Regulations under section 129 must include provision conferring on such persons as may be prescribed rights of appeal from decisions made by virtue of that section.
- (2) If regulations made by virtue of section 129(6)(g) provide that a Primary Care Trust may refuse to grant an application, they must also provide for an appeal (by way of redetermination) to the FHSAA against the decision of the Primary Care Trust.
- (3) Regulations under section 129 must be so framed as to preclude—
  - (a) a person included in a pharmaceutical list, and
  - (b) an employee of such a person,from taking part in the decision whether an application such as is mentioned in section 129(2)(c) should be granted or an appeal against such a decision brought by virtue of subsection (1) of this section should be allowed.

### **131 Power to charge**

- (1) The Secretary of State may give directions to a Primary Care Trust requiring it to charge a fee in cases or descriptions of case specified in the directions to persons who make an application referred to in section 129(2)(c)(i) or (ii).
- (2) The Secretary of State may in the directions—
  - (a) specify the fee himself, or
  - (b) require the Primary Care Trust to determine the amount of the fee in accordance with any requirements set out in the directions.
- (3) Before determining the amount of the fee—
  - (a) in a subsection (2)(a) case, the Secretary of State must consult such organisations as he considers appropriate that appear to him to represent persons providing pharmaceutical services and such organisations as he considers appropriate that appear to him to represent Primary Care Trusts,
  - (b) in a subsection (2)(b) case, the Primary Care Trust must undertake any consultation required by the directions.

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- (4) The Secretary of State must publish in such manner as he considers appropriate any directions he gives under this section.
- (5) In a subsection (2)(b) case, the Primary Care Trust must publish in such manner as it considers appropriate the fee which it determines.

### **132 Persons authorised to provide pharmaceutical services**

- (1) Except as may be provided for by or under regulations, no arrangements may be made by a Primary Care Trust with a medical practitioner or dental practitioner under which he is required or agrees to provide pharmaceutical services to any person to whom he is rendering primary medical services or primary dental services.
- (2) Except as may be provided for by or under regulations, no arrangements for the dispensing of medicines may be made under this Chapter with persons other than persons who—
  - (a) are registered pharmacists or persons lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968 (c. 67), and
  - (b) undertake that all medicines supplied by them under the arrangements will be dispensed either by or under the supervision of a registered pharmacist.
- (3) Regulations must provide for the preparation and publication by each Primary Care Trust of one or more lists of medical practitioners who undertake to provide drugs, medicines or listed appliances (within the meaning given by section 126) under arrangements with the Primary Care Trust.
- (4) The regulations may, in particular, include provision—
  - (a) as to grounds on which a Primary Care Trust may, or must, refuse to grant an application for inclusion in a list of medical practitioners referred to in subsection (3) (including grounds corresponding to the conditions referred to in section 151(2), (3) or (4) as read with section 153(2)),
  - (b) as to information which must be supplied to a Primary Care Trust by a medical practitioner included, or seeking inclusion, in such a list (or by arrangement with him),
  - (c) for the supply to a Primary Care Trust by a medical practitioner who is included, or seeking inclusion, in such a list of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,
  - (d) for grounds on which a Primary Care Trust may defer a decision whether or not to grant an application for inclusion in such a list,
  - (e) for the disclosure by a Primary Care Trust to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in such a list, and refusals by the Primary Care Trust to grant such applications,
  - (f) as to criteria to be applied in making decisions under the regulations.
- (5) If regulations made by virtue of subsection (4)(a) provide that a Primary Care Trust may refuse to grant an application for inclusion in such a list, they must also provide

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for an appeal (by way of redetermination) to the FHSAA against the decision of the Primary Care Trust.

- (6) The regulations must include provision for the removal of an entry from a list in prescribed circumstances.
- (7) No arrangements for the provision of—
  - (a) pharmaceutical services falling within section 126(3)(e), or
  - (b) additional pharmaceutical services provided in accordance with a direction under section 127,may be made with persons other than those who are registered pharmacists or are of a prescribed description.
- (8) Where—
  - (a) arrangements for the provision of pharmaceutical services have been made with a registered pharmacist, and
  - (b) a suspension order or an interim suspension order is made with respect to him,he may not provide pharmaceutical services in person during the period of suspension.
- (9) “Suspension order” and “interim suspension order” have the same meaning as in the Pharmacy Act 1954 (c. 61)

### **133 Inadequate provision of pharmaceutical services**

- (1) Subsection (2) applies if the Secretary of State is satisfied, after such inquiry as he considers appropriate, that—
  - (a) as respects the area, or part of the area, of a Primary Care Trust, the persons whose names are included in any pharmaceutical list are not such as to secure the adequate provision of pharmaceutical services in that area or part, or
  - (b) for any other reason any considerable number of persons in any such area or part are not receiving satisfactory services under the arrangements in force under this Chapter.
- (2) Where this subsection applies, the Secretary of State—
  - (a) may authorise the Primary Care Trust to make such other arrangements as he may approve, or may himself make such other arrangements, and
  - (b) may dispense with any of the requirements of regulations made under this Part (other than Chapters 2 to 4) so far as appears to him necessary to meet exceptional circumstances and enable such arrangements to be made.

## **CHAPTER 2**

### **LOCAL PHARMACEUTICAL SERVICES: PILOT SCHEMES**

### **134 Pilot schemes**

- (1) Primary Care Trusts may establish pilot schemes.
- (2) In this Act, a “pilot scheme” means one or more agreements—

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- (a) made by a Primary Care Trust in accordance with this Chapter,
  - (b) under which local pharmaceutical services will be provided (otherwise than by the Primary Care Trust), and
  - (c) the parties to which do not include any other Primary Care Trust.
- (3) A pilot scheme may include arrangements—
- (a) for the provision of services which are not local pharmaceutical services, but which may be provided under this Act, other than under Chapter 1 of this Part, and whether or not of the kind usually provided by pharmacies,
  - (b) for the provision of training and education (including training and education for persons who are, or may become, involved in the provision of local pharmaceutical services).
- (4) A pilot scheme may not combine arrangements for the provision of local pharmaceutical services with arrangements for the provision of primary medical services or primary dental services.
- (5) In determining the arrangements it needs to make in order to comply with section 126, a Primary Care Trust may take into account arrangements under a pilot scheme made by it.
- (6) The functions of an NHS trust and an NHS foundation trust include power to provide any services to which a pilot scheme applies.
- (7) In this Chapter—
- “local pharmaceutical services” means such services of a kind which may be provided under section 126, or by virtue of section 127 (other than practitioner dispensing services) as may be prescribed for the purposes of this Chapter, and
  - “piloted services” means services provided under a pilot scheme (including any services to which the scheme applies as a result of subsection (3)).
- (8) “Practitioner dispensing services” means the provision of drugs, medicines or listed appliances (within the meaning given by section 126) by a medical practitioner or dental practitioner to a patient of his pursuant to arrangements made by virtue of section 132(1).

### **135 Making pilot schemes**

Schedule 11 makes provision with respect to making pilot schemes, including provision with respect to the procedure to be followed.

### **136 Designation of priority neighbourhoods or premises**

- (1) The Secretary of State may make regulations allowing a Primary Care Trust to designate—
- (a) neighbourhoods,
  - (b) premises, or
  - (c) descriptions of premises,
- for the purposes of this section.
- (2) The regulations may, in particular, make provision—

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- (a) as to the circumstances in which, and the neighbourhoods or premises in relation to which, designations may be made or maintained,
  - (b) allowing a Primary Care Trust to defer consideration of pharmaceutical list applications relating to neighbourhoods, premises or descriptions of premises that have been designated,
  - (c) allowing a designation to be cancelled in prescribed circumstances,
  - (d) requiring a designation to be cancelled—
    - (i) if the Secretary of State gives a direction to that effect, or
    - (ii) in prescribed circumstances.
- (3) “Pharmaceutical list applications” means applications for inclusion in a pharmaceutical list.

### **137 Reviews of pilot schemes**

- (1) At least one review of the operation of each pilot scheme must be conducted by the Secretary of State.
- (2) Each pilot scheme must be reviewed under this section before the end of the period of three years beginning with the date on which piloted services are first provided under the scheme.
- (3) When conducting a review of a pilot scheme, the Secretary of State must give—
  - (a) the Primary Care Trust concerned, and
  - (b) any person providing services under the scheme,an opportunity to comment on any matter relevant to the review.
- (4) Otherwise, the procedure on any review must be determined by the Secretary of State.

### **138 Variation and termination of pilot schemes**

- (1) The Secretary of State may give directions authorising Primary Care Trusts to vary pilot schemes (otherwise than in response to directions given under subsection (2)) in such circumstances, and subject to such conditions, as may be specified in the directions.
- (2) The Secretary of State may by directions require a pilot scheme to be varied by the Primary Care Trust concerned in accordance with the directions.
- (3) If satisfied that a pilot scheme is (for any reason) unsatisfactory, the Secretary of State may give directions to the Primary Care Trust concerned requiring it to bring the scheme to an end in accordance with the terms of the directions.

### **139 NHS contracts and the provision of piloted services**

- (1) In the case of a pilot scheme entered into, or to be entered into, by a single individual or body corporate (other than an NHS foundation trust), that individual or body may make an application under this section to become a health service body.
- (2) In the case of any other pilot scheme, all of those providing, or proposing to provide, piloted services under the scheme may together make an application under this section to become a single health service body.

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- (3) An application must—
  - (a) be made to the Secretary of State in accordance with such provisions as may be made by regulations, and
  - (b) specify the pilot scheme in relation to which it is made.
- (4) Except in such cases as may be prescribed, the Secretary of State may grant an application.
- (5) If an application is granted, the Secretary of State must specify a date in relation to that application and, as from that date—
  - (a) in the case of an application under subsection (1), the applicant is, and
  - (b) in the case of an application under subsection (2), the applicants together are, a health service body for the purposes of section 9.
- (6) That section has effect in relation to such a health service body (“a PHS body”), acting as commissioner, as if the functions referred to in section 9(1) were the provision of piloted services.
- (7) Except in such circumstances as may be prescribed, a PHS body resulting from an application under subsection (2) must be treated, at any time, as consisting of those who are providing piloted services under the scheme.
- (8) A direction as to payment made under section 9(11) against, or in favour of, a PHS body is enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.
- (9) Regulations may provide for a PHS body to cease to be a PHS body in prescribed circumstances.
- (10) The Secretary of State must—
  - (a) maintain and publish a list of PHS bodies,
  - (b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to it.
- (11) The list must be published in such manner as the Secretary of State considers appropriate.

#### **140 Funding of preparatory work**

- (1) Provision may be made by regulations for Primary Care Trusts to make payments of financial assistance for preparatory work.
- (2) “Preparatory work” means work which it is reasonable for a person to undertake—
  - (a) in connection with preparing proposals for a pilot scheme, or
  - (b) in preparing for the provision by him of any piloted services.
- (3) The regulations may, in particular, include provision—
  - (a) prescribing the circumstances in which payments of financial assistance may be made,
  - (b) imposing a limit on the amount of any payment of financial assistance which a Primary Care Trust may make in any prescribed period in respect of any one person or any one pilot scheme,

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- (c) imposing a limit on the aggregate amount which a Primary Care Trust may pay by way of financial assistance in any one financial year,
- (d) requiring a person to whom assistance is given under this section to comply with such conditions as may be imposed in accordance with prescribed requirements, and
- (e) for repayment in the case of a failure to comply with any condition so imposed.

#### **141 Application of this Act**

This Act has effect in relation to piloted services—

- (a) subject to any provision of, or made under, this Chapter, section 145 (application of enactments) or section 178 (charges for local pharmaceutical services), but
- (b) otherwise as if those services were provided as a result of the delegation by the Secretary of State of his functions (by directions given under section 7).

#### **142 Premises from which piloted services may be provided**

The Secretary of State may by regulations—

- (a) prevent (except in such circumstances and to such extent as may be prescribed) the provision of both piloted services and pharmaceutical services from the same premises,
- (b) make provision with respect to the inclusion, removal, re-inclusion or modification of an entry in respect of premises in a pharmaceutical list.

#### **143 Control of entry regulations**

The power to make regulations under section 129 includes power to prescribe the extent to which the provision of piloted services must be taken into account in determining whether to grant an application for inclusion in a pharmaceutical list.

### **CHAPTER 3**

#### **LOCAL PHARMACEUTICAL SERVICES: LPS SCHEMES**

#### **144 Local pharmaceutical services schemes**

Schedule 12 makes provision with respect to the provision of local pharmaceutical services in accordance with schemes made by Primary Care Trusts.

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## CHAPTER 4

### LOCAL PHARMACEUTICAL SERVICES: MISCELLANEOUS

#### *Application of enactments*

#### **145 Application of enactments**

- (1) The Secretary of State may by regulations make, in relation to local pharmaceutical services arrangements or persons providing or assisting in the provision of services under such arrangements, provision corresponding (whether or not exactly) to enactments containing provision relating to—
  - (a) section 92 arrangements or section 107 arrangements, or
  - (b) persons who provide or perform services under section 92 or section 107.
- (2) The regulations may, in particular, provide for the application of any such enactment with such modifications, if any, as the Secretary of State considers appropriate.
- (3) The provision which may be made under this section includes provision amending, repealing or revoking enactments.
- (4) “Local pharmaceutical services arrangements” means arrangements made under an LPS scheme or a pilot scheme.

#### *Performance of local pharmaceutical services*

#### **146 Persons performing local pharmaceutical services**

- (1) Regulations may provide that a health care professional of a prescribed description may not perform any local pharmaceutical service for which a Primary Care Trust is responsible unless he is included in a list maintained under the regulations by a Primary Care Trust.
- (2) For the purposes of this section—
  - (a) “health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17)
  - (b) a Primary Care Trust is responsible for a local pharmaceutical service if it secures its provision by or under any enactment.
- (3) Regulations under this section may make provision in relation to lists under this section and in particular as to—
  - (a) the preparation, maintenance and publication of a list,
  - (b) eligibility for inclusion in a list,
  - (c) applications for inclusion (including provision as to the Primary Care Trust to which an application must be made, and for the procedure for applications and the documents to be supplied on application),
  - (d) the grounds on which an application for inclusion may or must be granted or refused,

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- (e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits),
  - (f) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal),
  - (g) circumstances in which a person included in a list may not withdraw from it,
  - (h) payments to be made in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State or a person appointed by him),
  - (i) the criteria to be applied in making decisions under the regulations,
  - (j) appeals against decisions made by a Primary Care Trust under the regulations, and
  - (k) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals,
- and may make any provision corresponding to anything in sections 151 to 159.
- (4) Regulations under this section may, in particular, also provide for—
- (a) a person’s inclusion in a list to be subject to conditions determined by a Primary Care Trust,
  - (b) a Primary Care Trust to vary the conditions or impose different ones,
  - (c) the consequences of failing to comply with a condition (including removal from a list),
  - (d) the review by a Primary Care Trust of decisions made by it by virtue of the regulations.
- (5) The imposition of such conditions must be with a view to—
- (a) preventing any prejudice to the efficiency of the services to which a list relates, or
  - (b) preventing fraud.
- (6) Regulations making provision as to the matters referred to in subsection (3)(k) may in particular authorise the disclosure of information—
- (a) by a Primary Care Trust to the Secretary of State, and
  - (b) by the Secretary of State to a Primary Care Trust.

#### *Assistance and support*

### **147 Assistance and support: local pharmaceutical services**

- (1) A Primary Care Trust may provide assistance or support to any person providing local pharmaceutical services.
- (2) Assistance or support provided by a Primary Care Trust under subsection (1) is provided on such terms, including terms as to payment, as the Primary Care Trust considers appropriate.
- (3) “Assistance” includes financial assistance.

## CHAPTER 5

### CONDITIONAL INCLUSION IN PHARMACEUTICAL LISTS, AND SUPPLEMENTARY LISTS

#### 148 Conditional inclusion in pharmaceutical lists

- (1) Regulations may provide—
  - (a) that if a person is included in a pharmaceutical list he is subject, while he remains included in the list, to conditions determined by the Primary Care Trust in whose list he is included,
  - (b) for the Primary Care Trust to vary that person’s terms of service for the purpose of or in connection with the imposition of any such conditions,
  - (c) for the Primary Care Trust to vary the conditions or impose different ones,
  - (d) for the consequences of failing to comply with a condition (including removal from the list), and
  - (e) for the review by the Primary Care Trust of any decision made by virtue of the regulations.
- (2) The imposition of conditions must be with a view to—
  - (a) preventing any prejudice to the efficiency of the services in question, or
  - (b) preventing any acts or omissions within section 151(3)(a).
- (3) If regulations provide for a practitioner’s removal from the list for breach of condition —
  - (a) the regulations may provide that he may not withdraw from the list while the Primary Care Trust is investigating whether there are grounds for exercising their power to remove him, or after the Primary Care Trust has decided to remove him but before it has given effect to that decision, and
  - (b) the regulations must include provision—
    - (i) requiring the practitioner to be given notice of any allegation against him,
    - (ii) giving him the opportunity of putting his case at a hearing before the Primary Care Trust makes any decision as to his removal from the list, and
    - (iii) requiring him to be given notice of the decision of the Primary Care Trust and the reasons for it and of his right of appeal under subsection (4).
- (4) If regulations provide as mentioned in subsection (1), they must also provide for an appeal by the person in question to the FHSAA against the decision of the Primary Care Trust—
  - (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to vary his terms of service,
  - (d) on any review of an earlier such decision of the Primary Care Trust,
  - (e) to remove him from the list for breach of condition,
 and the appeal must be by way of redetermination of the decision of the Primary Care Trust.

- (5) The regulations may provide for any such decision not to have effect until the determination by the FHSAA of any appeal against it, and must so provide in relation to a decision referred to in subsection (4)(e).
- (6) Regulations under this section may provide for the disclosure by a Primary Care Trust, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description—
  - (a) about persons whose inclusion in a pharmaceutical list is subject to conditions imposed under this section, and
  - (b) about the removal of such persons from a pharmaceutical list for breach of condition.
- (7) In this Part, “terms of service” means the terms upon which, by virtue of regulations, a person undertakes to provide pharmaceutical services.

#### **149 Supplementary lists**

- (1) The Secretary of State may make regulations providing for the preparation and publication by each Primary Care Trust of one or more lists of persons approved by the Primary Care Trust for the purpose of assisting in the provision of pharmaceutical services.
- (2) Such a list is referred to in this section, section 150 and section 159 as a “supplementary list”.
- (3) The regulations may, in particular, include provision as to—
  - (a) the Primary Care Trust to which an application for inclusion in a supplementary list must be made,
  - (b) the procedure for applying for inclusion, including any information to be supplied to the Primary Care Trust (whether by the applicant or by arrangement with him),
  - (c) grounds on which the Primary Care Trust may, or must, refuse a person’s application for inclusion in a supplementary list (including his unsuitability for inclusion in such a list), or on which it may defer its decision on the application,
  - (d) requirements with which a person included in a supplementary list must comply (including the declaration of financial interests and of gifts and other benefits),
  - (e) grounds on which a Primary Care Trust may, or must, suspend or remove a person from a supplementary list, the procedure for doing so, and the consequences of doing so,
  - (f) payments to or in respect of persons who are suspended from a supplementary list (including provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State),
  - (g) the supply to the Primary Care Trust by an applicant for inclusion in a supplementary list, or by a person included in one, of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,

- (h) circumstances in which a person included in a supplementary list may not withdraw from it,
  - (i) criteria to be applied in making decisions under the regulations,
  - (j) appeals against decisions of Primary Care Trusts under the regulations,
  - (k) the disclosure by a Primary Care Trust, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a supplementary list, refusals of such applications, and suspensions and removals from that list.
- (4) The regulations may, in particular, also provide for—
- (a) a person’s inclusion in a supplementary list to be subject to conditions determined by the Primary Care Trust,
  - (b) the Primary Care Trust to vary the conditions or impose different ones,
  - (c) the consequences of failing to comply with a condition (including removal from the list), and
  - (d) the review by the Primary Care Trust of its decisions made by virtue of regulations under this subsection.
- (5) The imposition of such conditions must be with a view to—
- (a) preventing any prejudice to the efficiency of the services to which the supplementary list relates, or
  - (b) preventing any acts or omissions of the type described in section 151(3)(a).
- (6) Regulations made by virtue of subsection (3)(e) may (but need not) make provision corresponding to anything in sections 151 to 159.
- (7) If the regulations provide under subsection (3)(e) or (4) that a Primary Care Trust may suspend or remove a person from a supplementary list, they must include provision—
- (a) requiring him to be given notice of any allegation against him,
  - (b) giving him the opportunity of putting his case at a hearing before the Primary Care Trust makes any decision as to his suspension or removal, and
  - (c) requiring him to be given notice of the decision of the Primary Care Trust and the reasons for it and of any right of appeal under subsection (8) or (9).
- (8) If the regulations provide under subsection (3)(c) or (e) that a Primary Care Trust may refuse a person’s application for inclusion in a supplementary list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the FHSAA against the decision of the Primary Care Trust.
- (9) If the regulations make provision under subsection (4), they must provide for an appeal (by way of redetermination) by the person in question to the FHSAA against the decision of the Primary Care Trust—
- (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to remove him from the supplementary list for breach of condition,
  - (d) on any review of an earlier such decision of the Primary Care Trust.

## **150 Further provision about regulations under section 149**

- (1) Regulations under section 149 may require a person (“A”) included in—
- (a) a pharmaceutical list, or

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(b) a list under section 132(3) (provision of drugs, medicines or listed appliances), not to employ or engage a person (“B”) to assist him in the provision of the service to which the list relates unless B is included in a list mentioned in subsection (2).

(2) The lists are—

- (a) a list referred to in subsection (1),
- (b) a supplementary list,
- (c) a list under section 91, 106 or 123,
- (d) a list under section 146 or a list corresponding to a list under section 91 prepared by a Primary Care Trust by virtue of regulations made under section 145,
- (e) a list corresponding to a list mentioned in any of paragraphs (a) to (d) prepared by a Local Health Board under or by virtue of the National Health Service (Wales) Act 2006 (c. 42)

or, in any of the cases in paragraphs (a) to (e), such a list of a prescribed description.

(3) If regulations do so require, they—

- (a) need not require both A and B to be included in lists prepared by the same Primary Care Trust, but
- (b) may, in particular, require that both A and B be included in lists prepared by Primary Care Trusts.

## CHAPTER 6

### DISQUALIFICATION

#### 151 Disqualification of practitioners

- (1) If it appears to a Primary Care Trust that any of the conditions set out in subsections (2) to (4) is established in relation to a person included in a pharmaceutical list it may (or, in cases falling within subsection (5), must) decide to remove him from that list.
- (2) The first condition is that the continued inclusion of the practitioner in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide (and such a case is referred to in this Chapter as an “efficiency case”).
- (3) The second condition is that the practitioner—
  - (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit, and
  - (b) knew that he or the other was not entitled to the benefit,(and such a case is referred to in this Chapter as a “fraud case”).
- (4) The third condition is that the practitioner is unsuitable to be included in the list (and such a case is referred to in this Chapter as an “unsuitability case”).
- (5) In unsuitability cases, the Primary Care Trust must remove the practitioner from the list in prescribed circumstances.

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- (6) The Primary Care Trust must state which condition (or conditions) it is relying on when removing a practitioner from a list.
- (7) “Health scheme” means—
- (a) any of the health services under section 1(1) of this Act, section 1(1) of the National Health Service (Wales) Act 2006 (c. 42), or any enactment corresponding to section 1(1) of this Act and extending to Scotland or Northern Ireland, and
  - (b) any prescribed scheme,
- and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.
- (8) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.
- (9) In this Chapter a “practitioner” means a person included in a pharmaceutical list.

## **152 Contingent removal**

- (1) In an efficiency case or a fraud case, the Primary Care Trust may, instead of deciding to remove a practitioner from its list, decide to remove him contingently.
- (2) If it so decides, it must impose such conditions as it may decide on his inclusion in the list with a view to—
  - (a) removing any prejudice to the efficiency of the services in question (in an efficiency case), or
  - (b) preventing further acts or omissions within section 151(3)(a) (in a fraud case).
- (3) If the Primary Care Trust determines that the practitioner has failed to comply with a condition, it may decide to—
  - (a) vary the conditions, or impose different conditions, or
  - (b) remove him from its list.
- (4) The Primary Care Trust may decide to vary the terms of service of the person concerned for the purpose of or in connection with the imposition of any conditions by virtue of this section.

## **153 Fraud and unsuitability cases: supplementary**

- (1) Where the practitioner is a body corporate providing pharmaceutical services, the body corporate must be treated for the purposes of this Chapter as meeting a condition referred to in section 151(3) or (4) if any one of the body of persons controlling the body meets that condition (whether or not he first did so when he was such a person).
- (2) A practitioner must be treated for the purposes of this Chapter as meeting the condition referred to in section 151(3) if—
  - (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 151(1) on the practitioner’s behalf, meets that condition, and

- (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 151(3)(a) occurring in the course of the provision of those services on his behalf.

## 154 Suspension

- (1) If the Primary Care Trust is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend a practitioner from its list—
  - (a) while it decides whether or not to exercise its powers under section 151 or 152 (other than in circumstances falling within paragraph (b)), or
  - (b) while it waits for a decision affecting the practitioner of a court or of a body which regulates—
    - (i) the practitioner’s profession,
    - (ii) the profession of a person providing any of the services mentioned in section 151(1) on the practitioner’s behalf, or
    - (iii) if the practitioner is a body corporate, the profession of one of its directors, or one of the body of persons controlling it or (if it is a limited liability partnership) one of its members,or one of that regulatory body’s committees.
- (2) The references in subsection (1)(b) to a court or regulatory body are to a court or such a body anywhere in the world.
- (3) In a case falling within subsection (1)(a), the Primary Care Trust must specify the length of the period of suspension.
- (4) In a case falling within subsection (1)(b), the Primary Care Trust may specify that the practitioner remains suspended after the decision referred to there for an additional period which the Primary Care Trust must specify.
- (5) In either case—
  - (a) before that period expires it may extend, or further extend, the suspension for a further specified period, or
  - (b) if that period has expired, it may impose a further suspension, for a period which it must specify.
- (6) The period of suspension (in a subsection (1)(a) case) or the additional period (in a subsection (1)(b) case), including in both cases the period of any further suspension imposed under subsection (5)(b), may not exceed six months in aggregate, except—
  - (a) in prescribed circumstances, when it may not extend beyond any prescribed event (which may be the expiry of a prescribed period),
  - (b) if, on the application of the Primary Care Trust, the FHSAA orders accordingly before the expiry of the period of suspension, or
  - (c) if the Primary Care Trust has applied under paragraph (b) before the expiry of the period of suspension, but the FHSAA has not made an order by the time it expires, in which case it continues until the FHSAA has made an order.
- (7) If the FHSAA does so order, it must specify—
  - (a) the date on which the period of suspension will end, or
  - (b) an event beyond which it will not continue.

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- (8) The FHSAA may, on the application of the Primary Care Trust, make a further order (complying with subsection (7)) at any time while the period of suspension pursuant to the earlier order is still continuing.
- (9) The Secretary of State may make regulations providing for payments to practitioners who are suspended.
- (10) Those regulations may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State.

### **155 Suspension pending appeal**

- (1) This section applies if the Primary Care Trust decides to remove a practitioner from a list under section 151.
- (2) In such a case it may also decide to suspend the practitioner from the list pending any appeal by him, if it is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest.
- (3) If it does suspend the practitioner under this section, the suspension has effect from the date when the Primary Care Trust gave him notice of the suspension.
- (4) The suspension has effect until its revocation under subsection (5) or (6) or, if later, until the expiry of the period of 28 days referred to in section 158(1), or, if the practitioner appeals under section 158, until the FHSAA has disposed of the appeal.
- (5) The Primary Care Trust may revoke a suspension imposed under this section.
- (6) If the practitioner appeals under section 158 against the decision of the Primary Care Trust to remove him from the list, the FHSAA may also revoke a suspension imposed on him under this section.
- (7) Subsections (9) and (10) of section 154 apply for the purposes of this section as they apply for the purposes of that.

### **156 Effect of suspension**

While a practitioner is suspended (whether under section 154 or under section 155) he must be treated as not being included in the list from which he has been suspended even though his name appears in it.

### **157 Review of decisions**

- (1) The Primary Care Trust may, and (except in prescribed cases) if requested in writing to do so by the practitioner must, review a contingent removal or a suspension (other than a contingent removal or a suspension imposed by, or a suspension continuing pursuant to, an order of the FHSAA, or a suspension imposed under section 155).
- (2) The practitioner may not request a review before the expiry of the period of—
  - (a) three months beginning with the date of the decision of the Primary Care Trust to suspend or contingently remove him, or (as appropriate),
  - (b) six months beginning with the date of its decision on the previous review.
- (3) On such a review, the Primary Care Trust may—

- (a) confirm the contingent removal or the suspension,
- (b) in the case of a suspension, terminate it,
- (c) in the case of a contingent removal, vary the conditions, impose different conditions, revoke the contingent removal, or remove the practitioner from the list.

## **158 Appeals**

- (1) A practitioner may appeal to the FHSAA against a decision of a Primary Care Trust mentioned in subsection (2) by giving notice in writing to the FHSAA within the period of 28 days beginning with the date on which the Primary Care Trust gave him notice of the decision.
- (2) The Primary Care Trust decisions in question are—
  - (a) to remove the practitioner from a list (under section 151 or 152(3) or under subsection (5)(b) of this section),
  - (b) to remove him contingently (under section 152),
  - (c) to impose any particular condition under section 152, or to vary any condition or to impose any different condition under that section,
  - (d) to vary his terms of service (under section 152(4)),
  - (e) any decision on a review of a contingent removal under section 157.
- (3) The appeal must be way of redetermination of the decision of the Primary Care Trust.
- (4) On an appeal, the FHSAA may make any decision which the Primary Care Trust could have made.
- (5) If the FHSAA decides to remove the practitioner contingently—
  - (a) the Primary Care Trust and the practitioner may each apply to the FHSAA for the conditions imposed on the practitioner to be varied, for different conditions to be imposed, or for the contingent removal to be revoked, and
  - (b) the Primary Care Trust may remove him from its list if it determines that he has failed to comply with a condition.
- (6) The Primary Care Trust may not remove a person from a list, or impose a contingent removal—
  - (a) until the expiry of the period of 28 days referred to in subsection (1), or
  - (b) if the practitioner appeals within that period, until the FHSAA has disposed of the appeal.
- (7) Regulations may provide for payments by Primary Care Trusts to practitioners who are removed from lists pursuant to decisions of the FHSAA under this section, but whose appeals against those decisions are successful.
- (8) Regulations under subsection (7) may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State.

## **159 National disqualification**

- (1) If the FHSAA removes the practitioner from a list, it may also decide to disqualify him from inclusion in—
  - (a) the pharmaceutical lists prepared by each Primary Care Trust,

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- (b) the supplementary lists prepared by each Primary Care Trust,
- (c) the lists under section 91, 106, or 123 prepared by each Primary Care Trust,
- (d) the lists under section 146 prepared by each Primary Care Trust, or the lists corresponding to the lists under section 91 prepared by each Primary Care Trust by virtue of regulations made under section 145,
- (e) the lists corresponding to the lists mentioned in paragraphs (a) to (d) prepared by each Local Health Board under or by virtue of the National Health Service (Wales) Act 2006 (c. 42)

or only from inclusion in one or more descriptions of such lists prepared by each Primary Care Trust and each Local Health Board, the description being specified by the FHSAA in its decision.

- (2) A decision by the FHSAA to do what is mentioned in subsection (1) is referred to in this section as the imposition of a national disqualification.
- (3) The FHSAA may also impose a national disqualification on a practitioner if it dismisses an appeal by him against the refusal by a Primary Care Trust to include him in such a list.
- (4) The Primary Care Trust may apply to the FHSAA for a national disqualification to be imposed on a person after the Primary Care Trust has—
  - (a) removed him from a list prepared by it of any of the kinds referred to in subsection (1)(a) to (d), or
  - (b) refused to include him in such a list.
- (5) Any such application must be made before the end of the period of three months beginning with the date of the removal or of the Primary Care Trust's refusal.
- (6) If the FHSAA imposes a national disqualification on a person—
  - (a) no Primary Care Trust or Local Health Board may include him in a list of any of the kinds prepared by it from which he has been disqualified from inclusion, and
  - (b) if he is included in such a list, each Primary Care Trust and each Local Health Board in whose list he is included must remove him from it.
- (7) The FHSAA may at the request of the person upon whom it has been imposed review a national disqualification, and on a review may confirm it or revoke it.
- (8) Subject to subsection (9), the person may not request such a review before the end of the period of—
  - (a) two years beginning with the date on which the national disqualification was imposed, or
  - (b) one year beginning with the date of the FHSAA's decision on the last such review.
- (9) The Secretary of State may provide in regulations for subsection (8) to have effect in prescribed circumstances as if the reference there to "two years" or "one year" were a reference to a different period specified in the regulations.

## **160 Notification of decisions**

Regulations may require a Primary Care Trust to notify prescribed persons, or persons of prescribed descriptions, of any decision it makes under this Chapter, and of any information relevant to the decision which it considers appropriate to include in the notification.

## **161 Withdrawal from lists**

Regulations may provide for circumstances in which a practitioner—

- (a) whom a Primary Care Trust is investigating in order to see whether there are grounds for exercising its powers under section 151, 152 or 154,
- (b) whom a Primary Care Trust has decided to remove from a list under section 151 or 152, or contingently remove under section 152, but who has not yet been removed or contingently removed, or
- (c) who has been suspended under section 154,

may not withdraw from a list in which he is included.

## **162 Regulations about decisions under this Chapter**

- (1) Any decision by a Primary Care Trust referred to in this Chapter must be reached in accordance with regulations about such decisions.
- (2) The regulations must include provision—
  - (a) requiring the practitioner to be given notice of any allegation against him,
  - (b) giving him the opportunity of putting his case at a hearing before a Primary Care Trust makes any decision affecting him under this Chapter,
  - (c) requiring him to be given notice of the decision of the Primary Care Trust and the reasons for it and of any right of appeal which he may have.
- (3) The regulations may, in particular, make provision as to criteria which the Primary Care Trust must apply when making decisions in unsuitability cases.

## **163 Corresponding provisions in Scotland and Northern Ireland**

- (1) This section applies where it appears to the Secretary of State that there is provision in Scotland or Northern Ireland under which a person may be dealt with in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under this Chapter.
- (2) A decision in Scotland or Northern Ireland to deal with such a person in such a way is referred to in this section as a “corresponding decision”.
- (3) If this section applies, the Secretary of State may make regulations providing for the effect to be given in England to a corresponding decision.
- (4) That effect need not be the same as the effect of the decision in the place where it was made.
- (5) The regulations may not provide for a corresponding decision to be reviewed or revoked in England.

## CHAPTER 7

### MISCELLANEOUS

#### *Remuneration*

#### **164 Remuneration for persons providing pharmaceutical services**

- (1) The remuneration to be paid to persons who provide pharmaceutical services under this Part must be determined by determining authorities.
- (2) Determining authorities may also determine the remuneration to be paid to persons who provide those services in respect of the instruction of any person in matters relating to those services.
- (3) For the purposes of this section and section 165 determining authorities are—
  - (a) the Secretary of State, and
  - (b) so far as authorised by him to exercise the functions of determining authorities, any Primary Care Trust or other person appointed by him in an instrument.
- (4) The instrument mentioned in subsection (3)(b) is called in this section an “instrument of appointment”.
- (5) An instrument of appointment—
  - (a) may contain requirements with which a determining authority appointed by that instrument must comply in making determinations, and
  - (b) may be contained in regulations.
- (6) Subject to this section and section 165, regulations may make provision about determining remuneration under this section and may in particular impose requirements with which determining authorities must comply in making, or in connection with, determinations (including requirements as to consultation and publication).
- (7) Regulations may provide that determinations may be made by reference to any of—
  - (a) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or will be fixed or determined, otherwise than by way of a determination under this section,
  - (b) scales, indices or other data of any description specified in the regulations.
- (8) Where regulations provide as mentioned in subsection (7)(b), they may provide that any determination which falls to be made by reference to a scale, index or other data may be made by reference to the scale, index or data—
  - (a) in the form current at the time of the determination, and
  - (b) in any subsequent form taking effect after that time.
- (9) Regulations may—
  - (a) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates,

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- (b) provide that any determination which does not specify such a date has effect in relation to remuneration in respect of a period beginning—
  - (i) if it is required to be published, on the date of publication,
  - (ii) if it is not so required, on the date on which it is made.
- (10) A reference in this section or section 165 to a determination is to a determination of remuneration under this section.

### **165 Section 164: supplementary**

- (1) Before a determination is made by the Secretary of State which relates to all persons who provide pharmaceutical services, or a category of such services, he—
  - (a) must consult a body appearing to him to be representative of persons to whose remuneration the determination would relate, and
  - (b) may consult such other persons as he considers appropriate.
- (2) Determinations may make different provision for different cases, including different provision for any particular case, class of case or area.
- (3) Determinations may be—
  - (a) made in more than one stage,
  - (b) made by more than one determining authority,
  - (c) varied or revoked by subsequent determinations.
- (4) A determination may be varied—
  - (a) to correct an error, or
  - (b) where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact.
- (5) Determinations may, in particular, provide that the whole or any part of the remuneration—
  - (a) is payable only if the determining authority is satisfied as to certain conditions, or
  - (b) must be applied for certain purposes or is otherwise subject to certain conditions.
- (6) Remuneration under section 164 may be determined from time to time and may consist of payments by way of—
  - (a) salary,
  - (b) fees,
  - (c) allowances,
  - (d) reimbursement (in full or in part) of expenses incurred or expected to be incurred in connection with the provision of the services or instruction.
- (7) At the time a determination is made or varied, certain matters which require determining may be reserved to be decided at a later time.
- (8) The matters which may be reserved include in particular—
  - (a) the amount of remuneration to be paid in particular cases,
  - (b) whether any remuneration is to be paid in particular cases.
- (9) Any determination may be made only after taking into account all the matters which are considered to be relevant by the determining authority.

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- (10) Such matters may include in particular—
- (a) the amount or estimated amount of expenses (taking into account any discounts) incurred in the past or likely to be incurred in the future (whether or not by persons to whose remuneration the determination will relate) in connection with the provision of pharmaceutical services or of any category of pharmaceutical services,
  - (b) the amount or estimated amount of any remuneration paid or likely to be paid to persons providing such services,
  - (c) the amount or estimated amount of any other payments or repayments or other benefits received or likely to be received by any such persons,
  - (d) the extent to which it is desirable to encourage the provision, either generally or in particular places, of pharmaceutical services or the category of pharmaceutical services to which the determination will relate,
  - (e) the desirability of promoting pharmaceutical services which are—
    - (i) economic and efficient, and
    - (ii) of an appropriate standard.
- (11) If the determination is of remuneration for a category of pharmaceutical services, the reference in subsection (10)(a) to a category of pharmaceutical services is a reference to the same category of pharmaceutical services or to any other category of pharmaceutical services falling within the same description.

### *Indemnity cover*

## **166 Indemnity cover**

- (1) Regulations may make provision for the purpose of securing that, in prescribed circumstances, prescribed persons included in a pharmaceutical list hold approved indemnity cover.
- (2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—
  - (a) for securing that a person must not be added to a pharmaceutical list unless he holds approved indemnity cover,
  - (b) for the removal from a pharmaceutical list prepared by a Primary Care Trust of a person who does not within a prescribed period after the making of a request by the Primary Care Trust in the prescribed manner satisfy the Primary Care Trust that he holds approved indemnity cover.
- (3) For the purposes of this section—
 

“approved body” means a person or persons approved in relation to indemnity cover of any description, after such consultation as may be prescribed, by the Secretary of State or by such other person as may be prescribed,

“approved indemnity cover” means indemnity cover made—

  - (a) on prescribed terms, and
  - (b) with an approved body,

“indemnity cover”, in relation to a person included in a pharmaceutical list (or a person who proposes to provide pharmaceutical services), means a contract of insurance or other arrangement made for the purpose of

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*Status: This is the original version (as it was originally enacted).*

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indemnifying him, and any person prescribed in relation to him, to any prescribed extent against any liability which—

- (a) arises out of the provision of pharmaceutical services in accordance with arrangements made by him with a Primary Care Trust, and
- (b) is incurred by him or any such person in respect of the death or personal injury of a person,

“personal injury” means any disease or impairment of a person’s physical or mental condition and includes the prolongation of any disease or such impairment,

and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover.

- (4) The regulations may provide that a person of any description who has entered into a contract or arrangement which is—
  - (a) in a form identified in accordance with the regulations in relation to persons of that description, and
  - (b) made with a person or persons so identified,must be treated as holding approved indemnity cover for the purposes of the regulations.

#### *Local Pharmaceutical Committees*

### **167 Local Pharmaceutical Committees**

- (1) A Primary Care Trust may recognise a committee formed for its area, or for its area and that of one or more other Primary Care Trusts, which it is satisfied is representative of—
  - (a) the persons providing pharmaceutical services from premises in the area for which the committee is formed (“pharmaceutical services providers”),
  - (b) pharmaceutical services providers and the persons to whom subsections (2) and (3) apply,
  - (c) pharmaceutical services providers and the persons to whom subsection (2) applies, or
  - (d) pharmaceutical services providers and the persons to whom subsection (3) applies.
- (2) This subsection applies to each person who—
  - (a) is providing local pharmaceutical services in the Primary Care Trust’s area under an LPS scheme made (whether with himself or another person) by the Primary Care Trust, and
  - (b) has notified the Primary Care Trust that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented).
- (3) This subsection applies to each person who—
  - (a) is providing local pharmaceutical services in the Primary Care Trust’s area under a pilot scheme made (whether with himself or another person) by the Primary Care Trust, and
  - (b) has notified the Primary Care Trust that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented).

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*Status: This is the original version (as it was originally enacted).*

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- (4) A committee recognised under this section is called the Local Pharmaceutical Committee for the area for which it is formed.
- (5) Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.
- (6) Regulations may require a Primary Care Trust, in the exercise of functions relating to pharmaceutical services or local pharmaceutical services, to consult committees recognised by it under this section on such occasions and to such extent as may be prescribed.
- (7) Subsection (6) does not affect any other power to require a Primary Care Trust to consult committees recognised by it under this section.
- (8) A committee recognised under this section has such other functions as may be prescribed.
- (9) A Primary Care Trust may, on the request of any committee recognised by it under this section, allot to that committee such sums for defraying the committee's administrative expenses (other than any determined under subsection (12)) as may be determined by the Primary Care Trust.
- (10) Any sums so allotted must be out of the moneys available to the Primary Care Trust for the remuneration of persons of whom the committee is representative under subsection (1)(a).
- (11) The amount of any such sums must be deducted from the remuneration of those persons in such manner as may be determined by the Primary Care Trust.
- (12) A committee recognised under subsection (1)(b), (c) or (d) must, in respect of each year, determine the amount of its administrative expenses for that year attributable to the persons of whom it is representative under subsection (2) or (3).
- (13) The committee must apportion the amount determined under subsection (12) among the persons of whom it is representative under subsection (2) or (3), and each such person must pay in accordance with the committee's directions the amount so apportioned to him.
- (14) The administrative expenses of a committee include the travelling and subsistence allowances payable to its members.

*Provision of accommodation by the Secretary of State*

**168 Use of accommodation: provision of pharmaceutical services and local pharmaceutical services**

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of pharmaceutical services or local pharmaceutical services, he may make the accommodation available on such terms as he considers appropriate to persons providing those services.