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STATUTORY INSTRUMENTS

2012 No. 2371

NATIONAL HEALTH SERVICE, ENGLAND

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

<i>Made</i>	- - - -	<i>12th September 2012</i>
<i>Laid before Parliament</i>		<i>17th September 2012</i>
<i>Coming into force</i>	- -	<i>1st November 2012</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 126, 129, 130, 132 and 272(7) and (8) of the National Health Service Act 2006⁽¹⁾.

Citation and commencement

1. These Regulations may be cited as the National Health Service (Pharmaceutical Services) Regulations 2012 (Amendment) Regulations 2012 and come into force on 1st November 2012.

Amendment of the National Health Service (Pharmaceutical Services) Regulations 2012

2.—(1) The National Health Service (Pharmaceutical Services) Regulations 2012⁽²⁾ are amended as follows.

(2) In regulation 2(1) (interpretation), after the definition of “directed services” insert the following definition—

““director” includes a member of a limited liability partnership;”.

(3) In paragraph 30 of Schedule 2 (applications in respect of pharmaceutical lists and the procedures to be followed – third party rights of appeal to the Secretary of State where an application is granted)—

(a) In sub-paragraph (3)(a)—

(1) [2006 c. 41](#). Section 129 has been amended by the Health Act 2009 ([c. 21](#)), sections 26 and 27 and Schedule 6, the Health and Social Care Act 2012 ([c. 7](#)), section 207(8), and by [S.I. 2010/231](#); section 130 has been amended by the Health and Social Care Act 2012, section 207(10), and by [S.I. 2010/22](#); section 132 has been amended by [S.I. 2007/289](#) and [2010/22](#) and [231](#). By virtue of section 271(1) of the 2006 Act, the functions of the Secretary of State being exercised in the making of these Regulations are exercisable only in relation to England. *See also* section 275(1) of the 2006 Act, which contains definitions of “prescribed” and “regulations” that are relevant to the powers being exercised.

(2) [S.I. 2012/1909](#).

- (i) omit “or” at the end of sub-paragraph (i),
- (ii) insert “or” at the end of sub-paragraph (ii), and
- (iii) after sub-paragraph (ii) insert the following sub-paragraphs—
 - “(iii) an LPS chemist, or
 - (iv) either—
 - (aa) a provider of primary medical services, or
 - (bb) another person on its dispensing doctor list if it has one (P1 being a performer but not a provider of primary medical services),but only if the application is in respect of premises in a controlled locality and it was granted partly on the basis that, having regard to regulation 44(3), in the opinion of the Primary Care Trust granting the application would not prejudice the proper provision of relevant NHS services in its area or in the area of a neighbouring Primary Care Trust,”; and
- (b) After sub-paragraph (6) insert the following sub-paragraph—
 - “(7) If P1 is a person to whom sub-paragraph (3)(a)(iii) or (iv) applies, P1 is treated as having complied with sub-paragraph (3)(b) and (c), if the Primary Care Trust gave notice under paragraph 19 of the application to which D2 relates before 1st November 2012, regardless of—
 - (a) whether or not P1 did make representations about the application; and
 - (b) what any representations that P1 did make included.”.
- (4) In paragraph 6(3)(b) of Schedule 6 (terms of service of dispensing doctors – refusal to provide drugs or appliances ordered), after “relates has” insert “not”.

Signed by authority of the Secretary of State for Health.

12th September 2012

Earl Howe
Parliamentary Under-Secretary of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Pharmaceutical Services) Regulations 2012 (“the 2012 Regulations”) which govern the arrangements for the provision of pharmaceutical services under Chapter 1 of Part 7 of the National Health Service Act 2006.

A new definition of “director” is inserted into regulation 2 of the 2012 Regulations. This provides that members of limited liability partnerships are to be considered as “directors” for the purposes of the 2012 Regulations, which include obligations relating to directors of bodies corporate.

Paragraph 30 of Schedule 2 to the 2012 Regulations deals with third party appeal rights against decisions by Primary Care Trusts to grant most types of applications to allow for the provision of NHS pharmaceutical services from new pharmacy premises, as well as third party appeal rights against decisions to grant some applications relating to existing pharmacies such as change of ownership applications. Paragraph 30 is amended so that third party appeal rights are potentially given to chemists who were notified of the decision, if they are providers of what are known as ‘local pharmaceutical services’ under contractual arrangements with Primary Care Trusts. Third party appeal rights are also potentially given to individual general practitioners and to medical practices made up of general practitioners, if they were notified of the Primary Care Trust’s decision and the “prejudice” test (a particular test applied to applications for new pharmacy premises in rural areas) was considered in the course of the taking of the decision on the application.

If the original application was subject to local consultation, in due course these new rights of appeal will only apply subject to a proviso that the chemist, practitioner or practice also made a reasonable attempt to oppose the application before it was granted. However, for these new categories of potential appellants, this proviso will only apply in relation to decisions on applications that were subject to a local consultation that began on or after the date on which these Regulations come into force.

Schedule 6 to the 2012 Regulations deals with the terms of service of dispensing doctors. Paragraph 6 of that Schedule, which relates to the reasons why a dispensing doctor may refuse to provide drugs or appliances ordered on a prescription, is amended to insert a missing word which was left out in error.