
STATUTORY INSTRUMENTS

2013 No. 349

**The National Health Service (Pharmaceutical and
Local Pharmaceutical Services) Regulations 2013**

PART 10

Performance related sanctions and market exit

Removal of listings: cases relating to remedial notices and breach notices

73.—(1) The NHSCB may remove an NHS chemist (C) from a pharmaceutical list, or remove the listing of particular listed chemist premises in relation to C, if C—

- (a) fails to take the steps set out in a remedial notice that C must take, to the satisfaction of the NHSCB, in order to remedy the breach, and the NHSCB is satisfied that it is necessary to remove C from the pharmaceutical list, or remove the listing of particular listed chemist premises in relation to C—
 - (i) to protect the safety of any persons to whom C may provide pharmaceutical services, or
 - (ii) to protect the NHSCB from material financial loss; or
- (b) has breached C's terms of service, and—
 - (i) C has repeatedly been issued with remedial notices or breach notices (or both) in relation to the relevant term of service,
 - (ii) previously been issued with a remedial notice or breach notice in relation to the relevant term of service, and the NHSCB is satisfied that C is likely to persist in breaching the term of service without good cause, or
 - (iii) C has repeatedly been issued with remedial notices or breach notices (or both) in relation to different terms of service, and the NHSCB is satisfied that C is likely to persist in breaching C's terms of service without good cause.

(2) For the purpose of paragraph (1), the NHSCB may only remove—

- (a) particular chemist premises from C's listing in a pharmaceutical list if the relevant breaches all relate to those particular chemist premises; or
- (b) C from a particular pharmaceutical list if the relevant breaches all relate to listed chemist premises which are the only chemist premises listed in that pharmaceutical list in relation to C.

(3) The NHSCB may only remove C, or chemist premises listed in relation to C, from a pharmaceutical list under paragraph (1) if—

- (a) the removal is justifiable and proportionate, having regard to the nature and seriousness of the breaches (or likely breaches) and the reasons for them; and
- (b) the NHSCB, when it notifies C of the decision, includes in the notice its duly justified reasons for the decision.

(4) The NHSCB need not take into account the reasons for the breaches (or likely breaches), pursuant to paragraph (3)(a), if it has made every reasonable effort to communicate with C to discover the reasons but has been unable to discover them.

(5) The NHSCB must not remove C, or chemist premises listed in relation to C, from a pharmaceutical list under paragraph (1) because—

- (a) C has simply ceased to provide pharmaceutical services at particular listed chemist premises (regulation 74 applies in those circumstances); or
- (b) of failure to provide, or to provide to a reasonable standard, a directed service, unless C is required to provide that service pursuant to a condition imposed by virtue of regulation 66(1) or (3) to (5) (and the removal is justifiable and proportionate etc.).

(6) Where the NHSCB is considering removing C, or removing the listing of particular chemist premises listed in relation to C, from a pharmaceutical list under paragraph (1), it must—

- (a) give notice to C, at least 30 days in advance of taking the decision, that the NHSCB is minded to remove C or the premises from a pharmaceutical list;
- (b) as part of that notification, advise C that C may make—
 - (i) written representations to the NHSCB with regard to that action, provided C notifies the NHSCB with those representations within 30 days beginning with the date of the notification by the NHSCB, and
 - (ii) oral representations to the NHSCB with regard to that action, provided—
 - (aa) C notifies the NHSCB of C's wish to do so within 30 days beginning with the date of the notification by the NHSCB, and
 - (bb) C (or a representative of C) attends the hearing that the NHSCB arranges for the purpose of hearing those representations, which the NHSCB must give C reasonable notice of; and
- (c) consult any Local Pharmaceutical Committee whose area includes the particular listed chemist premises or C's only chemist premises on that pharmaceutical list.

(7) If the NHSCB does decide to remove C, or to remove the listing of particular chemist premises listed in relation to C, from a pharmaceutical list under paragraph (1), it must, when it notifies C of that decision, include in that notification—

- (a) a statement of the reasons for the decision; and
- (b) an explanation of how C's rights of appeal under regulation 77(1)(d) may be exercised.