

SCHEDULE 4

Terms of service of NHS pharmacists

PART 3

Hours of opening

Pharmacy opening hours: general

23.—(1) An NHS pharmacist (P) must ensure that pharmaceutical services are provided at P’s pharmacy premises—

- (a) for 40 hours each week;
- (b) for not less than 100 hours each week, in the case of premises in respect of which a 100 hours condition applies;
- (c) if the NHSCB or a Primary Care Trust, or on appeal the Secretary of State, has directed that pharmaceutical services are to be provided at the premises for fewer than 40 hours per week, provided that the person listed in relation to them provides those services at set times and on set days, at the times and on the days so set;
- (d) if a Primary Care Trust, or on appeal the Secretary of State, has (under previous Regulations) directed that pharmaceutical services are to be provided at the premises for more than 40 hours per week, and at set times and on set days, at the times and on the days so set; or
- (e) if the NHSCB or a Primary Care Trust, or on appeal the Secretary of State, has directed that pharmaceutical services are to be provided at the premises for more than 40 hours each week, but only on set times and on set days as regards the additional opening hours—
 - (i) for the total number of hours each week required by virtue of that direction, and
 - (ii) as regards the additional opening hours for which the person listed in relation to the premises is required to provide pharmaceutical services by virtue of that direction, at the days on which and times at which that person is required to provide pharmaceutical services during those additional opening hours, as set out in that direction,

but the NHSCB may, in appropriate circumstances, agree a temporary suspension of services for a set period, where it has received 3 months notice of the proposed suspension.

(2) The hours during which pharmacy premises must be open by virtue of sub-paragraph (1) are referred to in these Regulations as “core opening hours”.

(3) P must notify the NHSCB of other hours during which P’s pharmacy premises are to be open, which are hours in addition to P’s core opening hours (and which are referred to in these Regulations as “supplementary opening hours”).

(4) Unless P is a distance selling chemist, at P’s pharmacy premises P must exhibit—

- (a) a notice specifying the days on which and times at which the premises are open for the provision of drugs and appliances (including times at which P is providing pharmaceutical services during supplementary opening hours); and
- (b) at times when the premises are not open, a notice based on information provided by the NHSCB, where practicable legible from outside the premises, specifying—
 - (i) the addresses of other NHS pharmacists and the days on which and times at which drugs and appliances may be obtained from those addresses, and

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

(ii) the addresses of LPS chemists in the area, the type of local pharmaceutical services which those LPS chemists provide, and the days on which and times at which their premises are open.

(5) P must, on request, submit a return to the NHSCB setting out—

(a) the days on which and times at which pharmaceutical services are provided at P's pharmacy premises (including times at which P is providing pharmaceutical services during supplementary opening hours); and

(b) the pharmaceutical services which P ordinarily provides at those premises.

(6) Where P changes—

(a) the supplementary opening hours of P's pharmacy premises; or

(b) the pharmaceutical services which P ordinarily provides at those premises,

P must supply the NHSCB with a return informing it of the change.

(7) Where P has notified to the NHSCB (or, before the appointed day, a Primary Care Trust) the days on which and times at which pharmaceutical services are to be provided at P's pharmacy premises (for example, in a return under sub-paragraph (5) or (6) or in an application for inclusion in a pharmaceutical list)—

(a) P must ensure that pharmaceutical services are provided at the premises to which the notification relates on the days and at the times set out in the notification (unless the notification has been superseded by a return, or a further return, under sub-paragraph (6)); and

(b) P must not change—

(i) the days on which or the times at which pharmaceutical services are to be provided at those premises during core opening hours which are neither additional opening hours nor in total less than 40 (if those core opening hours are additional opening hours, or are in total less than 40, regulation 65(5) to (7) and paragraphs 25 and 26 apply),

(ii) the total number of any supplementary opening hours (regulation 65(5) to (7) and paragraphs 25 and 26 apply to changes to the total number of core opening hours),

(iii) the days on which or the times at which pharmaceutical services are to be provided at those premises during supplementary opening hours, or

(iv) the pharmaceutical services which P is ordinarily to provide at those premises,

for a period of at least 3 months after that notification was received by the NHSCB (or, before the appointed day, a Primary Care Trust), unless the NHSCB agrees otherwise.

(8) Subject to sub-paragraph (9), where P is prevented by illness or other reasonable cause from complying with P's obligations under sub-paragraph (1), P must, where practicable, make arrangements with one or more NHS pharmacists or LPS chemists whose premises are situated in the same area for the provision of pharmaceutical services or local pharmaceutical services during that time.

(9) P may only make an arrangement with an LPS chemist under sub-paragraph (8) where that LPS chemist provides local pharmaceutical services which are of a similar description as, and a similar extent to, the pharmaceutical services which P ordinarily provides.

(10) Where there is a temporary suspension in the provision of pharmaceutical services by P for a reason beyond the control of P, P is not in breach of sub-paragraphs (1) and (7), provided that—

(a) P notifies the NHSCB of that suspension as soon as practical; and

(b) P uses all reasonable endeavours to resume provision of pharmaceutical services as soon as is practicable.

(11) Planned refurbishment of pharmacy premises is neither a “reasonable cause” for the purposes of sub-paragraph (8) nor a “reason beyond the control of P” for the purposes of sub-paragraph (10).

(12) For the purposes of calculating the number of hours that pharmacy premises are open during a week that includes Christmas Day, Good Friday, Easter Sunday or a bank holiday, it is to be deemed that the pharmacy premises were open on that day at the times at which they would ordinarily have been open on that day of the week.

(13) For the purposes of this Part, “additional opening hours”, where they are required, are hours during which P is required to provide pharmaceutical services pursuant to sub-paragraph (1) (e) which are in addition to the hours during which P would be required to provide pharmaceutical services, if P were subject instead to the condition set out in sub-paragraph (1)(a).

Matters to be considered when issuing directions in respect of pharmacy premises core opening hours

24.—(1) Where the NHSCB issues a direction setting any days or times for the opening hours of pharmacy premises under this Part, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services are such as to ensure that pharmaceutical services are provided on such days and at such times as are necessary to meet the needs of people in its area or other likely users of the pharmacy premises.

(2) In considering the matters mentioned in sub-paragraph (1), the NHSCB—

- (a) must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided; and
- (b) may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.

(3) The NHSCB may only direct that an NHS pharmacist (P) may provide pharmaceutical services at premises for less than 40 hours in any week if it is satisfied that the provision of pharmaceutical services in its area is likely to be adequate to meet the need for such services at times when P is not providing pharmaceutical services.

(4) Except in the case of premises that have (at any time) been subject to a direction under regulation 65 or regulation 65 of the 2012 Regulations (core opening hours conditions), the NHSCB may only direct that P must provide pharmaceutical services at premises for more than 40 hours in any week where it is satisfied that P is to receive reasonable remuneration in respect of the additional opening hours for which P is required to provide pharmaceutical services (and any additional remuneration payable in accordance with a determination made as mentioned in regulation 91(6) in respect of those hours is “reasonable remuneration” for these purposes).

Determination of pharmacy premises core opening hours instigated by the NHSCB

25.—(1) Where it appears to the NHSCB, after consultation with or having considered the matter at the request of the Local Pharmaceutical Committee for the area in which the premises are situated, that the days on which or times at which pharmacy premises are or are to be open for the provision of pharmaceutical services will not, or no longer, meet the needs of—

- (a) people in its area; or
- (b) other likely users of the pharmacy premises,

for the pharmaceutical services available at or from those premises, it must carry out an assessment as to whether to issue a direction requiring the NHS pharmacist (P) whose premises they are to provide pharmaceutical services at the pharmacy premises at set times and on set days (which may include Christmas Day, Good Friday and bank holidays).

(2) Before concluding the assessment under sub-paragraph (1) the NHSCB must—

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

- (a) give notice to P of any proposed changes to the days on which or times at which the pharmacy premises are to be open; and
 - (b) allow P 30 days within which to make written representations to the NHSCB about the proposed changes.
- (3) When it determines the outcome of its assessment, the NHSCB must—
- (a) issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs (4) and (5);
 - (b) confirm any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises, provided that the existing direction (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations) would meet the requirements of sub-paragraphs (4) and (5); or
 - (c) either—
 - (i) revoke, without replacing it, any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations), or
 - (ii) in a case where there is no existing direction, issue no direction, in which case, by virtue of whichever of paragraph 23(1)(a) or (b) applies, the pharmacy will need to be open for 40 hours each week or for at least 100 hours each week.
- (4) Where the NHSCB issues a direction under sub-paragraph (3) in respect of pharmacy premises that are to be required to be open—
- (a) for more than 40 hours each week, it must set out in that direction—
 - (i) the total number of hours each week for which P must provide pharmaceutical services at the pharmacy, and
 - (ii) as regards the additional opening hours, the days on which and the times at which P is required to provide those services during those hours, but it must not set out in that direction the days on which or times at which P is to provide pharmaceutical services during hours which are not additional opening hours; or
 - (b) for less than 40 hours each week, it shall set out in that direction the days on which and times at which pharmaceutical services are to be provided at the pharmacy premises.
- (5) The NHSCB must not issue a direction under sub-paragraph (3) that has the effect simply of requiring pharmacy premises to be open for 40 hours each week on set days and at set times (that is, the direction must have the effect of requiring pharmacy premises to be open for either more or less than 40 hours each week).
- (6) The NHSCB must notify P of any direction issued or any other action taken under sub-paragraph (3), and where it sets new days on which or times at which P is to provide pharmaceutical services at pharmacy premises, it must include with the notification a statement of—
- (a) the reasons for the change; and
 - (b) P's right of appeal under paragraph (7).
- (7) P may, within 30 days of receiving notification under sub-paragraph (6), appeal in writing to the Secretary of State against any direction issued or any other action taken under sub-paragraph (3) which sets new days on which or times at which P is to provide pharmaceutical services.
- (8) The Secretary of State may, when determining an appeal, either confirm the action taken by the NHSCB or take any action that the NHSCB could have taken under paragraph (3).
- (9) The Secretary of State shall notify P of the determination and shall in every case include with the notification a statement of the reasons for the determination.

(10) If the days on which or times at which P is to provide pharmaceutical services at pharmacy premises have been changed in accordance with this paragraph, P must introduce the changes—

- (a) if P has not appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (6); or
- (b) if P has appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (9).

(11) This paragraph does not apply where regulation 65(5) to (7) applies.

Determination of pharmacy premises core opening hours instigated by the NHS pharmacist

26.—(1) An NHS pharmacist (P) may apply to the NHSCB for it to change the days on which or times at which P is obliged to provide pharmaceutical services at P's pharmacy premises in a way that—

- (a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week (but not those required under any 100 hours condition); or
- (b) keeps that total number of hours the same.

(2) Where P makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of any changes to the needs of the people in its area, or other likely users of the pharmacy, for pharmaceutical services that are material to the application.

(3) The NHSCB must determine the application within 60 days of receiving it (including any information required of P in accordance with sub-paragraph (2)).

(4) When it determines the application, the NHSCB must—

- (a) issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs (5) and (6) and which has the effect of either granting the application under this paragraph or granting it only in part;
- (b) confirm any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises, provided that the existing direction (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations) would meet the requirements of sub-paragraphs (5) and (6); or
- (c) either—

- (i) revoke, without replacing it, any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations), where this has the effect of granting the application under this paragraph or granting it only in part, or

- (ii) in a case where there is no existing direction, issue no direction,

in which case, by virtue of whichever of paragraph 23(1)(a) or (b) applies, the pharmacy will need to be open for 40 hours each week or for at least 100 hours each week.

(5) Where the NHSCB issues a direction under sub-paragraph (4) in respect of pharmacy premises that are to be required to be open—

(a) for more than 40 hours each week, it must set out in that direction—

- (i) the total number of hours each week for which P must provide pharmaceutical services at the pharmacy premises, and
 - (ii) as regards any additional opening hours, the days on which and the times at which P is required to provide those services during those hours,

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

but it must not set out in that direction days on which or times at which P is to provide pharmaceutical services during hours which are not additional opening hours; or

- (b) for less than 40 hours each week, it shall set out in that direction the days on which and times at which pharmaceutical services are to be provided at the pharmacy premises.

(6) The NHSCB must not issue a direction under sub-paragraph (4) that has the effect simply of requiring pharmacy premises to be open for 40 hours each week on set days and at set times (that is, the direction must have the effect of requiring pharmacy premises to be open for either more or less than 40 hours each week).

(7) Where the NHSCB is considering taking action under sub-paragraph (4)(a) or (c)(i), it shall consult the Local Pharmaceutical Committee for the area in which the pharmacy premises are situated before determining the application.

(8) The NHSCB must notify P of any direction issued or any other action taken under sub-paragraph (4), and where this has the effect of refusing an application under this paragraph or granting it in part, it must send P a statement setting out—

- (a) the reasons for the refusal or, as the case may be, for granting the application only in part; and
- (b) P's right of appeal under sub-paragraph (9).

(9) P may, within 30 days of receiving a notification pursuant to sub-paragraph (8), appeal in writing to the Secretary of State against any action under sub-paragraph (4) which has the effect of refusing an application under this paragraph or granting it only in part.

(10) The Secretary of State may, when determining an appeal, either confirm the action taken by the NHSCB or take any action that the NHSCB could have taken under sub-paragraph (4).

(11) The Secretary of State must notify the pharmacist of the determination and must include with the notification a statement of the reasons for the determination.

(12) If the days on which or times at which P is to provide pharmaceutical services at pharmacy premises have been changed in accordance with this paragraph, P must introduce the changes—

- (a) if P has not appealed under sub-paragraph (9), not earlier than 30 days after the date on which P receives notification under sub-paragraph (4); or
- (b) if P has appealed under sub-paragraph (9), not earlier than 30 days after the date on which P receives notification under sub-paragraph (11).

(13) This paragraph does not apply where regulation 65(5) to (7) applies.

Temporary opening hours and closures during an emergency requiring the flexible provision of pharmaceutical services

27.—(1) Notwithstanding the provisions of this Part, during an emergency requiring the flexible provision of pharmaceutical services, the NHSCB may, on application from an NHS pharmacist ("P"), permit P a temporary change to the days on which or times at which P is obliged to provide pharmaceutical services at pharmacy premises, or permit temporary closure of those premises, if—

- (a) P gives at least 24 hours notice of the change or closure; and
- (b) the reasons given by P for the request are, in the opinion of the NHSCB, adequate reasons.

(2) The NHSCB need not approve the request in advance of the change or closure, but if it does not do so and decides subsequently that P's reasons are not, in its opinion, adequate reasons, then the days on which or times at which P is obliged to provide pharmaceutical services at the premises are to revert to the overridden days or times, from the day after the date on which that decision is given to P.