

## SCHEDULE 9

Regulation 119

### Transitional provisions

#### **The continuity principles**

1.—(1) Where by virtue of this Schedule—

- (a) a matter is to be dealt with in accordance with the 2006 Regulations or the 2012 Regulations; or
- (b) a matter (by virtue of having been dealt with in accordance with Schedule 7 to the 2012 Regulations (transitional provisions)), is to be dealt with in accordance with the 2005 Regulations or the SCAT Regulations,

if that matter under those Regulations would fall to be dealt with by a Primary Care Trust, unless the context requires otherwise, that matter is to be dealt with instead by the NHSCB.

(2) Any matter that is ongoing under the 2006 Regulations or the 2012 Regulations (including, by virtue of Schedule 7 of those Regulations, under the 2005 Regulations or the SCAT Regulations) immediately before the appointed day, unless the context requires otherwise—

- (a) is to be treated as ongoing under these Regulations on the appointed day (and where appropriate after that); and
- (b) where that matter becomes the responsibility of the NHSCB on the appointed day, anything done in relation to that matter by or with regard to a Primary Care Trust before the appointed day is to be treated as having been done (for the purposes of the ongoing treatment of the matter) by or with regard to the NHSCB.

(3) Where a period of time specified in a provision of the 2006 Regulations or the 2012 Regulations is current on the appointed day, and a period of time is also specified in a corresponding provision of these Regulations, unless the context requires otherwise, these Regulations have effect as if the corresponding provision of these Regulations had been in force when that period began to run.

(4) Where—

- (a) consideration of a matter under a provision of these Regulations in respect of a specified period of time requires consideration of a period of time before the appointed day; and
- (b) a corresponding provision of the 2006 Regulations or the 2012 Regulations also required consideration of that matter in respect of a specified period of time,

unless the context requires otherwise, the provision of these Regulations has effect as if it had been in force when the period of time specified in it began to run.

(5) Subject to sub-paragraphs (6) and (7), where on or after the appointed day—

- (a) a matter is to be dealt with in accordance with the SCAT Regulations, the 2005 Regulations, the 2006 Regulations or the 2012 Regulations; or
- (b) a matter that relates to circumstances that arose, or first arose, before the appointed day is to be dealt with in accordance with these Regulations or the Drug Tariff,

in dealing with that matter the NHSCB (or where appropriate, on appeal, the Secretary of State or the First-tier Tribunal) is to apply those Regulations, the Drug Tariff and related provisions of the 2006 Act subject to such modifications as it (or where appropriate, on appeal, the Secretary of State or the First-tier Tribunal) considers necessary or expedient.

(6) Modifications pursuant to paragraph (5) must—

- (a) be for a purpose related to—
  - (i) dealing with the matter justly, or

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- (ii) effecting an orderly transition from the scheme established by the Regulations mentioned in sub-paragraph (5)(a), read with the 2006 Act as in force before the appointed day, to the scheme established by these Regulations, read with the 2006 Act,
- or for purposes related to both; and
- (b) take account, as appropriate, of the manner in which—
  - (i) provisions in the 2005 Regulations were carried forward into the 2012 Regulations,
  - (ii) provisions in the 2006 Regulations and the 2012 Regulations were carried forward into these Regulations, and
  - (iii) the 2006 Act was amended by the Health and Social Care Act 2012(1).
- (7) Modifications pursuant to paragraph (5) may—
  - (a) be for the purpose of seeking to ensure that a matter is dealt with expeditiously;
  - (b) be for the purpose of seeking to ensure that a matter is dealt with proportionately, having regard to (as relevant)—
    - (i) the importance of protecting the safety of persons to whom pharmaceutical and local pharmaceutical services are provided,
    - (ii) the need for fairness,
    - (iii) the complexity of the issues,
    - (iv) the importance of protecting the NHSCB from material financial loss, and
    - (v) the importance of saving expense; or
  - (c) (without prejudice to the generality of the power to make modifications) have the effect of—
    - (i) adding to, modifying or removing functions that would have been performed by a Primary Care Trust under the SCAT Regulations, the 2005 Regulations, the 2006 Regulations, the 2012 Regulations or the 2006 Act as in force before the appointed day, or
    - (ii) adding to, modifying or removing functions that are to be performed by the NHSCB or a HWB under these Regulations or the 2006 Act.
- (8) In this Schedule, “the continuity principles” means the provisions of sub-paragraphs (1) to (7).

### **Listing applications under the 2005 Regulations: NHS chemists**

2.—(1) An application made to a Primary Care Trust under regulation 5(1), 40(1) or 54(2) of the 2005 Regulations (which relate to applications for inclusion in a pharmaceutical list, preliminary consent applications and temporary provision during a period of suspension) which—

- (a) has not been determined before the appointed day; and
  - (b) by virtue of Schedule 7 to the 2012 Regulations (transitional provisions), was to be determined in accordance with the 2005 Regulations and if relevant the 2006 Regulations,
- is to be dealt with by the NHSCB in accordance with the 2005 Regulations.

(2) Where an application made under the 2005 Regulations for preliminary consent has been finally granted under those Regulations—

- (a) an application under regulation 5(1) of the 2005 Regulations that is in accordance with regulation 41(1) of those Regulations (effect of preliminary consent) may be made in

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relation to that consent (within the 6 months period referred to in regulation 40(4) of the 2005 Regulations); and

- (b) any such application is to be dealt with by the NHSCB in accordance with the 2005 Regulations.

(3) Where on or after the appointed day, by virtue of this paragraph, an application is to be determined by the NHSCB having regard to regulation 13(1)(a) of the 2005 Regulations (exemptions from the necessary or expedient test), for the purposes of that application an area is an approved retail area if on 31st August 2012 it was a retail area that was for the time being approved by the Secretary of State under regulation 15 of those Regulations (approved retail areas).

(4) Where an application under regulation 5(1), 40(1) or 54(2) of the 2005 Regulations has been determined in accordance with the 2005 Regulations, whether before the appointed day or by virtue of this paragraph—

- (a) the arrangements for bringing an appeal in relation to that application; and
- (b) the determination of any appeal validly brought,

are to be in accordance with the 2005 Regulations.

### **Listing applications under the 2012 Regulations: NHS chemists**

**3.—**(1) Where a routine application has been made to a Primary Care Trust before the appointed day under the 2012 Regulations, subject to paragraph (2)—

- (a) if that application has not been notified under Part 3 of Schedule 2 to the 2012 Regulations (applications in respect of pharmaceutical lists and the procedures to be followed – notification of certain applications) before the appointed day, it is to be dealt with by the NHSCB in accordance with these Regulations; and
- (b) if that application has been notified under Part 3 of Schedule 2 to the 2012 Regulations before the appointed day, it is to be dealt by the NHSCB in accordance with the 2012 Regulations and the 2006 Act as in force immediately before the appointed day.

(2) Where—

- (a) a routine application has been made to a Primary Care Trust before the appointed day under the 2012 Regulations; and
- (b) determination of that application requires determination of whether granting it, or granting it in respect of some only of the services specified in it, would meet a current or future need for pharmaceutical services, or pharmaceutical services of a specified type, which have been included in a pharmaceutical needs assessment,

it is to be dealt with by the NHSCB in accordance with the 2012 Regulations and the 2006 Act as in force immediately before the appointed day, whether or not it has been notified under Part 3 of Schedule 2 to the 2012 Regulations before the appointed day.

(3) Where an excepted application has been made to a Primary Care Trust before the appointed day under the 2012 Regulations—

- (a) if that application—
  - (i) is not a notifiable application, and
  - (ii) has not been determined by the Primary Care Trust before the appointed day,it is to be dealt with by the NHSCB in accordance with these Regulations;
- (b) if that application—
  - (i) is a notifiable application, and

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- (ii) has not been notified under Part 3 of Schedule 2 to the 2012 Regulations before the appointed day,  
it is to be dealt with in accordance with these Regulations; and
- (c) if that application—
  - (i) is a notifiable application, and
  - (ii) has been notified under Part 3 of Schedule 2 to the 2012 Regulations before the appointed day,  
it is to be dealt with in accordance with the 2012 Regulations and the 2006 Act as in force immediately before the appointed day.
- (4) Where an application under the 2012 Regulations is determined in accordance with the 2012 Regulations, whether before the appointed day or by virtue of this paragraph—
  - (a) the arrangements for bringing an appeal in relation to that application; and
  - (b) the determination of any appeal validly brought,

are to be in accordance with the 2012 Regulations.

(5) In applying the continuity principles in relation to decisions which are to be made under the 2012 Regulations by virtue of this paragraph, the NHSCB must ensure that LPS chemists that would, by virtue of paragraph 32(5)(b)(ii) of Schedule 2 to these Regulations, have rights of appeal against particular types of decision under these Regulations, have the same rights of appeal against equivalent decisions under the 2012 Regulations, notwithstanding that those rights of appeal were not provided for in the 2012 Regulations.

#### **Listing applications under the 2005 Regulations: dispensing doctors**

4.—(1) An application made to a Primary Care Trust under Part 5 of the 2005 Regulations (provision of pharmaceutical services by doctors) for outline consent or premises approval (including temporary premises approval) which—

- (a) has not been determined before the appointed day; and
- (b) by virtue of Schedule 7 to the 2012 Regulations (transitional provisions) was to be determined in accordance with the 2005 Regulations,

is to be dealt with by the NHSCB in accordance with the 2005 Regulations.

(2) Where an application under Part 5 of the 2005 Regulations has been determined in accordance with those Regulations, whether before the appointed day or by virtue of sub-paragraph (1)—

- (a) the arrangements for bringing an appeal in relation to that application; and
- (b) the determination of any appeal validly brought,

are to be in accordance with the 2005 Regulations.

(3) If, before the appointed day—

- (a) a Primary Care Trust has required a doctor to provide pharmaceutical services under regulation 60(4)(a) of the 2005 Regulations<sup>(2)</sup> (arrangements for provision of pharmaceutical services by doctors); and
- (b) the doctor has appealed against that decision,

the arrangements for bringing that appeal, and the determination of any appeal validly brought, are to be in accordance with the 2005 Regulations.

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(2) Prior to its revocation, regulation 60(4) was amended by [S.I. 2005/1015](#) and [2006/3373](#).

### **Listing applications under the 2012 Regulations: dispensing doctors**

5.—(1) Where an application has been made to a Primary Care Trust before the appointed day under Part 8 of the 2012 Regulations (dispensing doctors) for outline consent or premises approval, other than an application for temporary premises approval to which regulation 58 or 61 of those Regulations (which relate to temporary provision in cases where premises approval has not taken effect or during an emergency requiring the flexible provision of pharmaceutical services) applies—

- (a) if that application has not been notified under regulation 52 of the 2012 Regulations (notification of applications for outline consent and premises approval), it is to be dealt with by the NHSCB in accordance with these Regulations; and
- (b) if that application has been notified under regulation 52 of the 2012 Regulations, it is to be dealt with by the NHSCB in accordance with the 2012 Regulations.

(2) Where—

- (a) an application has been made to a Primary Care Trust before the appointed day under regulation 58 or 61 of the 2012 Regulations for temporary premises approval; and
- (b) that application has not been determined before the appointed day,

it is to be dealt with by the NHSCB in accordance with these Regulations.

(3) Where an application under that Part 8 of the 2012 Regulations has been determined in accordance with the 2012 Regulations, whether before the appointed day or by virtue of this paragraph—

- (a) the arrangements for bringing an appeal in relation to that application; and
- (b) the determination of any appeal validly brought,

are to be in accordance with the 2012 Regulations.

(4) If, before the appointed day, a Primary Care Trust has required a doctor to provide pharmaceutical services under regulation 48(5)(b) of the 2012 Regulations (arrangements for provision of pharmaceutical services by doctors: applications by patients), and—

- (a) the doctor has appealed against that decision before the appointed day; or
- (b) the time limit for bringing an appeal against the decision in regulation 63(1) of the 2012 Regulations (appeals against decisions under Part 8) has not elapsed before the appointed day,

the arrangements for bringing an appeal in relation to that decision, and the determination of any appeal validly brought, are to be in accordance with the 2012 Regulations.

### **Outstanding cases relating to dispensing contractor lists**

6.—(1) If, before the appointed day the Primary Care Trust was engaged in a process which could have led to the inclusion or removal of a contractor or premises from a dispensing contractor list, that process and the action to be taken following its outcome (including relating to any appeal) are to be dealt with by the NHSCB in accordance with paragraph 10 of Schedule 7 to the 2012 Regulations (transitional provisions – dispensing contractor lists).

(2) Where—

- (a) the NHSCB grants an application for premises approval by virtue of this paragraph; and
- (b) the NHSCB is as a consequence required to consider any postponement of the making of arrangements to provide dispensing services, arising out of that grant,

that consideration, the NHSCB's decision on any postponement, the arrangements for bringing an appeal against its decision, and the determination of any appeal validly brought, are to be in accordance with paragraph 10 of Schedule 7 to the 2012 Regulations.

(3) Conditions relating to postponement of the making of arrangements to provide dispensing services which are imposed by virtue of this paragraph, or which continued to have effect by virtue of paragraph 10 of Schedule 7 to the 2012 Regulations, continue to have effect as if imposed under these Regulations in relation to the provision of pharmaceutical services.

### **Controlled localities**

7.—(1) The NHSCB must—

- (a) in respect of an area which on the appointed day continues to be, or to be part of, a controlled locality by virtue of regulation 36(1), delineate precisely the boundary of the controlled locality on a map (which may be part of a series of maps which relate to HWB areas);
- (b) publish that map; and
- (c) make that map available as soon as is practicable to any HWB that has all or part of that controlled locality in its area.

(2) Where—

- (a) before the appointed day, a Primary Care Trust was considering whether or not an area is either a controlled locality or part of a controlled locality; or
- (b) the NHSCB is required, by virtue of paragraphs 2 to 5, to determine an application and in connection with determining that application, it also needs to determine whether or not an area is or is not a controlled locality, or part of a controlled locality,

paragraph (3) applies.

(3) Where—

- (a) consideration by a Primary Care Trust mentioned in sub-paragraph (2)(a) was, or (by virtue of paragraph 2 or 4) an application referred to in sub-paragraph (2)(b) is, to be dealt with under the 2005 Regulations—
  - (i) the consideration of whether or not a locality is either a controlled locality or part of a controlled locality is to be dealt with by the NHSCB in accordance with the 2005 Regulations, and
  - (ii) the arrangements for bringing an appeal in relation to the decision of the NHSCB, and the determination of any appeal validly brought, are to be in accordance with the 2005 Regulations;
- (b) consideration by a Primary Care Trust mentioned in sub-paragraph (2)(a) was under the 2012 Regulations (unless it was in connection with an application which by virtue of paragraph 3 or 5 is to be determined in accordance with these Regulations)—
  - (i) the consideration of whether or not a locality is either a controlled locality or part of a controlled locality is to be dealt with by the NHSCB in accordance with the 2012 Regulations, and
  - (ii) the arrangements for bringing an appeal in relation to the decision of the NHSCB, and the determination of any appeal validly brought, are to be in accordance with the 2012 Regulations,

but if that consideration was in connection with an application which by virtue of paragraph 3 or 5 is to be determined in accordance with these Regulations, the consideration of whether or not a locality is either a controlled locality or part of a controlled locality is also to be dealt with by the NHSCB in accordance with these Regulations;

- (c) an application referred to in sub-paragraph (2)(b) is to be dealt with under the 2012 Regulations (by virtue of paragraphs 3 or 5)—

- (i) the related consideration of whether or not a locality is either a controlled locality or part of a controlled locality is to be dealt with by the NHSCB in accordance with the 2012 Regulations, and
  - (ii) the arrangements for bringing an appeal in relation to the decision of the NHSCB, and the determination of any appeal validly brought, are to be in accordance with the 2012 Regulations;
- (d) an application referred to in sub-paragraph (2)(b) is to be dealt with under these Regulations, the related consideration of whether or not a locality is either a controlled locality or part of a controlled locality is to be dealt with by the NHSCB in accordance with these Regulations.

(4) Where, by virtue of sub-paragraph (3), it is determined (whether by the NHSCB or on appeal by the Secretary of State) that an area is or is not, or is or is not part of, a controlled locality, the NHSCB must—

- (a) delineate precisely the boundary of any resulting controlled locality on a map;
- (b) publish that map; and
- (c) make that map available as soon as is practicable to any HWB that has all or part of any resulting controlled locality in its area,

and any area that becomes, or becomes part of, a controlled locality as a consequence of that determination is then a controlled locality, or part of a controlled locality, for the purposes of these Regulations (unless or until it is determined under these Regulations that it is no longer, or no longer part of, a controlled locality).

### **Reserved locations**

8.—(1) Where—

- (a) an application has been received which is to be determined under the 2005 Regulations—
  - (i) in accordance with paragraph 2, and
  - (ii) having regard to regulation 12 or 13 of the 2005 Regulations (which relate to the necessary or expedient test and exemptions from it); and
- (b) the premises or relevant location at or from which the applicant wishes to provide pharmaceutical services is or may be a reserved location,

pending the final determination of that application, the classification of any area in relation to those premises or that relevant location as, or as not, a reserved location is to be determined in accordance with the 2005 Regulations (if a further reserved location determination is required after the application is finally determined, it is to be in accordance with these Regulations).

(2) Where a determination of whether or not an area is a reserved location is made under the 2005 Regulations by virtue of—

- (a) sub-paragraph (1); or
- (b) before the appointed day, paragraph 6 of Schedule 7 to the 2012 Regulations (transitional provisions – reserved locations),

the arrangements for bringing an appeal against the decision, and the determination of any appeal validly brought, are to be in accordance with the 2005 Regulations.

(3) Where—

- (a) a routine application was received by a Primary Care Trust which the NHSCB is required to determine under the 2012 Regulations in accordance with paragraph 3; and

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- (b) the premises or relevant location at or from which the applicant wishes to provide pharmaceutical services is or may be a reserved location,

pending the final determination of that application, the classification of any area in relation to those premises or that relevant location as, or as not, a reserved location is to be determined in accordance with the 2012 Regulations (if a further reserved location determination is required after the application is finally determined, it is to be in accordance with these Regulations).

- (4) Where before the appointed day—

- (a) a Primary Care Trust received a request for a determination under regulation 42 of the 2012 Regulations (second and subsequent determinations of reserved location status), but there is no related routine application which is (still) to be finally determined under the 2012 Regulations in accordance with paragraph 2; and

- (b) the request was notified under regulation 42(2)(a) of the 2012 Regulations,

the classification of any area as, or as not, a reserved location pursuant to that request is to be determined in accordance with the 2012 Regulations (if a further reserved location determination is required after that determination, it is to be in accordance with these Regulations).

(5) Where a determination of whether or not an area is a reserved location is made under the 2012 Regulations by virtue of sub-paragraph (3) or (4), the arrangements for bringing an appeal against the decision, and the determination of any appeal validly brought, are to be in accordance with the 2012 Regulations.

(6) Where before the appointed day, a request is made to a Primary Care Trust for a reserved location determination, but the determination is not to be made under the 2005 Regulations or the 2012 Regulations by virtue of sub-paragraphs (1) to (5), it is to be made by the NHSCB (or on appeal the Secretary of State) under these Regulations.

(7) Where, by virtue of sub-paragraphs (1) to (5), it is determined (whether by the NHSCB or on appeal by the Secretary of State) that an area is a reserved location, if following the determination a reserved location thereafter takes effect (because the pharmacy premises to which it relates are included in a pharmaceutical list), the NHSCB must—

- (a) delineate precisely the boundary of the reserved location on a map;
- (b) publish that map; and
- (c) make that map available as soon as is practicable to any HWB that has all or part of that reserved location in its area.

### **Gradual discontinuation of the provision of pharmaceutical services by doctors**

9.—(1) Where, when granting an application which by virtue of paragraph 2 is finally determined in accordance with the 2005 Regulations, the NHSCB is required to consider under regulation 20(2) of the 2005 Regulations (imposition of conditions)—

- (a) any termination of arrangements with any person on its dispensing doctor list; and
- (b) any postponement of any such termination,

arising out of that grant (but not for a reason set out in regulation 50(1)(a) to (c), (e) or (f) of these Regulations), that consideration and its decision are to be in accordance with the 2005 Regulations.

(2) Where before the appointed day a Primary Care Trust was considering under the 2005 Regulations, in any case in which it could postpone the termination of arrangements with a dispensing doctor—

- (a) the termination of arrangements with a dispensing doctor; or
- (b) the postponement of the termination of arrangements with a dispensing doctor,

that matter is to be dealt with by the NHSCB, in accordance with the 2005 Regulations.

- (3) Where, under the 2005 Regulations—
- (a) a decision relating to termination of arrangements, or the postponement of the termination of arrangements, with a dispensing doctor is made by virtue of sub-paragraph (1) or (2); or
  - (b) before the appointed day, a decision relating to termination of arrangements, or the postponement of the termination of arrangements, with a dispensing doctor was made by a Primary Care Trust under the 2005 Regulations, and—
    - (i) that decision has been appealed before the appointed day, or
    - (ii) the time limit for bringing an appeal against that decision has not elapsed before the appointed day,

the arrangements for bringing an appeal in relation to that decision, and the determination of any appeal validly brought, are to be in accordance with the 2005 Regulations.

(4) Where, when granting an application which by virtue of paragraph 3 is finally determined in accordance with the 2012 Regulations, the NHSCB is required to consider under regulation 50(1) or (3) of the 2012 Regulations (discontinuation of arrangements for the provision of pharmaceutical services by doctors)—

- (a) any termination of arrangements with any person on its dispensing doctor list; and
- (b) any postponement of any such termination,

arising out of that grant, that consideration and its decision are to be in accordance with the 2012 Regulations.

(5) Where before the appointed day a Primary Care Trust was considering under regulation 50(1) to (6) of the 2012 Regulations, in any case in which it could postpone the termination of arrangements with a dispensing doctor—

- (a) the termination of arrangements with a dispensing doctor; or
- (b) the postponement of the termination of arrangements with a dispensing doctor,

that matter is to be dealt with by the NHSCB, in accordance with the 2012 Regulations.

(6) Where, under the 2012 Regulations—

- (a) a decision relating to termination of arrangements, or the postponement of the termination of arrangements, with a dispensing doctor is made by virtue of sub-paragraph (4) or (5); or
- (b) before the appointed day, a decision relating to termination of arrangements, or the postponement of the termination of arrangements, with a dispensing doctor was made by a Primary Care Trust pursuant to the 2012 Regulations, and—
  - (i) that decision has been appealed before the appointed day, or
  - (ii) the time limit for bringing an appeal against that decision has not elapsed before the appointed day,

the arrangements for bringing an appeal in relation to that decision, and the determination of any appeal validly brought, are to be in accordance with the 2012 Regulations.

(7) Regulation 50(1)(f) applies to a determination under the 2005 Regulations or the 2012 Regulations (either before the appointed day or by virtue of paragraph 8) that a location ceases to be or be part of a reserved location as it does to a determination referred to in regulation 42 as D2.

(8) Conditions imposed by virtue of—

- (a) regulation 20(2) or 35(6)(b) (pharmaceutical services in reserved locations) of the 2005 Regulations; or
- (b) regulation 50(2), (5) or (6) of the 2012 Regulations,

relating to the postponement of termination of arrangements with a dispensing doctor, whether or not imposed by virtue of this paragraph, continue to have effect as if imposed under these Regulations.

### **Gradual introduction of the provision of pharmaceutical services by doctors**

10.—(1) Where, when granting an application which by virtue of paragraph 4 is finally determined in accordance with the 2005 Regulations, the NHSCB is required to consider under regulation 20(2) of the 2005 Regulations (imposition of conditions) any postponement of the making of arrangements with a dispensing doctor arising out of that grant, that consideration and its decision are to be in accordance with the 2005 Regulations.

(2) Where before the appointed day a Primary Care Trust is considering under regulation 20(2) of the 2005 Regulations the postponement of the making of arrangements with a dispensing doctor, that matter is to be dealt with by the NHSCB, in accordance with the 2005 Regulations.

(3) Where, under the 2005 Regulations—

- (a) a decision relating to postponement of the making of arrangements with a dispensing doctor is made by virtue of sub-paragraph (1) or (2); or
- (b) before the appointed day, a decision relating to postponement of the making of arrangements with a dispensing doctor was made by a Primary Care Trust under the 2005 Regulations, and—
  - (i) that decision has been appealed before the appointed day, or
  - (ii) the time limit for bringing an appeal against that decision has not elapsed before the appointed day,

the arrangements for bringing an appeal in relation to that decision, and the determination of any appeal validly brought, are to be in accordance with the 2005 Regulations.

(4) Where, when granting an application which by virtue of paragraph 5 is finally determined in accordance with the 2012 Regulations, the NHSCB is required to consider under regulation 57(1) of the 2012 Regulations (gradual introduction of premises approval)—

- (a) any postponement of the making of arrangements with a dispensing doctor arising out of that grant; or
- (b) any limitation on the patients to whom a dispensing doctor is able to provide pharmaceutical services,

that consideration and its decision are to be in accordance with the 2012 Regulations.

(5) Where before the appointed day a Primary Care Trust is considering under regulation 57(1) of the 2012 Regulations—

- (a) the postponement of the making of arrangements with a dispensing doctor; or
- (b) any limitation on the patients to whom a dispensing doctor is able to provide pharmaceutical services,

that matter is to be dealt with by the NHSCB, in accordance with the 2012 Regulations.

(6) Where, under the 2012 Regulations—

- (a) a decision relating to—
  - (i) postponement of the making of arrangements with a dispensing doctor, or
  - (ii) limiting the patients to whom a dispensing doctor is able to provide pharmaceutical services,

is made by virtue of sub-paragraph (1) or (2); or

- (b) before the appointed day, a decision relating to postponement of the making of arrangements with a dispensing doctor, or to limiting the patients the patients to whom a dispensing doctor is able to provide pharmaceutical services, was made by a Primary Care Trust pursuant to the 2012 Regulations, and—

- (i) that decision has been appealed before the appointed day, or

- (ii) the time limit for bringing an appeal against that decision has not elapsed before the appointed day,

the arrangements for bringing an appeal in relation to that decision, and the determination of any appeal validly brought, are to be in accordance with the 2012 Regulations.

(7) Conditions imposed by virtue of—

- (a) regulation 20(2) of the 2005 Regulations relating to postponement of the making of arrangements with a dispensing doctor; or
- (b) regulation 57(1) of the 2012 Regulations relating to—
  - (i) the postponement of the making of arrangements with a dispensing doctor, or
  - (ii) limiting the patients to whom a dispensing doctor is able to provide pharmaceutical services,

whether or not imposed by virtue of this paragraph, continue to have effect as if imposed under these Regulations.

#### **Giving effect to listing decisions: pharmaceutical lists and dispensing doctor lists**

**11.**—(1) Where, before the appointed day or as a consequence of paragraphs 2 or 4, a person is entitled on the basis of a decision (whether by a Primary Care Trust or the NHSCB, or on appeal)—

- (a) to be included in pharmaceutical list but has not been included in that list;
- (b) to have listed in relation to their entry in a pharmaceutical list premises that have not been listed in relation to them;
- (c) to be included in a dispensing doctor list but has not been included in that list;
- (d) to have listed in relation to their entry in a dispensing doctor list premises that have not been listed in relation to them; or
- (e) to have listed in relation to their entry in a dispensing doctor list an area that has not been listed in relation to them,

the arrangements for the listing of that person, those premises or that area, and the circumstances in which that decision lapses, are as set out in the 2005 Regulations.

(2) Where, before the appointed day or as a consequence of paragraphs 3 or 5, a person is entitled on the basis of a decision (whether by a Primary Care Trust or the NHSCB, or on appeal)—

- (a) to be included in pharmaceutical list but has not been included in that list;
- (b) to have listed in relation to their entry in a pharmaceutical list premises that have not been listed in relation to them;
- (c) to be included in a dispensing doctor list but has not been included in that list;
- (d) to have listed in relation to their entry in a dispensing doctor list premises that have not been listed in relation to them; or
- (e) to have listed in relation to their entry in a dispensing doctor list an area that has not been listed in relation to them,

the arrangements for the listing of that person, those premises or that area, and the circumstances in which that decision lapses, are as set out in the 2012 Regulations.

#### **Pharmaceutical lists, EPS lists and dispensing doctor lists: continuity of entries and decisions**

**12.**—(1) Subject to sub-paragraph (2), the entries in pharmaceutical lists, EPS lists or dispensing doctor lists of Primary Care Trusts that are current immediately before the appointed day are to be current entries in the pharmaceutical lists, EPS lists and dispensing doctor lists maintained by the

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NHSCB on the appointed day under regulations 10 and 46 (albeit that the lists may be maintained by reference to different geographical areas).

(2) Where immediately before the appointed day a Primary Care Trust was required or entitled to give effect to a decision reached before the appointed day to change, remove or include an entry in a pharmaceutical list, EPS list or dispensing doctor list but had not done so, the NHSCB is required or entitled (unless the context requires otherwise) to give effect to that decision on or after the appointed day.

- (3) If, as regards a decision to which paragraph (2) applies, before the appointed day—
- (a) removal of an entry in a pharmaceutical list, EPS list or dispensing doctor list—
    - (i) would have resulted in removal of a person from a pharmaceutical list, EPS list or dispensing doctor list but no longer does so, or
    - (ii) would not have resulted in removal of a person from a pharmaceutical list, EPS list or dispensing doctor list but on or after the appointed day does so; or
  - (b) inclusion of an entry in a pharmaceutical list, EPS list or dispensing doctor list—
    - (i) would have required the new inclusion of a person in a pharmaceutical list, EPS list or dispensing doctor list but no longer does so, or
    - (ii) would not have required the new inclusion of a person in a pharmaceutical list, EPS list or dispensing doctor list but on or after the appointed day does so,

the NHSCB is nevertheless required or entitled (unless the context requires otherwise) to give effect to that decision, and in a manner that reflects the new arrangements for maintaining pharmaceutical lists, EPS lists and dispensing doctor lists, regardless of whether or not a different procedure would have been followed before the appointed day, had the nature of the listing change been as it is on or after the appointed day.

### **Service provision issues: NHS chemists**

**13.**—(1) Subject to sub-paragraph (3), where by virtue of a transfer scheme or paragraph 12, NHSCB becomes engaged in any matter—

- (a) arising under the 2005 Regulations before the appointed day; and
- (b) relating to compliance with the terms of service of a chemist (whether compliance by the chemist or a Primary Care Trust),

that matter is to be resolved in accordance with the 2005 Regulations, and where applicable the SCAT Regulations and the Drug Tariff, and the continuity principles are to be applied accordingly.

- (2) Subject to sub-paragraph (3), as regards the resolution of any matter—
- (a) arising under the 2005 Regulations before the appointed day; and
  - (b) relating to changing or removing any entry in a pharmaceutical list by virtue the 2005 Regulations other than pursuant to an application under regulation 5(1), 40(1) or 54(2) of those Regulations (which relate to applications for inclusion in a pharmaceutical list, preliminary consent applications and temporary provision during a period of suspension) (paragraph 2 applies in those cases),

that matter is to be resolved in accordance with the 2005 Regulations, and where applicable the SCAT Regulations and the Drug Tariff, and the continuity principles are to be applied accordingly.

(3) Sub-paragraphs (1) and (2) are without prejudice to the ability of the NHSCB to commence proceedings under Chapter 6 of Part 7 of the 2006 Act (pharmaceutical services and local pharmaceutical services – disqualification) on or after the appointed day that relate to matters arising before 1st September 2012 (potentially together with matters arising between 1st September 2012

and the appointed day, or on or after the appointed day), but any decisions in such proceedings are reached in accordance with the relevant provisions of these Regulations (and that Chapter 6).

(4) Subject to sub-paragraph (6), where by virtue of a transfer scheme or paragraph 12, NHSCB becomes engaged in any matter—

- (a) arising under the 2012 Regulations before the appointed day; and
- (b) relating to compliance with the terms of service of an NHS chemist (whether compliance by the NHS chemist or a Primary Care Trust),

that matter is to be resolved in accordance with the 2012 Regulations and where applicable the Drug Tariff, and the continuity principles are to be applied accordingly.

(5) Subject to sub-paragraph (6), as regards the resolution of any matter—

- (a) arising under the 2012 Regulations before the appointed day; and
- (b) relating to changing or removing any entry in a pharmaceutical list by virtue the 2012 Regulations other than pursuant to a routine or excepted application (paragraph 3 applies in those cases),

that matter is to be resolved in accordance with the 2012 Regulations and where applicable the Drug Tariff, and the continuity principles are to be applied accordingly.

(6) Sub-paragraphs (4) and (5) are without prejudice to the ability of the NHSCB—

- (a) to commence proceedings under Chapter 6 of Part 7 of the 2006 Act on or after the appointed day that relate to matters arising before the appointed day (potentially together with matters arising on or after the appointed day), but any decisions in such proceedings are reached in accordance with the relevant provisions of these Regulations (and that Chapter 6);
- (b) to issue breach or remedial notices under Part 10 on or after the appointed day that relate to matters arising before the appointed day (potentially together with matters arising on or after the appointed day); or
- (c) to take action under regulation 73 based on breach or remedial notices issued by a Primary Care Trust under Part 10 of the 2012 Regulations (performance related sanctions and market exit).

(7) Decisions and reviews of decisions in any proceedings commenced under Chapter 6 of Part 7 of the 2006 Act before the appointed day—

- (a) which by virtue of paragraph 10 of Schedule 7 to the 2012 Regulations (transitional provisions – other continuing matters: NHS chemists) were being determined in accordance with the 2005 Regulations and that Chapter 6 are to continue to be so determined; or
- (b) were being determined in accordance with Part 11 of the 2012 Regulations (enforcement, reviews and appeals relating to fitness matters) and that Chapter 6 are to continue to be so determined,

except in the case of a review of a decision where the request by the practitioner for a review is made on or after the appointed day (such a review is to be in accordance with the relevant provisions of these Regulations and that Chapter 6).

(8) Where a person was suspended from a pharmaceutical list by virtue of Chapter 6 of Part 7 of the 2006 Act before the appointed day—

- (a) decisions on payments in respect of any part of the period of suspension that preceded 1st September 2012, and any appeals relating to those decisions, are to be in accordance with the 2005 Regulations and with the determinations under regulation 58 of the 2005

Regulations<sup>(3)</sup> (payments to suspended chemists) that were in force immediately before 1st September 2012; and

- (b) decisions on payments in respect of any part of the period of suspension between 1st September 2012 and 31st March 2013 inclusive, and any appeals relating to those decisions, are to be in accordance with the 2012 Regulations and with the determinations under regulation 98 of the 2012 Regulations (payments to suspended chemists) that were in force immediately before the appointed day.

(9) Any direction or approval under, or that continues in effect under, a provision of Schedule 4 or 5 of the 2012 Regulations (terms of service of NHS pharmacists and terms of service of NHS appliance contractors) is to continue in effect as a direction or approval under the corresponding provision of Schedule 4 or 5 to these Regulations, unless or until it is amended or revoked by virtue of that corresponding provision or as a consequence of a decision under this paragraph.

### **Service provision issues: dispensing doctors**

14.—(1) Where, by virtue of a transfer scheme or paragraph 12, the NHSCB becomes engaged in any matter—

- (a) arising under the 2005 Regulations before the appointed day; and
- (b) relating to compliance with the terms of service of a dispensing doctor (whether compliance by the dispensing doctor or a Primary Care Trust),

that matter is to be resolved in accordance with the 2005 Regulations, and where applicable the SCAT Regulations and directions under section 87 of the 2006 Act (GMS contracts: payments), and the continuity principles are to be applied accordingly.

(2) Where, by virtue of a transfer scheme or paragraph 12, the NHSCB becomes engaged in any matter arising under the 2012 Regulations before the appointed day and relating to compliance with the terms of service mentioned in regulation 47(2) of the 2012 Regulations (terms of service of dispensing doctors: general), the arrangements mentioned in regulation 47(2)(a) of those Regulations must provide for the matter to be resolved—

- (a) justly;
- (b) in a manner that effects an orderly transition from the scheme established by the 2012 Regulations to the scheme established by these Regulations; and
- (c) if necessary or expedient in a manner that is inconsistent with these Regulations, or with regulations or directions under the 2006 Act that were in force immediately before the appointed day,

and the continuity principles are to be applied, and that matter is to be acted upon, accordingly.

(3) As regards the resolution of any matter—

- (a) arising under the 2012 Regulations before the appointed day; and
- (b) relating to changing or removing any entry in a dispensing doctor list by virtue the 2012 Regulations other than pursuant to an application under Part 8 of those Regulations (dispensing doctors) for premises approval or outline consent (paragraph 5 applies in those cases),

the matter is to be resolved in accordance with the 2012 Regulations, and the continuity principles are to be applied accordingly.

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(3) Prior to its revocation, regulation 58 was amended by [S.I. 2006/3373](#).

### **LPS schemes: replacement of Primary Care Trusts with the NHSCB and service provision issues**

**15.**—(1) For the purposes of this paragraph, “the relevant transitional provisions” means—

- (a) in the case of an LPS pilot scheme, paragraph 92(8) of Schedule 4 to the Health and Social Care Act 2012<sup>(4)</sup> (amendments of the National Health Service Act 2006); or
- (b) in the case of LPS schemes that are not LPS pilot schemes, paragraph 93(6) of Schedule 4 to the Health and Social Care Act 2012.

(2) The changes to LPS schemes by virtue of the relevant transitional provisions take effect on the appointed day without the need for notices—

- (a) in the case of LPS pilot schemes, under any terms of those schemes; or
- (b) in the case of LPS schemes that are not LPS pilot schemes, under the terms of the schemes that give effect to paragraph 26 of Schedule 7.

(3) Where, by virtue of a transfer scheme or the relevant transitional provisions, the NHSCB becomes engaged in any matter arising under an LPS scheme before the appointed day and relating to compliance with the terms of the LPS scheme (whether compliance by the LPS chemist or a Primary Care Trust)—

- (a) that matter is to be resolved in accordance with the relevant provisions of the LPS scheme, and any applicable provisions of 2006 Regulations and the Drug Tariff; and
- (b) the NHSCB may vary those terms, if necessary or expedient in a manner that is inconsistent with—
  - (i) the 2006 Regulations,
  - (ii) these Regulations, or
  - (iii) any directions under Chapter 2 of Part 7 of, and Schedule 11 to, the 2006 Act (which relate to local pharmaceutical services pilot schemes) that were in force immediately before the appointed day,

in order to provide for the matter to be resolved justly and in a manner that effects an orderly transition from the regulatory schemes for local pharmaceutical services established by the 2006 Regulations and directions under the 2006 Act to the regulatory schemes for local pharmaceutical services established by these Regulations and directions under the 2006 Act,

and the continuity principles are to be applied, and the matter is to be acted upon, accordingly.

### **Notification of LPS designations and completion of reviews**

**16.**—(1) The making, varying or cancellation of a designation by a Primary Care Trust under Part 2 of the 2006 Regulations (designation) before the appointed day that was not, before the appointed day, notified in accordance with that Part is to be notified by the NHSCB as if it were made, varied or notified under Part 13 of these Regulations.

(2) Any review of a designation which was being undertaken by a Primary Care Trust before the appointed day but which was not completed before the appointed day is to be completed by the NHSCB.

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(4) 2012 c. 7.

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

### **The application of Group 12 of Schedule 8 to the Value Added Tax Act 1994**

17. Pending amendment of Group 12 of Schedule 8 to the Value Added Tax Act 1994<sup>(5)</sup> (zero rating: drugs, medicines, aids for the handicapped, etc.) to take account of the coming into force of these Regulations, the definition of “relevant provision” in Note (2D) shall apply in relation to supplies on or after the appointed day as if for paragraph (j) there were substituted—

“(j) Part 8 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.”.

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(5) 1994 c.23; relevant amendments have been made to Group 12 by S.I. 2009/2972.