

SCHEDULE 5

Terms of service for NHS pharmacists who provide pharmaceutical services in particular by the provisions of drugs

PART 3

Pharmacy opening hours

Pharmacy opening hours: general

23.—(1) An NHS pharmacist must ensure that pharmaceutical services are provided at each of the premises from which the NHS pharmacist has undertaken to provide pharmaceutical services—

- (a) for not less than 40 hours each week, or
- (b) if the Local Health Board in whose pharmaceutical list the NHS pharmacist is included, or on appeal the Welsh Ministers, has directed that the NHS pharmacist may provide pharmaceutical services at the premises for fewer than 40 hours per week, provided that the NHS pharmacist provides those services at set times and on set days, at the times and on the days so set, or
- (c) if the Local Health Board in whose pharmaceutical list the NHS pharmacist is included, or on appeal the Welsh Ministers, has directed that the NHS pharmacist must provide pharmaceutical services at the premises for more than 40 hours per week, at set times and on set days, at the times and on the days so set, or
- (d) if the Local Health Board in whose pharmaceutical list the NHS pharmacist is included, or on appeal the Welsh Ministers, has directed that the NHS pharmacist must provide pharmaceutical services at the premises for more than 40 hours per week—
 - (i) for the total number of hours each week required by virtue of that direction, and
 - (ii) as regards the additional hours for which the NHS pharmacist is required to provide pharmaceutical services by virtue of that direction, at the days on which and the times at which the NHS pharmacist is required to provide pharmaceutical services during those additional hours, as set out in that direction,

but a Local Health Board may, in appropriate circumstances, agree a temporary suspension of pharmaceutical services for a set period, where it has received 3 months' notice of the proposed suspension from the NHS pharmacist.

(2) An NHS pharmacist must notify the Local Health Board in whose pharmaceutical list the NHS pharmacist is included of other hours during which the premises from which the NHS pharmacist has undertaken to provide pharmaceutical services will be open, which are hours in addition to those during which the pharmacy is obliged to open by virtue of sub-paragraph (1) (and which are referred to in these Regulations as “supplementary opening hours”).

(3) At each of the premises from which an NHS pharmacist has undertaken to provide pharmaceutical services, the NHS pharmacist must exhibit—

- (a) a notice specifying the times at which the premises are open for the provision of drugs and appliances, and
- (b) at times when the premises are not open, a notice based on information provided by the Local Health Board, legible from outside the premises, specifying the addresses of other NHS pharmacists included in the pharmaceutical list and the times at which drugs and appliances may be obtained from those addresses.

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(4) An NHS pharmacist must, on request, submit a return to the Local Health Board on whose pharmaceutical list the NHS pharmacist is included setting out—

- (a) the times at which pharmaceutical services are provided at each of the premises from which the NHS pharmacist has undertaken to provide pharmaceutical services (including the times at which the NHS pharmacist is providing pharmaceutical services when they are not obliged to do so by virtue of sub-paragraph (1)), and
- (b) the pharmaceutical services which the NHS pharmacist ordinarily provides at each of those premises.

(5) Where an NHS pharmacist changes—

- (a) the days on which or the times at which pharmaceutical services are to be provided at premises from which the NHS pharmacist has undertaken to provide pharmaceutical services, or
- (b) the pharmaceutical services which the NHS pharmacist is ordinarily to provide at those premises,

the NHS pharmacist must supply the Local Health Board on whose pharmaceutical list the NHS pharmacist is included with a return informing it of the change.

(6) Where an NHS pharmacist has submitted a return under sub-paragraph (4) or (5) in respect of any premises, or where the NHS pharmacist has set out in an application under these Regulations for inclusion in the pharmaceutical list the days on which and the times at which pharmaceutical services will be provided at the premises to which the application relates if the application is granted—

- (a) the NHS pharmacist must ensure that pharmaceutical services are provided at the premises to which the return or application relates on the days and at the times set out in the return or application (unless the return or application has been superseded by a return, or a further return, under sub-paragraph (5)), and
- (b) the NHS pharmacist must not change—
 - (i) the days on which or the times at which pharmaceutical services are to be provided at those premises, or
 - (ii) the pharmaceutical services which the NHS pharmacist is ordinarily to provide at those premises,

as set out in that return or application, for a period of at least 3 months after that return or application was received by the Local Health Board.

(7) Where an NHS pharmacist is prevented by illness or other reasonable cause from complying with their obligations under sub-paragraph (1), they must, where practicable, make arrangements with one or more other NHS pharmacists whose premises are situated in the neighbourhood for the provision of pharmaceutical services during that time.

(8) Where there is a temporary suspension in the provision of pharmaceutical services for a reason beyond the control of the NHS pharmacist, the NHS pharmacist will not be in breach of sub-paragraphs (1), (2) and (3) provided that—

- (a) the NHS pharmacist notifies the Local Health Board on whose pharmaceutical list the NHS pharmacist is included of that suspension as soon as practicable, and
- (b) the NHS pharmacist uses all reasonable endeavours to resume provision of pharmaceutical services as soon as practicable.

(9) Planned refurbishment of a pharmacy is neither a “reasonable cause” for the purposes of sub-paragraph (7), nor a “reason beyond the control of the NHS pharmacist” for the purposes of sub-paragraph (8).

(10) For the purposes of calculating the number of hours that a pharmacy is open during a week that includes Christmas Day, Good Friday, Easter Sunday or a bank holiday, it must be deemed that

the pharmacy was open on that day at the times at which it would ordinarily have been open on that day of the week.

(11) In this Part—

“additional hours” (“*oriau ychwanegol*”) for which an NHS pharmacist is to be required to provide pharmaceutical services are those hours during which the NHS pharmacist would not be providing pharmaceutical services, were the NHS pharmacist subject to the condition set out in sub-paragraph (1)(a) and not the condition set out in sub-paragraph (1)(d);

“existing direction” (“*cyfarwyddyd presennol*”) means one that has been made in accordance with this Part or one that was in existence on the date that these Regulations come into force.

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

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

(2) In considering the matters mentioned in sub-paragraph (1) the Local Health Board may have regard to any pharmaceutical services that are being provided in that neighbourhood in circumstances where the NHS pharmacist is not obliged to provide those services.

(3) The Local Health Board may only direct that an NHS pharmacist 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 the neighbourhood is likely to be adequate to meet the need for such services at times when the NHS pharmacist is not providing pharmaceutical services.

(4) The Local Health Board may only direct that an NHS pharmacist must provide pharmaceutical services at premises for more than 40 hours in any week where it is satisfied that the NHS pharmacist will receive reasonable remuneration in respect of the additional hours for which they are required to provide pharmaceutical services (and any additional remuneration payable in accordance with a determination made as a consequence of regulation 42 in respect of those hours is “reasonable remuneration” for these purposes).

Determination of pharmacy opening hours instigated by the Local Health Board

25.—(1) Where it appears to the Local Health Board in whose pharmaceutical list the NHS pharmacist is included, after consultation with or having considered the matter at the request of the Local Pharmaceutical Committee, that the times at which a pharmacy is or will be open for the provision of pharmaceutical services will not, or no longer meet, the needs of—

- (a) people in the neighbourhood, or
- (b) other likely users of that pharmacy,

for pharmaceutical services, it may carry out an assessment as to whether to issue a direction requiring the NHS pharmacist whose pharmacy it is to provide pharmaceutical services at the pharmacy at set times and on set days (which may include Christmas Day, Good Friday, Easter Sunday and bank holidays).

(2) Before concluding the assessment under sub-paragraph (1), the Local Health Board must—

- (a) give notice to the NHS pharmacist of any proposed changes to the times at which or the days on which the pharmacy is to be open, and
- (b) allow the NHS pharmacist 30 days within which to make written representations to the Local Health Board about the proposed changes.

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(3) After considering any representations made in accordance with sub-paragraph (2)(b), the Local Health Board must—

- (a) issue a direction (which will replace any existing direction) which meets the requirements of sub-paragraphs (4) and (5),
- (b) confirm any existing direction setting the days on which and the times at which the NHS pharmacist must provide pharmaceutical services at the pharmacy provided that the existing direction would meet the requirements of sub-paragraphs (4) and (5) if it were issued under this paragraph, or
- (c) either—
 - (i) revoke (without replacing it) any existing direction setting the times at which or the days on which the NHS pharmacist must provide pharmaceutical services at the pharmacy, or
 - (ii) in a case where there is no existing direction, issue no direction, in which case, by virtue of paragraph 23(1)(a), the pharmacy must be open for not less than 40 hours each week.

(4) Where a Local Health Board issues a direction under sub-paragraph (3) in respect of a pharmacy that is 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 the NHS pharmacist must provide pharmaceutical services at the pharmacy, and
 - (ii) as regards the additional hours for which the NHS pharmacist is to provide pharmaceutical services, the days on which and times at which the NHS pharmacist is required to provide those services during those additional hours,

but it must not set out in that direction the days on which or the times at which the NHS pharmacist is to provide pharmaceutical services during hours which are not additional hours, or

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

(5) The Local Health Board must not issue a direction under sub-paragraph (3) that has the effect simply of requiring a pharmacy 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 a pharmacy to be open for either more or less than 40 hours each week).

(6) The Local Health Board must notify the NHS pharmacist in writing 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 the NHS pharmacist is to provide pharmaceutical services at the pharmacy, it must include with the notification a statement in writing of—

- (a) the reasons for the change, and
- (b) the NHS pharmacist's right of appeal under sub-paragraph (7).

(7) An NHS pharmacist may, within 30 days of receiving notification under sub-paragraph (6) appeal in writing to the Welsh Ministers against any direction issued or any other action taken under sub-paragraph (3) which sets new days on which or times at which the NHS pharmacist is to provide pharmaceutical services.

(8) The Welsh Ministers may, when determining an appeal, either confirm the action taken by the Local Health Board or take any action that the Local Health Board could have taken under sub-paragraph (3).

(9) The Welsh Ministers must notify the NHS pharmacist in writing of their determination and must in every case include with the notification a written statement of the reasons for the determination.

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

- (a) if they have not appealed under sub-paragraph (7), not later than 8 weeks after the date on which they receive notification under sub-paragraph (6), or
- (b) if they have appealed under sub-paragraph (7), not later than 8 weeks after the date on which they receive notification under sub-paragraph (9).

Determination of pharmacy opening hours instigated by the NHS pharmacist

26.—(1) An NHS pharmacist may apply to a Local Health Board on whose pharmaceutical list the NHS pharmacist is included for it to change the days on which or the times at which the NHS pharmacist is obliged to provide pharmaceutical services at the NHS pharmacist's pharmacy in a way that—

- (a) reduces the total number of hours for which the NHS pharmacist is obliged to provide pharmaceutical services each week, or
- (b) keeps the total number of hours the same.

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

(3) The Local Health Board must determine an application under sub-paragraph (1) within 60 days of receiving it (including any information required of the applicant in accordance with sub-paragraph (2)).

(4) In determining the application, the Local Health Board must—

- (a) issue a direction (which will replace 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 setting the days on which and the times at which the NHS pharmacist must provide pharmaceutical services at the pharmacy provided that the existing direction 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 or the days on which the NHS pharmacist must provide pharmaceutical services at the pharmacy, 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 paragraph 23(1)(a), the pharmacy must be open for not less than 40 hours each week.

(5) Where a Local Health Board issues a direction under sub-paragraph (4) in respect of a pharmacy that is 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 the NHS pharmacist is required to provide pharmaceutical services at the pharmacy, and
 - (ii) as regards the additional hours for which the NHS pharmacist is to provide pharmaceutical services, the days on which and the times at which the NHS pharmacist is required to provide those services during those additional hours,

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but it must not set out in that direction the days on which or the times at which the NHS pharmacist is to provide pharmaceutical services during hours which are not additional hours, or

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

(6) The Local Health Board must not issue a direction under sub-paragraph (4) that has the effect simply of requiring a pharmacy 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 a pharmacy to be open for either more or less than 40 hours each week).

(7) Where the Local Health Board is considering taking action under sub-paragraph (4)(a) or (4)(c)(i), it must consult the Local Pharmaceutical Committee before determining the application.

(8) A Local Health Board must notify the NHS pharmacist in writing 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 the NHS pharmacist a statement in writing setting out—

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

(9) An NHS pharmacist may, within 30 days of receiving a notification pursuant to sub-paragraph (8), appeal in writing to the Welsh Ministers 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 Welsh Ministers may, when determining an appeal, either confirm the action taken by the Local Health Board or take any action that the Local Health Board could have taken under sub-paragraph (4).

(11) The Welsh Ministers must notify the NHS pharmacist in writing of their determination and must in every case include with the notification a written statement of the reasons for the determination.

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

- (a) if they have not appealed under sub-paragraph (9), not earlier than 30 days after the date on which they receive notification under sub-paragraph (8), or
- (b) if they have appealed under sub-paragraph (9), not earlier than 30 days after the date on which they receive notification under sub-paragraph (11).

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

27.—(1) Notwithstanding the provisions of this Schedule, during an emergency requiring the flexible provision of pharmaceutical services, the Local Health Board in whose pharmaceutical list the NHS pharmacist is included may, on application from the NHS pharmacist, permit the NHS pharmacist a temporary change to the days on which or times at which the NHS pharmacist is obliged to provide pharmaceutical services at the premises from which the NHS pharmacist has undertaken to provide pharmaceutical services, or permit temporary closure of those premises, if—

- (a) the NHS pharmacist gives at least 24 hours' notice of the change or closure, and
- (b) the reasons given by the NHS pharmacist for the request are, in the opinion of the Local Health Board, adequate reasons.

(2) The Local Health Board need not approve the request in advance of the change or closure, and if it does not do so but decides subsequently that the NHS pharmacist's reasons are not, in its

opinion, adequate reasons, then the days on which or times at which the NHS pharmacist 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 the NHS pharmacist.