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STATUTORY INSTRUMENTS

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**2009 No. 2205**

**The National Health Service (Miscellaneous Amendments  
Relating to Community Pharmaceutical Services  
and Optometrist Prescribing) Regulations 2009**

**PART 2**

**Amendment of the National Health Service (Local  
Pharmaceutical Services etc.) Regulations 2006**

**Amendment of the National Health Service (Local Pharmaceutical Services etc.) Regulations  
2006**

**29.** The National Health Service (Local Pharmaceutical Services etc.) Regulations 2006(1) are amended in accordance with the provisions of this Part.

**Amendment of regulation 2**

**30.** In regulation 2(2) (interpretation), in paragraph (1)—

(a) insert at the appropriate place—

““emergency requiring the flexible provision of pharmaceutical services” has the meaning given in regulation 2(5) of the Pharmaceutical Services Regulations;” and

““optometrist independent prescriber” means a person—

(a) who is registered in the register of optometrists maintained under section 7(a) of the Opticians Act 1989; and

(b) against whose name is recorded in that register an annotation signifying that the person is qualified to order drugs, medicines and appliances as an optometrist independent prescriber;” and

(b) in the definition of “prescriber”, for “or a supplementary prescriber” substitute “, a supplementary prescriber or an optometrist independent prescriber”.

**Amendment of regulation 15**

**31.** In regulation 15(3) (right of return to pharmaceutical lists), after paragraph (6) insert the following paragraphs—

“(7) Nothing in this regulation prevents a Primary Care Trust from making a temporary amendment to an LPS Scheme which the Primary Care Trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services.

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(1) S.I. 2006/552.

(2) Amended by S.I. 2006/913 and 3373, 2007/674 and 2008/528 and 1700.

(3) Amended by S.I. 2006/3373 and 2008/528.

(8) In the circumstances described in paragraph (7), the Primary Care Trust may make a temporary variation to a determination about a contractor, but—

- (a) only for a specified period (which shall not be longer than the specified period of the emergency given by the Secretary of State) which the Primary Care Trust may extend or curtail in appropriate circumstances; and
- (b) the contractor may revert to the contractor’s overridden determination before the end of the period specified by the Primary Care Trust, on giving the Primary Care Trust at least 24 hours notice.

(9) There is no right of appeal under these Regulations in respect of a decision to make or not to make, or to curtail the duration of, a temporary variation to an LPS scheme made under paragraph (8).”.

### **Amendment of regulation 16**

**32.** In regulation 16 (sharing of information received)—

(a) after paragraph (1) insert the following paragraph—

“(1A) Where a Primary Care Trust—

- (a) terminates an LPS scheme on any ground specified in paragraphs 29 to 31 of Schedule 2, it must consider whether its reasons for doing so raise any question about—
  - (i) the contractor’s suitability to be a contractor, or
  - (ii) the fitness to practise of a pharmacist employed by the contractor; or
- (b) is entitled to or has served a notice on a contractor under paragraphs 29 to 31 of Schedule 2 but the contractor’s LPS scheme is terminated on other grounds, the Primary Care Trust must consider whether the reasons why it served or was entitled to serve a notice under those paragraphs raise any question about—
  - (i) the contractor’s suitability to be a contractor, or
  - (ii) the fitness to practise of a pharmacist employed by the contractor.”; and

(b) in paragraph (2) for “the information does raise such a question, it must pass the information it has received” substitute “a question referred to in paragraph (1) or (1A) is raised, it must pass on its concerns and any relevant supporting evidence”.

### **New regulation 16A**

**33.** After regulation 16, insert the following regulation—

**“Proceedings with regard to overridden arrangements during an emergency requiring the flexible provision of pharmaceutical services**

**16A.** Where, during an emergency requiring the flexible provision of pharmaceutical services, arrangements for the provision of local pharmaceutical services are overridden by temporary arrangements—

- (a) any proceedings with regard to the overridden arrangements are unaffected by that overriding (although they may need to be stayed during the emergency for other reasons); and
- (b) if as a result of those proceedings, the overridden arrangements require amendment before the end of the temporary arrangements, when the emergency ends, the reversion to the overridden arrangements shall be to the overridden arrangements as amended as a result of those proceedings.”.

## Amendment of Schedule 2

34.—(1) Schedule 2 (contract terms) is amended in accordance with the provisions of this regulation.

(2) In paragraph 15 (inducements etc.)—

(a) in paragraph (1), for “A contractor or his staff must not give” substitute “Neither a contractor nor any person employed or engaged by a contractor shall give”;

(b) after sub-paragraph (2), insert the following sub-paragraphs—

“(3) Neither a contractor nor any person employed or engaged by a contractor shall give, promise or offer to any relevant person any gift or reward (including by way of a share of, or dividend on, the profits of the contractor’s business, or by way of a discount or rebate) as an inducement to or in consideration of the relevant person recommending to any person that they—

(a) present to the contractor an order for drugs or appliances on a prescription form or repeatable prescription; or

(b) nominate the contractor as their dispensing contractor (or one of them) on their NHS Care Record.

(4) For the purpose of sub-paragraph (3), “relevant person” means any person who performs or provides NHS services, whether on their own behalf or on behalf of another, and includes—

(a) any NHS body or any person (including a partnership) with a contract to provide a Primary Care Trust with primary medical services; and

(b) any person employed or engaged by any of the persons mentioned in paragraph (a).”.

(3) After paragraph 26, insert the following paragraph—

### **“Temporary arrangements during an emergency requiring the flexible provision of pharmaceutical services**

26A.—(1) Paragraph 26 shall not apply to an amendment of or variation to the LPS scheme that is made in accordance with this paragraph.

(2) During an emergency requiring the flexible provision of pharmaceutical services, a Primary Care Trust may, on application from a contractor (“C”)—

(a) permit C a temporary change to the days on which or times at which C is obliged to provide local pharmaceutical services at the premises from which C has undertaken to provide local pharmaceutical services, or permit temporary closure of those premises, if—

(i) C gives at least 24 hours notice of the change or closure, and

(ii) the reasons given by C for the request are, in the opinion of the Primary Care Trust, adequate reasons; or

(b) permit C any other temporary variation to C’s LPS scheme that, in the opinion of the Primary Care Trust, will facilitate continuity of the provision of services of a kind that may be provided under section 126, or by virtue of section 127, of the National Health Service Act 2006 during the emergency.

(3) The Primary Care Trust need not approve the request referred to in sub-paragraph (2)(a) (ii) in advance of the change or closure, and if it does not do so but decides subsequently that C’s reasons are not, in its opinion, adequate reasons, then the days on which or times at which

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C is obliged to provide pharmaceutical services at the premises are to revert to the overridden days and times, from the day after the date on which that decision is given to C.”.