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STATUTORY INSTRUMENTS

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**2013 No. 349**

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

**PART 12**

**Remuneration, charges and refunds**

**The Drug Tariff and section 164: general provisions**

**89.**—(1) The Drug Tariff referred to in section 127(4) of the 2006 Act (arrangements for additional pharmaceutical services) is the aggregate of—

- (a) the determinations of remuneration made by the Secretary of State, acting as a determining authority, under section 164 of the 2006 Act<sup>(1)</sup> (remuneration for persons providing pharmaceutical services), but not of the remuneration of dispensing doctors;
- (b) the determinations of remuneration made by the NHSCB, acting as a determining authority, pursuant to regulation 91(1); and
- (c) any other instruments that the Secretary of State is required by virtue of these Regulations or the 2006 Act to publish, or does publish, together with those determinations,

in the publication known as the Drug Tariff, which the Secretary of State shall publish in such format as the Secretary of State thinks fit.

(2) Determinations under section 164 of the 2006 Act by the Secretary of State or the NHSCB may be made by reference to—

- (a) the drugs and appliances dispensed or expected to be dispensed in accordance with NHS prescriptions during a reference period determined by the Secretary of State;
- (b) lists of published prices produced by suppliers of the drugs or appliances that are available from them on NHS prescription;
- (c) scales, indices or other data that relate to volume and price that are produced by suppliers of the drugs or appliances that are available from them on NHS prescription; and
- (d) any other scales, indices or other data (including formulae) by reference to which the Secretary of State considers it appropriate to make such a determination, and in these circumstances, the Secretary of State may provide that remuneration is to be determined by reference to data which is—
  - (i) in the form current at the time of the determination; and
  - (ii) in any subsequent form taking effect after that time.

(3) Amendments may be made to the Drug Tariff at such intervals as the Secretary of State thinks fit, but must be published in a consolidated version of the Drug Tariff that has the amendments included in it.

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(1) Section 164 has been amended by the Health and Social Care Act 2008 (c. 14), section 141(1), and Schedule 15, Part 4, and by the Health and Social Care Act 2012 (c. 7), Schedule 4, paragraph 89.

(4) The consultation that the Secretary of State must undertake under section 165(1) of the 2006 Act (section 164: supplementary) prior to the inclusion of, or change to, a price of a drug or appliance which is to form part of a calculation of remuneration shall be by way of consultation on the process for determining the price to be included or changed, not on the proposed price itself (unless it is impossible to carry out an effective consultation in any other way).

(5) The Drug Tariff is to include the arrangements for the claiming of payments by NHS chemists and the making of payments to NHS chemists under it (whether the amounts are determined by the Secretary of State or the NHSCB), and—

- (a) claims by NHS chemists for payments under the Drug Tariff must be made in accordance with those arrangements;
- (b) payments under the Drug Tariff must be made—
  - (i) by the NHSCB (or a person exercising its functions), and
  - (ii) in accordance with those arrangements, subject as appropriate to any deduction that may or must be made in accordance either with those arrangements or with any provision of, or made under, the 2006 Act (including the Drug Tariff); and
- (c) the arrangements may include arrangements for auditing, monitoring or analysing the making of payments.

#### **Data to be provided to assist Drug Tariff determinations**

**90.**—(1) The data which the Secretary of State and the NHSCB may take into account prior to making a determination under section 164 of the 2006 Act<sup>(2)</sup> (remuneration for persons providing pharmaceutical services) may include information obtained pursuant to paragraph (3) by—

- (a) the Secretary of State or a person appointed by the Secretary of State under this paragraph; or
- (b) the NHSCB or a person appointed by the NHSCB under this paragraph,

and a person appointed under this paragraph is referred to in this regulation as “a nominee”.

(2) Before appointing a person to be a nominee, the Secretary of State or the NHSCB must consult, as they consider appropriate, organisations representative of the NHS chemists to whose remuneration the possible determination arising out of the data would relate.

(3) An NHS chemist must, within 30 days of a request to do so, provide—

- (a) the Secretary of State or a nominee of the Secretary of State with information (for example invoices) which the Secretary of State considers to be relevant to the matters the Secretary of State may take into account prior to making a determination under section 164 of the 2006 Act; or
- (b) the NHSCB or a nominee of the NHSCB with information (for example invoices) which the NHSCB considers to be relevant to the matters the NHSCB may take into account prior to making a determination under section 164 of the 2006 Act.

(4) A nominee may handle and process information obtained under paragraph (3).

(5) The Secretary of State may require—

- (a) information obtained by a nominee of the Secretary of State under paragraph (3)(a) to be obtained; and
- (b) information processed or handled by a nominee of the Secretary of State under paragraph (4) to be processed or handled,

(2) Section 164 has been amended by the Health and Social Care Act 2008 (c. 14), section 141(1), and Schedule 15, Part 4, and by the Health and Social Care Act 2012 (c. 7), Schedule 4, paragraph 89..

in such manner as the Secretary of State may reasonably specify.

- (6) The NHSCB may require—
- (a) information obtained by a nominee of the NHSCB under paragraph (3)(b) to be obtained; and
  - (b) information processed or handled by a nominee of the NHSCB under paragraph (4) to be processed or handled,

in such manner as the NHSCB may reasonably specify.

(7) The Secretary of State and the NHSCB may share with each other information which they or their nominees have obtained under this regulation (for purposes related to the determination of pharmaceutical remuneration).

### **Remuneration of NHS chemists: instruments of appointment of the NHSCB**

**91.**—(1) The NHSCB is appointed by the Secretary of State as a determining authority in relation to the following remuneration to be paid to NHS chemists for providing pharmaceutical services—

- (a) the remuneration listed in Schedule 8 (which has effect); and
  - (b) remuneration in respect of advanced services.
- (2) Before making determinations as provided for by paragraph (1), the NHSCB must consult—
- (a) the Secretary of State in such manner as the Secretary of State may reasonably request; and
  - (b) a body appearing to it to be representative of persons to whose remuneration the determination would relate.
- (3) In making determinations as provided for by paragraph (1), the NHSCB must—
- (a) co-operate with the Secretary of State over seeking to ensure that resource use in respect of pharmaceutical remuneration is compatible with any objectives agreed between the Secretary of State and the NHSCB in respect of the total resource to be available for pharmaceutical remuneration;
  - (b) ensure that those determinations are compatible with the Secretary of State's arrangements for the claiming and making of payments, and making deductions from payments, that are included in the Drug Tariff (which may relate to pharmaceutical remuneration determined by the NHSCB as well as to pharmaceutical remuneration determined by the Secretary of State);
  - (c) ensure that those determinations are signed by a member of the senior management of the NHSCB, and for these purposes a person is a member of the senior management of the NHSCB if that person plays a significant role in—
    - (i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or
    - (ii) the actual managing or organising of the whole or a substantial part of those activities; and
  - (d) act in a manner that ensures that any amendments which, as a consequence, need to be made to the Drug Tariff, are made in a manner that is compatible with the Secretary of State's arrangements for the publication of the Drug Tariff (or the arrangements of a person publishing the Drug Tariff on the Secretary of State's behalf).
- (4) The Secretary of State must, before making a determination which could by virtue of paragraph (1) be made by the NHSCB, notify the NHSCB of the Secretary of State's intention to make the determination.

(5) Before determining the remuneration payable by it in respect of an enhanced service, the NHSCB must consult any Local Pharmaceutical Committee for the area in which the service is to be provided.

(6) Where the NHSCB makes a determination of the remuneration payable in respect of an enhanced service, it must publish the determination in such manner as it thinks appropriate for bringing it to the attention of persons included in the relevant pharmaceutical lists.

(7) The arrangements for claiming and paying any remuneration in respect of an enhanced service thus determined must allow for the making for any deduction that may or must be made from that remuneration by virtue of any provision of, or made under, the 2006 Act (for example, a deduction that may or must be made by virtue of regulations 70 to 72).

### **Dispensing doctor remuneration**

**92.**—(1) As regards the pharmaceutical services provided by dispensing doctors—

- (a) if a drug, appliance or related additional service is provided by a dispensing doctor in circumstances where the dispensing doctor could provide it under pharmaceutical services or related arrangements for the provision of primary medical services, the remuneration in respect of providing that drug, appliance or service is to be the remuneration payable in respect of that drug, appliance or service under the related arrangements; and
- (b) in all other cases, the remuneration payable to a dispensing doctor in respect of those pharmaceutical services is to be the remuneration payable under a GMS contract to a GMS practice in respect of those services by virtue of directions under section 87 of the 2006 Act<sup>(3)</sup> (GMS contracts: payments), whether or not the dispensing doctor is a GMS practice.

(2) Claims for remuneration in respect of pharmaceutical services by or on behalf of a dispensing doctor are to be made to the NHS BSA (which calculates the amount of the payment on behalf of the NHSCB) in such manner as the NHS BSA determines.

(3) The making of payments by the NHSCB pursuant to a claim made in accordance with paragraph (2) is to be in accordance with the arrangements—

- (a) that the dispensing doctor has with the NHSCB for the provision of primary medical services to the patients to whom the dispensing doctor provides pharmaceutical services; or
- (b) if the dispensing doctor has no such arrangements, that the NHSCB has with a provider of primary medical services for the provision of primary medical services to the patients to whom the dispensing doctor provides pharmaceutical services,

subject as appropriate to any deduction that may or must be made in accordance either with those arrangements or with any provision of, or made under, the 2006 Act (including the determinations mentioned in paragraph (1)).

### **The taking effect of determinations**

**93.**—(1) A determination of remuneration under section 164 of the Act<sup>(4)</sup> (remuneration for persons providing pharmaceutical services) is to have effect—

- (a) in relation to remuneration in respect of a period beginning on or as from a date specified in the determination, on or as from that date; or
- (b) if no such date is specified, in relation to remuneration in respect of the period beginning on the date that the determination is published.

<sup>(3)</sup> Section 87 has been amended by the Health and Social Care Act 2012 (c. 7), Schedule 4, paragraph 33.

<sup>(4)</sup> Section 164 has been amended by the Health and Social Care Act 2008 (c. 14), section 141(1), and Schedule 15, Part 4, and by the Health and Social Care Act 2012, Schedule 4, paragraph 89.

(2) A date before the date a determination is published may only be specified under paragraph (1) (a) if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates.

### **Overpayments**

**94.**—(1) Where the NHSCB considers that a payment has been made to an NHS chemist pursuant to the arrangements mentioned in regulation 89(5) or 91(7) in circumstances where it was not due, it must (except to the extent that the Secretary of State, on the application of the NHSCB, directs otherwise) draw the overpayment to the attention of the NHS chemist, and—

- (a) where the NHS chemist admits the overpayment; or
- (b) if the NHS chemist does not admit there has been an overpayment, where the final outcome of an investigation or appeal is that there has been an overpayment,

the amount overpaid shall be recoverable by deduction from other remuneration payable to the NHS chemist in respect of pharmaceutical services or as a civil debt.

(2) Where the NHSCB considers that a payment has been made to a dispensing doctor or provider of primary medical services pursuant to the arrangements mentioned in regulation 92(2) in circumstances where it was not due, it must (except to the extent that the Secretary of State, on the application of the NHSCB, directs otherwise) seek to recover that overpayment under those arrangements.

(3) Recovery under this regulation of an overpayment is to be without prejudice to the investigation of any related breach of the relevant NHS chemist's or dispensing doctor's terms of service.

### **Free supply of drugs, appliances and containers where the drug or appliance is supplied under pharmaceutical services**

**95.** Subject to any provision of regulations made under Part 9 of the 2006 Act (charging) to the contrary and without prejudice to regulation 92(1)(a), any drug, appliance or container supplied under arrangements made by the NHSCB for the provision of pharmaceutical services must be supplied free of charge (although a prescription charge may be payable).

### **Refunds of prescription charges**

**96.**—(1) Where any person is entitled to repayment of a charge paid under the Charges Regulations presents an NHS pharmacist with a valid claim for the repayment within 3 months of the date on which the charge was paid, the NHS pharmacist must make the repayment.

(2) For the purposes of paragraph (1), a claim for repayment is only valid if duly made—

- (a) in such form and manner as the Secretary of State has determined for an application for such a repayment under regulation 10(2)(b) of the Charges Regulations(5) (repayment of charges); or
- (b) on an equivalent form issued in Scotland, Wales or Northern Ireland.

### **Reward scheme**

**97.**—(1) An NHS chemist who is presented with or receives an order under paragraph 5(2) or (3) of Schedule 4, or paragraph 4(2) or (3) of Schedule 5, is eligible to claim a payment from the NHSCB, in accordance with the Drug Tariff, if—

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(5) Regulation 10 has been amended by [S.I. 2000/3189](#), [2002/2352](#) and [2004/696](#).

- (a) the NHS chemist has refused, in accordance with paragraph 9 of Schedule 4 or paragraph 8 of Schedule 5, to provide a drug or appliance and has informed the NHSCB of this action as soon as practicable; or
- (b) has provided a drug or appliance pursuant to paragraph 5(2) or (3) of Schedule 4, or paragraph 4(2) or (3) of Schedule 5 but has reason to believe (whether or not this was the case at the time that the drug or appliance was dispensed) that the order was not a genuine order on NHS prescription and has informed the NHSCB of this belief as soon as is practicable,

and in either case has sent the order (or, in the case of an electronic prescription, details of it) to the NHSCB.

(2) Where the NHSCB establishes that an order about which it has been notified in accordance with paragraph (1) was not a genuine order, the NHSCB must make such payment as is due to the NHS chemist under the Drug Tariff.

(3) In this regulation, “order” includes a purported order.

### **Payments to suspended chemists**

**98.**—(1) If an NHS chemist (C) is suspended from a pharmaceutical list, the NHSCB must make payments to C, in accordance with the determination that is to be made by the Secretary of State under this paragraph in relation to such payments.

(2) A determination under paragraph (1) may be amended from time to time by a further determination under that paragraph.

(3) Before making a determination under paragraph (1), the Secretary of State must consult such organisations as appear to the Secretary of State to be representative of NHS chemists.

(4) A determination under paragraph (1) must be published in the Drug Tariff.

(5) A determination under paragraph (1) may include provision that payments in accordance with the determination are not to exceed a specified amount in a specified period.

(6) If a payment has been made pursuant to a determination under paragraph (1) to C when it was not due, it must (except to the extent that the Secretary of State, on the application of the NHSCB, directs otherwise) draw the overpayment to the attention of C, and—

- (a) where C admits the overpayment; or
- (b) if C does not admit there has been an overpayment, where the final outcome of an investigation or appeal is that there has been an overpayment,

the amount overpaid shall be recoverable by deduction from other remuneration payable to C in respect of pharmaceutical services (for example, from subsequent payments under the determination or from payments for pharmaceutical services where C resumes the provision of pharmaceutical services) or as a civil debt.

(7) C may appeal to the Secretary of State against the following decisions by the NHSCB—

- (a) a refusal to make payments to C under the determination under paragraph (1);
- (b) the level of any payments made to C under the determination under paragraph (1); or
- (c) a deduction from remuneration under paragraph (6),

provided that C notifies the Secretary of State with a valid notice of appeal within 30 days of the date on which C was notified of the decision that is being appealed.

(8) A notice under paragraph (7) is valid only if it includes a concise and reasoned statement of the grounds of appeal.

(9) Schedule 3 has effect in relation to appeals to the Secretary of State under paragraph (7) (as it does in relation to appeals against decisions under Parts 2 to 5, 7, 8 to 10 and Schedule 2).

