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WELSH STATUTORY INSTRUMENTS

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**2020 No. 1073**

**The National Health Service (Pharmaceutical Services) (Wales) Regulations 2020**

**PART 10**

**Payments to NHS pharmacists and NHS appliance contractors**

**The Drug Tariff and remuneration of NHS pharmacists and NHS appliance contractors**

**55.**—(1) The Drug Tariff referred to in section 81(4) of the 2006 Act (arrangements for additional pharmaceutical services) is the aggregate of—

- (a) the determinations of remuneration made by the Welsh Ministers, acting as a determining authority, under section 88 of the 2006 Act (remuneration for persons providing pharmaceutical services), and
- (b) any other instruments that the Welsh Ministers are required by virtue of these Regulations or the 2006 Act to publish, or which they do publish, together with those determinations,

in the publication known as the Drug Tariff published by the Welsh Ministers in such format as they think fit.

(2) Determinations under section 88 of the 2006 Act by the Welsh Ministers—

- (a) may be made by reference to scales, indices or formulae of any kind, and where a determination falls to be made by reference to any such scale, index or formula, the determination may provide that the relevant price calculation is to be made by reference to the scale, index or formula which is—
  - (i) in the form current at the time of the determination, and
  - (ii) in any subsequent form taking effect after that time, and
- (b) may take effect in relation to remuneration in respect of a period beginning on or after the date specified in the determination, which may be the date of the determination or an earlier or later date, but it may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates.

(3) Where a determination included in the Drug Tariff does not specify a date as mentioned in paragraph (2)(b), it will have effect in relation to remuneration in respect of the period beginning on the date on which the change to the Drug Tariff is published in accordance with paragraph (4).

(4) Amendments that may be made to the Drug Tariff at such intervals as the Welsh Ministers think fit must be published by the Welsh Ministers in a consolidated version of the Drug Tariff that has the amendments included in it.

(5) The consultation that the Welsh Ministers undertake under section 89(1) of the 2006 Act (section 88: supplementary) prior to the inclusion of or a change to the price of a drug or appliance which is to form part of a calculation of remuneration must 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).

- (6) Payments under the Drug Tariff must be made—
- (a) by the Local Health Board responsible for making the payment, and
  - (b) in accordance with arrangements for claiming and making payments which are to be set out in the Drug Tariff but subject, as appropriate, to any deduction that may or must be made from the remuneration of an NHS pharmacist or NHS appliance contractor under these Regulations or any other regulations under the 2006 Act.

### **Local Health Boards as determining authorities**

**56.**—(1) The Welsh Ministers may state in the Drug Tariff that the determining authority for a particular fee, allowance or other remuneration is to be the Local Health Board of the NHS pharmacist or NHS appliance contractor to whom the remuneration relates.

(2) Where a Local Health Board is authorised to be a determining authority, the Local Health Board must—

- (a) consult the relevant Local Pharmaceutical Committee before making any determination,
- (b) publish the determination in such manner as it thinks appropriate for bringing it to the attention of persons included in its pharmaceutical lists, and
- (c) make the determination available for inspection.

(3) A determination made by a Local Health Board must include the arrangements for claiming and paying the remuneration and—

- (a) claims by NHS pharmacists and NHS appliance contractors must be made in accordance with the arrangements, and
- (b) payments of remuneration must be made in accordance with the arrangements subject, as appropriate, to any deduction that may or must be made from the remuneration under these Regulations or any other regulations under the 2006 Act.

### **Overpayments**

**57.**—(1) Where a Local Health Board considers that a payment has been made to an NHS pharmacist or NHS appliance contractor as mentioned in regulation 55(6) or 56(3) in circumstances where it was not due, the Local Health Board must draw the overpayment to the attention of the NHS pharmacist or NHS appliance contractor and—

- (a) where the overpayment is admitted by the NHS pharmacist or NHS appliance contractor, or
- (b) where the NHS pharmacist or NHS appliance contractor does not admit there has been an overpayment but the Local Health Board or, on appeal, the Welsh Ministers under regulation 9(1)(c) of the National Health Service (Service Committees and Tribunal) Regulations 1992, decides that there has been an overpayment,

the amount overpaid will be recoverable either by deduction from the remuneration of the NHS pharmacist or NHS appliance contractor or in some other manner.

(2) Recovery of an overpayment under this regulation is without prejudice to the investigation of an alleged breach of the terms of service.

### **Reward scheme**

**58.**—(1) An NHS pharmacist who is presented with an order under paragraph 5 of Schedule 5 or an NHS appliance contractor who is presented with an order under paragraph 4 of Schedule 6 will be eligible to claim a payment from the Local Health Board, in accordance with the Drug Tariff, if—

- (a) in accordance with paragraph 10 of Schedule 5 or paragraph 9 of Schedule 6 the NHS pharmacist or the NHS appliance contractor refused to provide the drugs or medicines or listed appliances ordered and informed the Local Health Board of this action as soon as practicable, or
  - (b) the NHS pharmacist or the NHS appliance contractor provided the drugs or listed appliances but had reason to believe at that time or subsequently came to have reason to believe that the order was not a genuine order for the person named on the prescription form or repeatable prescription form and informed the Local Health Board of this belief as soon as practicable and in either case the NHS pharmacist or the NHS appliance contractor has sent the order referred to in this paragraph to the Local Health Board and the Local Health Board has established that the order referred to in this paragraph was not a genuine order for the person named on the prescription form or repeatable prescription form.
- (2) The Local Health Board must in respect of any claim under paragraph (1) make such payment as is due to the NHS pharmacist or the NHS appliance contractor calculated in the manner specified in the Drug Tariff.
- (3) In this regulation, “order” includes a purported order.

#### **Payments to suspended NHS pharmacists and NHS appliance contractors**

**59.**—(1) The Local Health Board must make payments to any NHS pharmacist or NHS appliance contractor who is suspended from a pharmaceutical list, in accordance with the Welsh Ministers’ determination in relation to such payments.

(2) The Welsh Ministers must make the determination in accordance with paragraph (3) after consultation with such organisations as they may recognise as representing NHS pharmacists and NHS appliance contractors with whom arrangements for the provision of pharmaceutical services exist, and must publish it in the Drug Tariff.

(3) The determination may be amended from time to time by the Welsh Ministers after consultation with the organisations referred to in paragraph (2), and any amendments must also be published with the Drug Tariff.

(4) The Welsh Ministers’ determination may include provision that payments in accordance with the determination are not to exceed a specified amount in any specified period.