EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CHARGES FOR DRUGS AND APPLIANCES) (AMENDMENT) (No. 2) REGULATIONS 2017

2017 No. 457

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The National Health Service (Charges for Drugs and Appliances) Regulations 2015 (S.I. 2015/570) ("the 2015 Regulations") provide for charges to be made and recovered for the supply of certain drugs, appliances, wigs and fabric supports, and provide for certain exemptions from charging in prescribed circumstances. This instrument amends the 2015 Regulations in consequence of a defect in the National Health Service (Charges for Drugs and Appliances and Dental Charges) (Amendment) Regulations 2017 (S.I. 2017/408) (the 2017 Regulations).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Yes, this instrument breaches the 21 day rule. This instrument is being made to correct a defect in the 2017 Regulations, which uprated NHS prescription charges from 1st April 2017. Due to an error, the 2017 Regulations omitted certain prescription charges from the uprating provisions. This instrument uprates those charges, also with effect from 1st April 2017. The impact of not breaching the 21 day rule would be an ambiguity in relation to certain charges in the 2015 Regulations. As this instrument is being made in consequence of a defect in the 2017 Regulations, it is being issued subject to the free issue procedure. The Department sincerely apologises for this.

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 172 of the National Health Service Act 2006 (the Act) allows regulations to be made for the making and recovery, in such manner as may be prescribed, of charges for the supply of drugs, medicines and appliances under the Act. The 2015 Regulations set out a scheme for charges for drugs and appliances and some other items supplied to NHS patients in England, and the arrangements for exemption from those charges. The 2015 Regulations have been amended to increase charges for drugs and appliances and other items supplied to NHS patients in England with effect from 1st April 2017 by the 2017 Regulations. Due to an error, the 2017 Regulations omitted to include certain prescription charges in the uprating provisions. This

instrument amends the 2015 Regulations to increase those charges in line with the increases to prescription charges made by the 2017 Regulations from 1st April 2017.

5. Extent and Territorial Application

5.1 This instrument extends only to England.

5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The 2015 Regulations include the charges that are payable for the supply of NHS drugs and appliances in England, the circumstances in which the charge must, or must not, be made and the patients who are exempt from prescription charges. The amendments made by the 2017 Regulations increased these charges so as to increase the prescription charge for the supply of drugs and appliances from £8.40 to £8.60, which was a 2.38 % increase. Due to an error, the 2017 Regulations did not also amend the 2015 Regulations so as to include the new prescription charge in the provisions which ensure that where a drug ordered on a single prescription is supplied in instalments by a chemist or a walk-in centre, the prescription charge is payable on, and only on, the supply of the first instalment. This instrument corrects that error to provide that the charge payable in such circumstances is also increased similarly to the other charges from £8.40 to £8.60.

7.2 As this instrument is made in consequence of a defect in the 2017 Regulations, it is being issued subject to the free issue procedure.

Consolidation

7.3 The 2015 Regulations were consolidated in 2015.

8. Consultation outcome

8.1 The Department of Health is not required to consult on amendments to the 2015 Regulations.

9. Guidance

9.1 Relevant health care professionals and the public will be advised of the increase to charges for prescriptions and wigs and fabric supports by way of patient information leaflets, the Drug Tariff, the NHS Choices website and the gov.uk website. The Department will request NHS England to provide notification via email bulletins for dissemination to staff.

10. Impact

10.1 In respect of amendments to the 2015 Regulations, there is no impact on business, charities or voluntary bodies.

10.2 Amendments to the 2015 Regulations will create a minimal cost to the public sector. To accommodate the increase to the single prescription charge the NHS Business Services Authority will need to amend their systems to reflect the increased level of the charge.

10.3 An Impact Assessment has not been prepared for this instrument, or the 2017 Regulations, in relation to the increases in charges for prescriptions, wigs and fabric supports.

11. Regulating small business

11.1 The Regulations apply to small businesses, including firms employing up to 20 people. As these Regulations concern the provision of NHS primary care services in England on the basis of nationally determined terms of service, it is not possible to differentiate between contractors according to their operational turnover or size. This is to ensure the application of agreed nation-wide standard and practice in the provision of such services as part of a nationally determined contractual framework.

11.2 This instrument places no new requirements on small businesses. In respect of charges levied it merely changes the amount the patient pays.

12. Monitoring & review

12.1 Charges for drugs and appliances and other items supplied by the NHS under the 2015 Regulations are monitored by NHS England and the Department of Health and are reviewed annually, to consider what, if any, change in the amounts of such charges should be made.

13. Contact

13.1 Rebecca Blessing at the Department of Health Telephone: 0113 2546326 or email: Rebecca.blessing@dh.gsi.gov.uk can answer any queries regarding the instrument.