EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CHARGES FOR DRUGS AND APPLIANCES) (AMENDMENT) (NO. 2) REGULATIONS 2024

2024 No. 1086

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (DHSC) and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Karin Smyth MP, Minister of State for Health (Secondary Care) at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

2.2 Gila Sacks, Director of Medicines at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Carol Walker at the Department of Health and Social Care, email: prescribingpolicy@dhsc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The National Health Service (Charges for Drugs and Appliances) (Regulations 2015 (SI 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 regulation 11 of the 2015 Regulations to allow electronic as well as paper prescriptions issued to or for a person leaving prison or other secure accommodation to be exempt from prescription charges and it also changes an annotation requirement.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 The 2015 Regulations provide the amount of the charge for an NHS prescription item supplied by the NHS, the circumstances in which the charge must, or must not, be made, and the patients who are exempt from prescription charges. The amendments to the 2015 Regulations made in this instrument allow the use of the Electronic

Prescription Service ("EPS") for released prisoners from HMP establishments and other secure accommodation, for example Young Offender Institutes, to claim a valid exemption from the prescription charge and certain appliances supplied by the NHS.

5.2 This will allow NHS England to commence their pilot project relating to services provided to detainees at specified sites. The pilot will allow testing of the EPS prior to rollout at other sites, enabling identification of any issues in community pharmacies and to inform further rollout and guidance content. Using the EPS allows for a quicker, more efficient, and more secure method of issuing prescriptions for planned and unplanned releases from HMP premises than the use of a paper form. The EPS avoids the need for the patient to have the paper FP10 in their personal property as they leave for court or leave the prison. Released prisoners face many challenges on release and accessing medicines via a digital prescription safely stored for them to collect via a community pharmacy is a major benefit to them. A high proportion of prisoners need mental health, pain medicines and/or substance misuse medication. Access to a continued supply of doses is essential for their mental and physical health and wellbeing. Use of the EPS in this way is integral to a plan to move away from supplying the medicines on release, but instead use electronic prescriptions for these supplies. This will also reduce waste from uncollected discharge medicines. The focus of the benefits is on prisoners, but the benefits apply equally to young people in Young Offenders Institutions and Secure Training Centres/Secure Schools, both of whom are vulnerable groups.

What was the previous policy, how is this different?

5.3 The previous policy only allowed for paper prescriptions (the FP10 form) to be provided to this cohort if they were to access prescription items in the community free of charge. Exemption provisions did not extend to those prescriptions issued electronically.

6. Legislative and Legal Context

How has the law changed?

6.1 The changes made by this instrument allow the use of the Electronic Prescription Service for released prisoners from HMP establishments and people leaving other secure accommodation to correctly claim a valid exemption from prescription charges. The paper prescriptions issued in these circumstances have to be annotated "HMP" but this annotation requirement is not considered necessary for electronic prescriptions as they include the necessary "HMP" identifying information.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 DHSC is not required to consult on the 2015 Regulations.

8. Applicable Guidance

8.1 Pharmacies, relevant health care professionals and released prisoners will be advised of the change in prescribing arrangements and the charging position. This will be communicated by NHS England through the Health Justice Information Service, NHS

Business Services Authority guidance issued to dispensing systems suppliers and pharmacies.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because of low impact on the public sector and on NHS prescription charge revenue, as paper prescription forms enable the exemption for this cohort, the move to EPS simply improves patient service.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the prescription charge exemption currently applies to the prescriptions issued on paper FP10 forms.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is that prescriptions issued via EPS will be easier to track and withdraw if no longer required.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through NHS England and DHSC following an initial pilot at identified sites, prior to national rollout.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).