EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CHARGES FOR DRUGS AND APPLIANCES) (AMENDMENT) REGULATIONS 2023

2023 No. 300

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.

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 to increase prescription and other charges payable under them.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The opportunity has been taken in this instrument to correct an error arising out of a failure, in the preamble to the National Health Service (Amendments Relating to Pre-Payment Certificates, Hormone Replacement Therapy Treatments and Medicines Shortages) Regulations 2023 (S.I. 2023/171) ("the 2023 Regulations") to cite all the powers being exercised. This error had implications for the new regulation 17A of the 2015 Regulations, inserted by the 2023 Regulations. The Department's response to this error is explained in paragraph 7.6.

4. Extent and Territorial Application

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

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Section 172 of the National Health Service Act 2006 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. Apart from changes relating to the new HRT only PPC, this instrument provides for a routine uprating of the amounts that are to be charged under those Regulations from 1st April 2023.

7. Policy background

What is being done and why?

7.1 The 2015 Regulations provide the amount of the charge for an NHS prescription item and certain other appliances 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. Following a freeze to the increase for 2021-22, the amendments to the 2015 Regulations made in this instrument increase all prescription charges, including the costs of the 3- month and 12-month Prescription Pre-payment Certificate (PPC), and the HRT only PPC. The single prescription charge will increase by 30 pence, to £9.65 per item, which is an increase of 3.21% (after rounding to the nearest 5 pence) and the cost of the 3- and 12- month PPCs will increase by 3.31% and 3.24% respectively (after rounding to the nearest 5 pence). The charge for the new HRT only PPC, which will be twice the single item charge, will be £19.30. Using a 3 or 12-month PPC or, if only prescribed HRT, the HRT only PPC, can lead to significant savings for patients if they are prescribed several items during the validity of their PPC. For instance, if a patient is prescribed two items per month, this would cost £231.60 if paying the single charge for each item monthly for 12 months, compared to paying £111.60 for a 12-month PPC, or £19.30 for the HRT only PPC. The charge for elastic hosiery and wigs will also increase by 3.24%. Charges are made for wigs when supplied by hospitals or by other bodies through contracts. This instrument makes transitional provision in respect of an order for supply given before this instrument comes into force. The basic charge per item and the charges for PPCs are set out in Table 1.

Table 1: Prescription, Prescription Pre-payment Certificate, Fabric Support and Wigs Charges for 2022-23 (unchanged from 2021-22), and the new charges for 2023-24 with effect from 1 April 2023.

	2022-23	**2023-24**	increase in £
Single prescription charge	9.35	**9.65**	0.30
Prescription Pre-payment Certificate (3 month)	30.25	**31.25**	1
Prescription Pre-payment Certificate (12 month)	108.10	**111.60**	3.50
Hormone Replacement Therapy Prescription Pre-payment Certificate (12 month)	n/a	**19.30**	n/a
Surgical bra	30.70	**31.70**	1
Abdominal or spinal support	46.30	**47.80**	1.50
Stock modacrylic wig	75.70	**78.15**	2.45
Partial human hair wig	200.50	**207**	6.50
Full bespoke human hair wig	293.20	**302.70**	9.50

7.2 Prescription prepayment certificates are available to everyone. 3-month certificates can be purchased directly from some pharmacists. 3 and 12-month certificates can be purchased from the NHS Business Services Authority, by phone, online or by post. A 12-month prescription prepayment certificate is available to purchase in ten monthly

direct debit instalments. Prescription pre-payment certificates will save people money if they need more than four items in a three-month period, or 12 items or more in a year.

7.3 The 2023 Regulations introduced a bespoke HRT only PPC which will significantly reduce the costs to patients of HRT prescriptions through the purchase of an annual HRT only PPC for a one-off annual fee of £19.30, which represents a significant saving if a patient is prescribed several HRT items in a 12 month period and previously had paid the single prescription charge for each HRT item. This means they can obtain all of their NHS HRT items without paying any further charges for the duration of the validity of their HRT only PPC, provided those items are on a list published in the Drug Tariff, which is a monthly publication, now published exclusively online, compiled by the NHS Business Services Authority (BSA) and which is used as the essential basis for remunerating providers of pharmaceutical and local pharmaceutical services.

7.4 Under all the PPCs those certificate holders pay no further charge at the point of dispensing. There is no limit to the number of items the holder may obtain using the certificate, although the HRT only PPC will cover a bespoke list of approved HRT medicines.

Explanations

What did any law do before the changes to be made by this instrument?

7.5 The Charges Regulations set out the charges that applied for all prescription charges, including the costs of the 3 month and 12-month Pre Payment Certificate (PPC). Prior to the changes made by this instrument the charges for the PPCs that were available before 1st April 2023 were an annual charge that was not specifically pegged to the prescription charge. The charge for the new HRT only PPC is to be pegged at twice the annual applicable prescription charge, which will be uplifted in line with the usual annual inflationary increases as they are applied to such charges. This is the first time that charges for a PPC have been calculated in this way.

Why is it being changed?

7.6 Apart from the changes that apply to the new HRT only PPC, this is a routine change with ministers annually reviewing prescription charges and the cost of PPCs. This review takes place annually to ensure that prescription charges are appropriate for patients and for the NHS. The uplift to the cost of a HRT only PPC is required to peg the cost of the PPC to twice the cost of the applicable prescription charge.

7.7 The change made to the charge for the new HRT only PPC has been made not simply by making an amendment to regulation 17A(4)(a) of the 2015 Regulations but by substituting regulation 17A in its entirety, although the only change to it is to the cost of the HRT only PPC. The reason for taking this approach is that, as noted in paragraph 3.1 above, the 2023 Regulations which inserted regulation 17A contained an error in the preamble. The error was a failure to cite section 272(8)(b), which was relevant to the making of regulation 17A. The impact of an error such as this is a matter of legal debate, but the Department has decided that it is appropriate on this occasion to take the immediate opportunity afforded by the making of this instrument to substitute regulation 17A using the correct powers, and thereby to remove any doubt about the validity of provisions containing sub-delegation in regulation 17A

arising from the failure to cite section 272(8)(b). The Department apologies for its error.

What will it now do?

7.8 The changes will implement inflationary increases to the amount that the patient pays for prescriptions and PPCs.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The 2015 Regulations were consolidated in 2015, so there are no plans to consolidate these Regulations in the near future, but this will be kept under review.

10. Consultation outcome

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

11. Guidance

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

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is minimal. To accommodate the increase to the prescription charges the NHS Business Services Authority will need to amend their systems to reflect the increased level of the charges. Hospitals and other bodies supplying wigs and fabric supports will need to revise arrangements to reflect the new charges.

12.3 A full Impact Assessment has not been prepared for this instrument because of low impact on the public sector and, other than in 2021-22, this being an increase that takes place annually.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. As this instrument concerns 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 standards and practice in the provision of such services as part of a nationally determined contractual framework.

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

14. Monitoring & review

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

15. Contact

15.1 Carol Walker at the Department of Health and Social Care, telephone: 0113 2546384 or email: carol.walker@dhsc.gov.uk, can be contacted with any queries regarding this instrument.

15.2 Liz Woodeson, Director, Medicines at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Neil O'Brien MP, Parliamentary Under Secretary of State for Primary Care and Public Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.