
STATUTORY DETERMINATIONS

THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL SERVICES) REGULATIONS 2012

The Payments to Suspended NHS Chemists (England) Determination 2012

The Secretary of State makes the following determination in exercise of the powers conferred by regulation 98(1) of the National Health Service (Pharmaceutical Services) Regulations 2012(a).

Before making this determination, the Secretary of State consulted such organisations as appeared to the Secretary of State to be representative of NHS chemists.

Citation and commencement

1. This determination may be cited as the Payments to Suspended NHS Chemists (England) Determination 2012 and comes into force on 1st September 2012.

Interpretation

2.—(1) In this Determination—

“the 2005 Regulations” means the National Health Service (Pharmaceutical Services) Regulations 2005(b), as in force immediately before the appointed day;

“the 2012 Regulations” means the National Health Service (Pharmaceutical Services) Regulations 2012;

“the appointed day” means 1st September 2012;

“bank holidays” includes Christmas Day and Good Friday;

“relevant listed premises” means the premises listed in relation to a suspended contractor in the pharmaceutical list from which the contractor is suspended;

“SCMP” means a suspended contractor monthly payment, as mentioned in paragraph 3(1); and

“suspended contractor” means a person included in a pharmaceutical list who is suspended from that list.

(2) Where reference is made in this Determination to a numbered or numbered and lettered Part, it is to the numbered or numbered and lettered Part of the Drug Tariff bearing that number or number and letter.

Payments to a suspended contractor

3.—(1) Subject to the following provisions of this determination, the Primary Care Trust from whose pharmaceutical list a contractor (SC) is suspended in accordance with Chapter 6 of Part 7

(a) S.I. 2012/1909. These Regulations apply, and so this determination applies, in relation to England only.

(b) S.I. 2005/641; amended by S.I. 2005/1015, 1501, 3315 and 3491, 2006/552, 562, 913, 1056, 1501 and 3373, 2007/674, 2008/683 and 1514, 2009/309, 599 2205 and 3340, 2010/22, 231 and 914, 2011/2136 and 2012/1399. These Regulations were revoked with effect from 1st September 2012 by S.I. 2012/1909.

of the National Health Service Act 2006(a) (pharmaceutical services and local pharmaceutical services – disqualification) must pay to SC a suspended contractor monthly payment (SCMP) of—

- (a) as regards each complete calendar month for which SC is suspended, an amount equal to SC's reference remuneration; or
- (b) if SC is only suspended for part of a calendar month, an amount calculated by multiplying SC's reference remuneration by the fraction produced by dividing the number of days for which SC was suspended during that month (including weekends and bank holidays) by the total number of days in that month.

(2) For the purposes of sub-paragraph (1) but subject to the following provisions of this determination, the "reference remuneration" of SC is the total of the relevant fees and allowances to which SC is entitled in respect of relevant listed premises during the relevant period, divided by the duration of the relevant period (which may differ for different elements of the reference remuneration if more than one set of premises are listed in relation to SC and those premises are listed in relation to SC for different periods).

(3) For the purposes of paragraph (2), the "relevant fees and allowances" means the following fees payable to SC during the relevant period—

- (a) fees (for pharmacy contractors) payable under clause 1 of Part IIIA;
 - (b) fees (for pharmacy contractors) payable under clause 2 of Part IIIA;
 - (c) fees (for appliance contractors) for dispensing appliances payable under Part IIIB;
 - (d) payments (for pharmacy contractors) payable under Part VIA;
 - (e) payments (for appliance contractors) payable under Part VIB;
 - (f) payments for advanced services (for pharmacy and appliance contractors) payable under Part VIC;
 - (g) payments for enhanced services (for pharmacy contractors) payable under Part VIE; and
 - (h) payments in respect of pre-registration trainees payable under Part XIII.
- (4) For the purposes of paragraphs (2) and (3), the duration of the "relevant period" is—
- (a) in the case of any relevant listed premises that have been listed in relation to SC for at least 12 complete calendar months prior to the suspension of SC, the 12 complete calendar months that preceded SC's suspension; or
 - (b) in the case of any relevant listed premises that have been listed in relation to SC for less than 12 complete calendar months prior to the suspension of SC—
 - (i) if the premises have been listed in relation to SC for at least one calendar month prior to the suspension of SC, the number of complete calendar months prior to that suspension during which the premises were listed in relation to SC, or
 - (ii) if the premises have not been listed in relation to SC for at least one calendar month prior to the suspension of SC, the portion of that month, expressed as a fraction, prior to the suspension of SC during which the premises were listed in relation to SC.

Adjustments to suspended contractor monthly payments to take account of premises closures or changes of ownership

4.—(1) Subject to paragraph (3), where premises cease to be listed in relation to a contractor (SC) after SC has been suspended from a pharmaceutical list, as respects the period after those premises cease to be so listed, no account is to be taken of pharmaceutical services provided by SC at those premises prior to SC's suspension in the calculation of a SCMP.

(2) For these purposes, where the premises cease to be listed in relation to SC after the start of a calendar month, SC remains entitled to a proportion of—

- (a) the element of the SCMP; or

(a) 2006 c. 41.

(b) the SCMP,

that related to those premises, calculated by reference to the number of days in that month during which the premises were listed in relation to SC divided by the total number of days in that month.

(3) Paragraph (1) does not apply in circumstances where premises cease to be listed in relation to SC as a consequence of the relocation of the business at those premises to new premises elsewhere in the area of the Primary Care Trust that is paying the SCMP.

(4) For the avoidance of doubt, no payments are payable under this Determination in respect of any period when SC no longer has any premises listed in relation to SC on the Primary Care Trust's pharmaceutical list.

Additional payments: increasing turnover

5.—(1) If a Primary Care Trust is satisfied that a suspended contractor (SC) to whom it is required to pay a SCMP would, but for the suspension, have been entitled to receive payments under Part VIA or VIB for a particular month in respect of particular premises that in total are higher than the amount in respect of payments under that Part that was included in the calculation of SC's SCMP for that month, it must make an additional payment to that contractor.

(2) The amount of the additional payment is to be the difference between the contractor's SCMP and the amount the SCMP would have been if the higher total referred to in sub-paragraph (1) had instead been the total of payments under Part VIA or VIB in respect of the particular premises that had been used in the appropriate place in the calculation of SC's SCMP.

Additional payments: temporary cover

6.—(1) If—

- (a) a person (X) other than a suspended contractor (Y) has been listed in relation to relevant listed premises; and
- (b) the Primary Care Trust is satisfied that Y is paying X a payment (in addition to any agreed share of the payments under paragraphs 3 and 5) in respect of the provision of professional services by a chemist (Z),

the Primary Care Trust must make an additional payment to Y in respect of that provision of professional services.

(2) The amount of the additional payment is to be the cost to X of the professional services provided by Z, up to a maximum of £150 per day.

Arrangements for claims and making payments

7.—(1) Payment of an SCMP, or of an additional payment under paragraph 5 or 6, is to be made in arrears as soon as is practicable after the end of the month to which the payment relates, but—

- (a) in the case of SCMPs, they are only payable if, before the first monthly payment, by the end of the month after the first month in respect of which a suspended contractor (SC) wishes to claim SCMPs, SC has notified the Primary Care Trust from whose list SC is suspended that SC wishes to claim SCMPs; or
- (b) in the case of additional payments under paragraph 6, they are only payable if, by the end of the month after the month in respect of which SC wishes to claim the additional payment, SC has notified that Primary Care Trust that it wishes to claim an additional payment.

(2) Where it is reasonable to do so, payments under this determination may be withheld, temporarily or permanently, if SC does not provide the Primary Care Trust with the information that it reasonably requires in order to establish entitlement to, or the correct level of, payments under this determination.

(3) If SC's first SCMP is due but a Primary Care Trust is only able to make a reasonable estimate of the amount that is due, it must pay a reasonable estimate of the amount that is due, and

thereafter adjust (where it is able to do so) future SCMPs to take account of any underpayment or overpayment that has arisen because of the use of that estimate.

(4) For the avoidance of doubt—

- (a) sub-paragraph (3) is without prejudice to the Primary Care Trust's powers to recover overpayments under regulation 98(6) of the 2012 Regulations (payments to suspended chemists); and
- (b) the payments to be made under this determination are the payments to be made by the Primary Care Trust to SC and not the payments to be made by the Primary Care Trust to any person who is providing pharmaceutical services instead of SC because of SC's suspension from the Primary Care Trust's pharmaceutical list.

Revocations and transitional arrangements

8.—(1) The following determinations (to the extent that they still have effect in relation to England) are revoked in relation to England—

- (a) The Determination made by the Secretary of State under regulation 58 of the National Health Service (Pharmaceutical Services) Regulations 2005(a) (payments to suspended chemists), and regulation 18A of the National Health Service (Pharmaceutical Services) Regulations 1992(b) (payments to suspended chemists), signed on 1st April 2005; and
- (b) the Payments to Suspended Chemists Determination 2009, signed on 3rd December 2009.

(2) Paragraph 12(5) of Schedule 7 to the 2012 Regulations (transitional provisions – other continuing matters: NHS chemists) applies in relation to payments to a suspended contractor in respect of a period of suspension that preceded the appointed day (as a consequence of which, decisions on payments in respect of the period of suspension that preceded the appointed day, and any appeals relating to those decisions, are to be in accordance with the 2005 Regulations and with the determinations mentioned in paragraph (1)).

Signed by authority of the Secretary of State for Health



20th July 2012

Jeannette Howe
Head of Pharmacy
Department of Health

EXPLANATORY NOTE

The following example is intended to illustrate the method of calculation of suspended contractor monthly payments under this Determination.

A pharmacy contractor is suspended by a Primary Care Trust after close of business on 14th February 2013 and on that date has three sets of premises listed in relation to them on the Primary Care Trust's pharmaceutical list: one (premises X) has been listed for two years; the second (premises Y) has been listed since the 15th May 2012; and the third (premises Z) has been listed since the start of February 2013.

In the 12 months prior to 1st February 2013, the contractor's income from the relevant fees and allowances at premises X was £120,000; in the eight months prior to 1st February 2013, the contractor's income from the relevant fees and allowances at premises Y was £96,000; and in the first two weeks of February 2013, the contractor's income from the relevant fees and allowances

(a) Prior to its revocation, regulation 58 was amended by S.I. 2006/3373. The 2005 Regulations were revoked with effect from 1st September 2012 by the National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909).
(b) S.I. 1992/662; prior to its revocation in relation to England, regulation 18A was inserted by S.I. 1996/698 and amended by 2002/2469. The 1992 Regulations were revoked in relation to England by the National Health Service (Pharmaceutical Services) Regulations 2005 (S.I. 2005/641).

at premises Z was £4,000. Accordingly, the reference remuneration for the contractor is $(£120,000 \div 12 = £10,000) + (96,000 \div 8 = £12,000) + (£4,000 \div 0.5 = £8,000) = £30,000$. For February 2013, the amount due will be $£30,000 \times (14 \div 28) = £15,000$, and from March 2013 onwards, the amount will be £30,000 – unless any or all of the premises close or are sold. So for example, if, with effect from 16th June 2013, premises Z are sold to another contractor, the reference remuneration for June 2013 is adjusted to £26,000 and from July 2013 to £22,000.

