

EXECUTIVE NOTE

The National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2007 SSI/2007/317

The above instrument was made in exercise of the powers conferred on Scottish Ministers by sections 27(2), 69(1) and (2), 105(7) and 108(1) of the National Health Service (Scotland) Act 1978 and all the other powers enabling them in that behalf. The instrument is subject to negative resolution procedure.

Policy Objective

The purpose of this instrument is to correct an error in regulation 8(8)(b) of the National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2007 (S.S.I. 2007/139) (“the 2007 Regulations”). The provisions laid down in the 2007 Regulations were intended to maintain the existing policy as to amounts refundable in respect of unexpired prescription pre-payment certificates (PPCs), as stated in regulation 8(8)(b) of the National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2001 (S.S.I. 2001/430). However, an error in regulation 8(8)(b) of the 2007 Regulations unintentionally raised the amount payable in respect of each unused month of a 12 month PPC from one twelfth of the cost of a PPC to 50%.

In the opinion of the Scottish Executive the inclusion in regulation 8(8)(b) of “50%” instead of “1/12” was a palpable mistake and error which would be interpreted by the courts as such and therefore had no legal effect. In other words, the courts would interpret regulation 8(8)(b) as if “50%” read “1/12”.

Effects of These Amendments

These amending regulations regularise the legal position in that they reinstate the correct figure in regulation 8(8)(b) i.e. they provide that one twelfth of the cost of a 12 month PPC is refundable per complete month of remaining validity.

These amendments will have effect from 1 July 2007 in respect of refund applications arising from patient deaths which occur after that date. The Scottish Executive is of the view that there is no need to give retrospective effect to these amendments because the position is clear in law.

In the interests of clarity and consistency refunds payable in respect of 4 month PPCs should also be presented as a fraction rather than a percentage. To that end, regulation 8(8)(a) is amended to show the amount refundable per complete, unused month as $\frac{1}{4}$ of the cost, rather than 25%.

Financial Effects

This instrument will have no financial implications for the Scottish Executive or NHSScotland. Amounts refunded in respect of unexpired PPCs will not increase.

Scottish Executive Health Department
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