

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – The Health Service in England

Emergency powers

Schedule 3 – Pharmaceutical remuneration

521. This Schedule inserts new Schedule 12A into the NHS Act.
522. Paragraph 1 of the new Schedule makes provision in respect of interpretation. It defines “drugs” by reference to the meaning given in section 126 of the NHS Act so that this term includes listed appliances (such as stoma care products) as well as drugs. It also defines “pharmaceutical remuneration” so that this term includes both contractors who provide NHS pharmaceutical services and contractors who provide NHS local pharmaceutical services (which would be provided under direct contracts with the NHS Commissioning Board).
523. Paragraph 2 of the new Schedule sets out the arrangements for how pharmaceutical remuneration is to be apportioned amongst CCGs. This largely mirrors current funding flows for NHS pharmaceutical services expenditure.
524. Sub-paragraph (1) of paragraph 2 provides that the NHS Commissioning Board must determine the elements of pharmaceutical remuneration which will be apportioned to CCGs in relation to the relevant financial year in accordance with that sub-paragraph.
525. Sub-paragraph (2) of paragraph 2 provides that the elements of pharmaceutical expenditure to be apportioned each financial year, which the NHS Commissioning Board has determined in accordance with sub-paragraph (1), are to be referred to as “designated elements”.
526. Sub-paragraph (3) of paragraph 2 requires the NHS Commissioning Board to notify each CCG of its determination of the designated elements of pharmaceutical remuneration on which the apportionment to CCGs during the financial year is based.
527. Sub-paragraph (4) of paragraph 2 provides that the NHS Commissioning Board must apportion among all CCGs the sums paid by it for each designated element as the Board thinks appropriate. For example, the NHS Commissioning Board could determine that the drug costs for prescriptions written in Scotland but dispensed in England are to be shared across all CCGs in an equitable way. This would reflect existing arrangements whereby such costs are shared equitably across all PCTs (since such costs cannot be attributed to an individual PCT and will not be capable in future of being attributed to an individual CCG).
528. Sub-paragraph (5) of paragraph 2 provides that when the NHS Commissioning Board is apportioning the sums paid by it to CCGs under sub-paragraph (4), the NHS Commissioning Board may, in particular, take into account the financial consequences of the prescriptions issued by GP practices in the CCG in the same way that they will

*These notes refer to the Health and Social Care Act 2012
(c.7) which received Royal Assent on 27 March 2012*

be responsible for the financial consequences of referral decisions. It is intended that this will provide incentives for CCGs to work with practices in the CCG to look in the round at how to achieve the best overall health outcomes from the resources available.

529. Sub-paragraph (6) of paragraph 2 provides that the NHS Commissioning Board may deduct the amount of pharmaceutical remuneration it has apportioned to a CCG from the sums it would otherwise pay to the CCG under section 223H and where it does so it must notify the CCG.
530. Sub-paragraph (7) of paragraph 2 provides that the Secretary of State may direct the NHS Commissioning Board that a particular element (or elements) of pharmaceutical remuneration should not to be included in a determination the NHS Commissioning Board makes under sub-paragraph (1). For example, the Secretary of State might direct the NHS Commissioning Board that the cost of dental prescriptions is not to be included in a determination by the Board under sub-paragraph(1).
531. Sub-paragraph (8) of paragraph 2 provides that the NHS Commissioning Board, when determining the overall allocation to a CCG under section 223H of the NHS Act, must take account of the effect of the new Schedule 12A. The NHS Commissioning Board must therefore take account of pharmaceutical needs, alongside other relevant healthcare needs, when determining the overall allocation.
532. Sub-paragraph (9) of paragraph 2 provides that, for the purposes of sections 223H, 223I(3), and paragraph (16) of Schedule 1A, any amount of pharmaceutical remuneration apportioned by the NHS Commissioning Board for a given financial year which is notified to CCGs under sub-paragraph (6) is to be treated as expenditure of the CCG which is attributable to the performance of its functions in the relevant year.
533. Paragraph 3 of the new Schedule makes provision for the reimbursement by the NHS Commissioning Board of other pharmaceutical remuneration. Sub-paragraph (1) makes clear that paragraph 3 does not apply to elements of pharmaceutical remuneration which are designated elements under paragraph 2(2) or other remuneration of a prescribed description. Sub-paragraph (2) makes provision for the NHS Commissioning Board to require a person to reimburse it for any pharmaceutical remuneration to which paragraph 3 applies if the drugs or appliances in question were ordered by that person or ordered in the course of the delivery of a service arranged by that person. This paragraph does not relate to the pharmaceutical remuneration attributable to CCGs. Rather, it enables the NHS Commissioning Board to require providers who deliver services that give rise to pharmaceutical expenditure to cover the costs that may arise. The NHS Commissioning Board would, for example, under sub-paragraph (2), be able to require reimbursement from an NHS foundation trust for the costs of the drugs prescribed by one of its employees (or any such costs incurred in the course of the delivery of services arranged by that person) which are dispensed in the community by a pharmaceutical contractor. Sub-paragraph (3) provides that any such sums due can be recovered summarily as a civil debt.
534. [Paragraph 4](#) provides that the NHS Commissioning Board may, with the express consent of the Secretary of State, delegate any of its functions under Schedule 12A to a Special Health Authority or arrange for its functions to be exercised by any other person. This would, for example, enable existing arrangements to continue if so desired whereby the NHS Business Services Authority makes payments to contractors for the provision of pharmaceutical services on behalf of PCTs.