
STATUTORY INSTRUMENTS

2018 No. 384

**NATIONAL HEALTH SERVICE,
ENGLAND AND WALES
NATIONAL HEALTH SERVICE, SCOTLAND
HEALTH AND PERSONAL SOCIAL
SERVICES, NORTHERN IRELAND**

The Health Service Medicines (Price Control Penalties
and Price Control Appeals Amendment) Regulations 2018

<i>Made</i>	- - - -	<i>19th March 2018</i>
<i>Laid before Parliament</i>		<i>20th March 2018</i>
<i>Coming into force</i>	- -	<i>11th April 2018</i>

The Secretary of State for Health and Social Care makes the following Regulations in exercise of the powers conferred by sections 265(1), (2), (5) and (6) and 272(7) and 272(8) of the National Health Service Act 2006⁽¹⁾, having consulted in accordance with section 265(9) of that Act⁽²⁾ the industry body⁽³⁾ and any other body which appears to the Secretary of State appropriate to represent UK producers.

Citation and commencement

1. These Regulations may be cited as the Health Service Medicines (Price Control Penalties and Price Control Appeals Amendment) Regulations 2018 and come into force on 11th April 2018.

Section 262 of the National Health Service Act 2006: Penalties

2.—(1) Paragraph (2) applies where, for the supply of a health service medicine, a manufacturer or supplier charges a price in excess of the limit specified in a direction given by the Secretary of

(1) 2006 c.41; section 265 has been amended by the Health Service Medical Supplies (Costs) Act 2017 (c.23), sections 6(3), (4), 7(5) and 10(7) to (14). See section 275(1) of the National Health Service Act 2006 for the definition of “regulations” which is relevant to the powers being exercised.

(2) Inserted by the Health Service Medical Supplies (Costs) Act 2017, section 10(13).

(3) See section 266(6) of the National Health Service Act 2006, which contains the relevant definition of “the industry body”.

State under section 262(1)(a) of the National Health Service Act 2006(4) (power to control prices) on or after the date on which the direction takes effect.

(2) Where this paragraph applies, the manufacturer or supplier is liable to pay to the Secretary of State a penalty, in respect of the period starting on the date which the direction takes effect, calculated on a daily basis in accordance with the Schedule read with regulations 3(3) and 4(2), until the price charged by the manufacturer or supplier for the supply of the health service medicine complies with the limit specified in the direction.

Demands

3.—(1) The Secretary of State may make a demand for payment of the penalty from a manufacturer or supplier liable to pay a penalty under regulation 2(2).

(2) A demand made under paragraph (1) must be made by way of issuing a written notice to that manufacturer or supplier and must state—

- (a) the amount of the penalty calculated in accordance with the Schedule up to the date on which the demand is made;
- (b) the date before which the amount referred to in paragraph (a) must be paid;
- (c) the daily rate at which the penalty continues to accrue until the price charged by the manufacturer or supplier for the supply of the health service medicine complies with the limit specified in the direction referred to in regulation 2(1); and
- (d) the manufacturer's or supplier's appeal rights.

(3) For the purposes of calculating the amount of a penalty by reference to a number of days, the day on which the manufacturer or supplier complies with the limit specified in the direction referred to in regulation 2(1) does not count towards the calculation of the number of days.

Appeals

4.—(1) A manufacturer or supplier in respect of whom the Secretary of State has made a demand for payment of a penalty issued by way of a notice under regulation 3(2) has by virtue of this paragraph a right of appeal against that demand in accordance with the Health Service Medicines (Price Control Appeal) Regulations 2000(5).

(2) If a manufacturer or supplier sends a notice of an appeal to the Tribunal in accordance with regulation 4 of the Health Service Medicines (Price Control Appeal) Regulations 2000 (time for and manner of making an appeal), in respect of a demand issued by way of a notice under regulation 3(2), the period beginning on the date that notice of an appeal is received by the Tribunal to the date on which the appeal is finally determined or is withdrawn (including both dates) is discounted for the purposes of the calculation of the number of days in respect of which the manufacturer or supplier supplies the health service medicine in excess of the limit specified in the direction referred to in regulation 2(1).

Amendment of the Health Service Medicines (Price Control Appeals) Regulations 2000

5.—(1) The Health Service Medicines (Price Control Appeals) Regulations 2000 are amended as follows.

- (2) In regulation 7 (appointment of tribunal) omit paragraph (9).
- (3) In regulation 26 (hearing to be in public) omit paragraph (2).

(4) 2006 c. 41; section 262 was amended by the Health Service Medical Supplies (Costs) Act 2017, section 4. See section 266(1) (b) of the National Health Service Act 2006 which empowers the Secretary of State to exercise the powers under section 262(1) (a) by giving directions to a specific manufacturer or supplier.

(5) S.I. 2000/124 as amended by S.I. 2000/870, 2006/680 and 2007/1898.

- (4) Omit regulation 38 (supervision by the Council on Tribunals).

Annual review

- 6.—(1) Before the end of the review period, the Secretary of State must—
- (a) carry out a review of these Regulations;
 - (b) set out the conclusions of the review in a report; and
 - (c) publish the report.
- (2) The report must in particular—
- (a) set out the objectives intended to be achieved by the scheme established by these Regulations;
 - (b) assess the extent to which these objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (3) Under this regulation, “review period” means the period of one year beginning on the date of the coming into force of these Regulations.

Signed by the authority of the Secretary of State for Health and Social Care.

19th March 2018

O’Shaughnessy
Parliamentary Under-Secretary of State,
Department of Health and Social Care

SCHEDULE

Regulation 2(2)

1. The daily penalty referred to in regulation 2(2) must be calculated by reference to the entries in Columns (1), (2) and (3) of the table below as follows—

- (a) Column (1) specifies the manufacturer’s or supplier’s total annual turnover in the United Kingdom which is as stated in the manufacturer’s or supplier’s most recent individual accounts;
- (b) Column (2) specifies the daily penalty which accrues for the first 14 days of contravention by reference to the manufacturer’s or supplier’s total annual turnover in the United Kingdom;
- (c) Column (3) specifies the daily penalty which accrues on the 15th day, and each subsequent day, of contravention by reference to the manufacturer’s or supplier’s total annual turnover in the United Kingdom.

Table

<i>Column (1)</i>	<i>Column (2)</i>	<i>Column (3)</i>
<i>Total annual turnover in the United Kingdom</i>	<i>Daily penalty for first 14 days</i>	<i>Daily penalty for subsequent days</i>
Less than £100 million	£2,500	£5,000
£100 million or more	£5,000	£10,000

2. For the purposes of the table, the total annual turnover in the United Kingdom of a new manufacturer or supplier will be assumed to be less than £100 million.

3. In this Schedule—

“accounting reference period” has the meaning given to it under section 391 of the Companies Act 2006⁽⁶⁾ (accounting reference periods and accounting reference date);

“individual accounts” means accounts of the manufacturer or supplier prepared in accordance with section 394 of the Companies Act 2006⁽⁷⁾ (duty to prepare individual accounts); and

“new manufacturer or supplier” means a manufacturer or supplier that is within its first accounting reference period.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations relate principally to the circumstances where, for the supply of a health service medicine, a manufacturer or supplier charges in excess of the limit specified in a direction given under section 262(1)(a) of the National Health Service Act 2006 (“NHS Act 2006”).

⁽⁶⁾ 2006 c. 46.

⁽⁷⁾ Amended by S.I. 2012/2301.

Regulation 2 provides that in these circumstances the manufacturer or supplier is liable to pay, on demand, a daily penalty to the Secretary of State – and the Schedule contains provisions relating to the calculation of that daily penalty.

Regulation 3 makes provision for the Secretary of State to make a demand for payment by way of issuing a notice to the manufacturer or supplier.

Regulation 4 provides the manufacturer or supplier that has been issued with a penalty notice with a right of appeal, and ensures that the period during which an appeal is ongoing is discounted for the purposes of calculating daily penalties.

The Health Service Medicines (Price Control Appeals) Regulations 2000⁽⁸⁾ (“the Appeals Regulations”) make provision for the appeals process where a manufacturer, supplier or where relevant other UK producer has a right of appeal in relation to enforcement decisions made under sections 260 to section 265 of the NHS Act 2006.

Regulation 5 amends the Appeals Regulations by removing the reference to the Council of Tribunals which has been abolished.

Regulation 6 requires the Secretary of State to review the operation and effect of these Regulations and publish a report setting out the conclusions of that review a year after the commencement of these Regulations and annually after that.

⁽⁸⁾ S.I. 2000/124 as amended by S.I. 2000/870, 2006/680 and 2007/1898.