

The National Health Service (Pharmaceutical Services) (Amendment) (Wales) Regulations 2005

The purpose of these Regulations is to amend the National Health Service (Pharmaceutical Services) Regulations 1992 (“the principal Regulations”) in so far as they apply to pharmaceutical services in Wales. They are intended to “enable pharmacies to provide a greater range of services and to be rewarded for the range and quality of those services.” The Regulations are made in English only because the Minister made the determination on 26 January that it was both inappropriate and not reasonably practicable for the draft to be in both languages.

Standing Order 11.7

The following points have been identified for reporting under SO 11.7.

Substantial substitutions are made in the Schedules to the principal Regulations. In particular, regulation 8 inserts new paragraphs 3 to 33 into Schedule 2.

In the new paragraph 7(2)(a) there is an incorrect reference to “sub-paragraphs (e) to (k) of regulation 4(1) of the Remission of Charges Regulations”. These are defined in the principal Regulations as the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988. Regulation 4(1) only has sub-paragraphs (a) and (b), but regulation 4(2) goes as far as (k) and should be substituted. [Minor typographical error] In the new paragraph 8(8)(c) the expression “for additional to bath water” appears. This should read “for addition to bath water”. [Minor typographical error]

The new paragraph 21(2) commences with “Subject to sub-paragraph (3)”. Sub-paragraph (2) deals with the exhibiting of information. Sub-paragraph (3) deals with the submission of a return. Whilst related, they are not inter-dependent, so the words with “Subject to sub-paragraph (3)” are not appropriate. [Standing Order 11.7(v)]

The new paragraph 23(3) contains a list of different ways in which the Local Health Board can finalise the issue of pharmacy opening hours. The words used are “the Local Health Board shall-“, followed by a list of alternatives. The Board cannot do all of them. Accordingly the word “or” should be inserted after sub-paragraph (b) to make it clear that they are alternatives. [Standing Order 11.7(v)]

Paragraph 23(4)(b) refers to “the chemist’s right of appeal under paragraph (6).” The right of appeal is dealt with in sub-paragraph (5), not (6), as is correctly referred to in sub-paragraph (8). [Standing Order 11.7(v)]

Paragraph 24(4) refers in the penultimate line to “by virtue of paragraph 23(1)(a)”. That paragraph merely reads “(a) people in the neighbourhood;”. The connection is not apparent. The relevance cross-reference needs to be made clearer, or it should be removed as unnecessary. [Standing Order 11.7(v)]

The provisions of paragraph 24 from sub-paragraph (5) onwards contain a number of cross-references to other sub-paragraphs of paragraph 24. They are all one lower than

they should be, as if an additional sub-paragraph had been inserted without the consequential changes being made. [Standing Order 11.7(v)]

In the first line of the new paragraph 35, the reference to paragraph 36 should be a reference to paragraph 34. [Standing Order 11.7(v)]

The introductory part of paragraph 36 contains two incorrect references. They are to paragraphs 37(a) and 36(1), neither of which exists. The intention is not clear. [Standing Order 11.7(v)]

Regulation 11 makes transitional provisions and regulation 11(3)(a) refers to complaints “made in accordance with the provisions of paragraphs 10A or 10B” of the principal Regulations before the current Regulations have effect. Paragraph 10A contains the complaint provision, and paragraph 10B follows on, but does not contain a separate power to complain. Thus complaints are made either in accordance with the provisions of “paragraphs 10A and 10B” or “paragraph 10A”. [Standing Order 11.7(v)]

These are all minor drafting or typographical errors appropriate for correction by a Memorandum of Corrections.

Observations

These Regulations use gender-specific language throughout. The Committee is aware that the reason for this is to maintain consistency with the language of the 1992 Regulations being amended. The Committee is not happy with this explanation and will be giving further consideration as to how the decision against the use of gender specific language, that the Assembly adopted at the beginning of the First Assembly, can be applied to pre-devolution legislation. A similar issue is that of amending legislation made in English only before devolution, and this too will be the subject of further consideration by the Committee.

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