SCOTTISH STATUTORY INSTRUMENTS

2003 No. 158

NATIONAL HEALTH SERVICE

The National Health Service (Dental Charges) (Scotland) Regulations 2003

Made - - - -	*6th March 2003*
Laid before the Scottish Parliament - - - -	*10th March 2003*
Coming into force - -	*1st April 2003*

The Scottish Ministers, in exercise of the powers conferred by sections 4, 25, 70(1A), 71(1), 71A, 73, 74(b), 75, 105 and 108(1) of, and paragraphs 2(6) and 3(3) and (5) of Schedule 11 to, the National Health Service (Scotland) Act 1978(**1**), sections 20(1), (3), (5) and (8), 39(1) and 40(2) of the National Health Service (Primary Care) Act 1997(**2**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Dental Charges) (Scotland) Regulations 2003 and shall come into force on 1st April 2003.

(2) In these Regulations–

"the Act" means the National Health Service (Scotland) Act 1978;

(**1**) 1978 (c. 29); section 25 was amended by the Health Services Act 1980 (c. 53) ("the 1980 Act"), Schedules 6 and 7, S.I. 1981/432, the Health and Social Security and Social Security Adjudications Act 1983 (c. 41), section 16, the Dentists Act 1984, section 54(1) and Schedule 5, paragraph 12, the Health and Medicines Act 1988 (c. 49) ("the 1988 Act"), Schedule 2, paragraph 11, the National Health Service and Community Care Act 1990 (c. 19) ("the 1990 Act"), sections 40(2) and (3) and 66(1) and Schedule 9, paragraph 19(6) and the National Health Service (Primary Care) Act 1997 (c. 46), section 41(10) and (12) and Schedule 2, paragraph 43 and Schedule 3 and was extended by the 1988 Act, section 17; sections 70(1A) and 71A were inserted by, and section 71(1) was amended by, the 1988 Act, section 11; section 73 was amended by the Health and Social Security Act 1984 (c. 48) ("the 1984 Act"), Schedule 8, Part 1 and the 1990 Act, section 66(1) and Schedule 9, paragraph 19(11); section 74 was amended by the 1990 Act, Schedule 9, paragraph 19(12); section 75 was amended by the 1984 Act, Schedule 8; section 105(7), which contains provisions relevant to the making of regulations, was amended by the 1980 Act, Schedule 6, paragraph 5 and Schedule 7, paragraph 24, the 1990 Act, Schedule 9 and the Health Act 1999 (c. 8), sections 59 and 65 and Schedule 4, paragraph 60; section 108(1) contains definitions of "prescribed" and "regulations" relevant to the exercise of the statutory powers under which these Regulations are made; paragraph 2(6) of Schedule 11 was amended by the 1984 Act, Schedule 8; paragraph 3(3) and (5) of Schedule 11 was amended by the 1980 Act, Schedule 5, paragraph 7(3). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(**2**) 1997 (c. 46); section 40(2) contains definitions of "prescribed" and "regulations" relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

"the 1997 Act" means the National Health Service (Primary Care) Act 1997;

"the 1996 Regulations" means the National Health Service (General Dental Services) (Scotland) Regulations 1996(**3**);

"the Agency" means the Common Services Agency for the Scottish Health Service constituted under section 10 of the Act;

"basic type" means, in relation to a dental appliance, a type no more expensive than that which is clinically necessary for such a reasonable standard of dental efficiency and oral health as is necessary to safeguard general health;

"the Board" means the Scottish Dental Practice Board constituted under section 4 of the Act(**4**);

"bridge" means a fixed or a removable bridge which takes the place of any teeth;

"capitation arrangement" has the same meaning as in the 1996 Regulations;

"continuing care arrangement" has the same meaning as in the 1996 Regulations;

"denture" does not include an obturator;

"emergency" has the same meaning as in the 1996 Regulations;

"estimate" has the same meaning as in the 1996 Regulations(**5**);

"Health Board" means a Health Board constituted under section 2 of the Act;

"NHS trust" shall be construed in accordance with section 12A(1) of the Act(**6**);

"patient" includes a person who pays or undertakes to pay a charge on behalf of a person to whom a dental appliance is supplied or to whom some other service is provided;

"pilot scheme" means a pilot scheme under Part I of the 1997 Act under which personal dental services are provided;

"Statement of Dental Remuneration" means the Statement(**7**) published under regulation 22 of the 1996 Regulations;

"Statement remuneration" has the meaning given by regulation 4(2) and (3), and, in relation to a service provided under a pilot scheme, means the amount that would be payable if the service were provided as part of general dental services;

"supply", in relation to an appliance, includes its replacement;

"treatment" has the same meaning as in the 1996 Regulations; and

"treatment on referral" has the same meaning as in the 1996 Regulations.

(3) Unless the context otherwise requires, a reference to a numbered regulation or Schedule is to the regulation in, or Schedule to, these Regulations bearing that number and a reference in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number.

Charges for supply of dental appliances

2.—(1) Subject to paragraph 2(3)(**8**), (4)(**9**) and (8) of Schedule 11 to the Act (which provides for circumstances in which no charge may be made) and to paragraph (2), a charge of the amount

(**3**) S.I. 1996/177; relevant amending instruments are S.I. 1999/724 and S.S.I. 1999/51, 2000/188 and 352, 2001/368 and 2002/99 and 268.
(**4**) Section 4 was amended by the 1988 Act, sections 12(3) and 25(2) and Schedule 3. The name of the Board was changed from "the Scottish Dental Estimates Board" by section 12 of the 1988 Act.
(**5**) The definition of "estimate" in regulation 2(1) of S.I. 1996/177 was amended by S.S.I. 1999/51.
(**6**) Section 12A was inserted by section 31 of the 1990 Act.
(**7**) Published by the Scottish Executive.
(**8**) Paragraph 2(3) was amended by the 1988 Act, section 25 and Schedule 2, paragraph 15(2).
(**9**) Paragraph 2(4) was amended by the 1980 Act, section 26(2) and Schedule 2, paragraph 6(3) and the 1988 Act, sections 11(8) and 25(1) and Schedule 2, paragraph 15(3).

provided for by regulation 4 may be made and recovered in respect of the supply under the Act of dentures and bridges.

(2) No charge shall be made and recovered under paragraph (1) in respect of a supply, otherwise than as part of general dental services, to a person who has undergone operative procedures affecting the mandible, the maxilla or the soft tissues of the mouth as part of treatment for invasive tumours.

Charges for other dental services

3.—(1) Subject to section 71(1)(b) and (c) of, and paragraph 3(4) of Schedule 11 to, the Act(**10**) and to section 20(6) of the 1997 Act (which provide for circumstances in which no charge may be made) and to paragraph (2), a charge of the amount provided for by regulation 4 may be made and recovered in respect of the provision of services as part of general dental services or under a pilot scheme.

(2) No charge shall be made and recovered under paragraph (1) in respect of–

(a) the supply of a dental appliance described in regulation 2(1);

(b) a visit by a dental practitioner to a patient;

(c) the opening by a dental practitioner of the practitioner's surgery outside the practitioner's normal opening hours in order to provide treatment in an emergency;

(d) the attendance at the surgery of a dental practitioner providing treatment in an emergency of a medical practitioner or of another dental practitioner, specifically with a view to the administration of sedation in connection with treatment in an emergency; or

(e) treatment (including treatment under a pilot scheme) in the circumstances described in paragraph 7 (repair or replacement of restorations), 13(2) (treatment on referral) or 17(4) (occasional treatment) of Schedule 1 (terms of service) to the 1996 Regulations(**11**).

Calculation of charges

4.—(1) Subject to paragraphs (4) and (5), the amount of the charge which may be made and recovered under regulations 2(1) and 3(1) is 80% of the Statement remuneration (rounded down, where necessary, to the nearest whole penny).

(2) In these Regulations "Statement remuneration" means–

(a) in relation to the supply (whether or not as part of general dental services) of an appliance described in regulation 2(1), the remuneration provided for by the Statement of Dental Remuneration as that payable to a dental practitioner for the supply of an appliance of that type; or

(b) in relation to the provision of services described in regulation 3(1), the total amount provided for by the Statement of Dental Remuneration as that payable to the dental practitioner for the provision of those services but where a patient has been accepted by a dental practitioner under a continuing care arrangement or a capitation arrangement or for treatment on referral, does not include the payment which, in accordance with that Statement, falls to be made to the dentist in respect of such an arrangement or referral.

(3) For the purposes of paragraph (2), where the Statement remuneration for any service is a fee of such amount as the Board may in its discretion approve, whether or not subject to a maximum, the amount is–

(a) if the Board has approved a fee for the service, the amount of fee so approved, notwithstanding any subsequent variation of that amount on appeal; or

(**10**) Paragraph 3(4) was amended by the 1980 Act, section 26(2) and Schedule 5, paragraph 7(2).
(**11**) Paragraph 7 was amended by S.I. 1998/2224.

(b) if the Board has refused to approve a fee for the service, the amount of any fee authorised for it on appeal.

(4) Where a dental practitioner–

(a) has, under a contract or an arrangement for the provision of general dental services or services under a pilot scheme, begun to provide for a patient services which include the supply of an appliance described in regulation 2(1); and

(b) has referred that patient, for the supply of that appliance otherwise than as part of general dental services or services under a pilot scheme, to a Health Board or NHS trust or to a hospital or other person or body with which arrangements have been made for the provision of services under the Act,

the amount of the charge for that supply shall be calculated in accordance with Schedule 1, and the dental practitioner shall provide the Health Board, NHS trust, hospital or other person or body with a written statement of the amounts mentioned in sub-paragraphs (a) and (b) of paragraph 1 of that Schedule.

(5) The amount of the charges payable under regulations 2(1) and 3(1) in respect of all dental appliances supplied and other services provided in pursuance of any one contract or arrangement shall not exceed £372 in the aggregate; and £372 is the sum prescribed for the purposes of paragraph 3(3) of Schedule 11 to the Act and section 20(5) of the 1997 Act.

Conditions for exemption under the Act

5.—(1) It is a condition of the exemption under paragraph 2(4) of Schedule 11 to the Act in respect of the supply of a dental appliance to a person otherwise than as part of general dental services or under a pilot scheme that –

(a) a written declaration on a form provided for that purpose by the Scottish Ministers shall be made to the effect that that person is, at the time of the examination or first examination leading to the supply of the appliance, within one of the specified categories; and

(b) where the Scottish Ministers or an NHS trust so requires, the specified evidence shall be supplied by or on behalf of that person.

(2) It is a condition of the exemptions under–

(i) paragraphs 2(4)(**12**) and 3(4) of Schedule 11 to the Act in respect of the supply of a dental appliance, or other services provided, to a person as part of general dental services; and

(ii) section 20(6) of the 1997 Act in respect of the supply of a dental appliance, or other services provided, to a person under a pilot scheme;

that–

(a) a written declaration on a claim for remuneration or estimate, or in the case of services provided under a pilot scheme on a form to like effect, shall be made to the effect that that person is, on the date of the contract or arrangement for the service, within one of the specified categories; and

(b) where the Board so requires, the specified evidence shall be supplied by or on behalf of that person.

(3) The declarations referred to in paragraphs (1)(a) and (2)(a) shall be made by the person to whom the services are to be provided, except that where the application for services is made by another person on behalf of the person to whom the services are to be provided, it shall be made instead by the person who applies for the services.

(**12**) Paragraph 3(4) was amended by the 1980 Act, section 26(2) and Schedule 5, paragraph 7(2).

(4) Nothing in paragraph (1)(b) or (2)(b) prevents the Scottish Ministers, the NHS trust or the Board from accepting evidence other than the specified evidence as establishing that a person is within one of the specified categories.

(5) In this regulation "the specified categories" means the categories of person specified in column (1) of Schedule 2 and "the specified evidence", in relation to any of those categories, means the evidence specified in relation to it in column (2) of that Schedule.

Making and recovery of charges

6.—(1) Where any charge is payable under regulation 2(1) in respect of the supply of a dental appliance under the Act otherwise than as part of general dental services or services provided under a pilot scheme, the Scottish Ministers, a Health Board or NHS trust may–

(a) on arranging to supply it, make the appropriate charge; and

(b) on supplying it or having it available for supply, recover the appropriate charge from the patient (if it has not previously been paid).

(2) In providing general dental services or services provided under a pilot scheme for which a charge may be made under regulation 2(1) or 3(1), a dental practitioner –

(a) may, on arranging to provide the service, make the appropriate charge;

(b) shall require the patient to acknowledge, on the appropriate part of the claim for remuneration or estimate, or, in the case of services provided under a pilot scheme, on a form to like effect, and before that claim or estimate or form to like effect is sent to the Board, the patient's obligation to pay a charge which is made;

(c) may, on providing the service, recover the charge from the patient (if it has not previously been paid); and

(d) shall, on receiving a sum in payment (in full or in part) of the charge, give a receipt for it on a form provided for that purpose by the Health Board or a form to the like effect.

(3) Where a declaration in support of a claim for exemption has been made under regulation 5(2)(a) but the claim is not substantiated, and in consequence of the claim a dental practitioner has not recovered a charge in respect of an appliance supplied or other services provided, a Health Board may recover the charge from the person who made the declaration (whether or not the obligation to pay has been acknowledged).

Remission and repayment

7. The charges which may be made and recovered by virtue of the preceding provisions of these Regulations are subject to the provisions of regulations made under section 75A(a) of the Act providing for remission of repayment(**13**).

Charges for more expensive supplies and repairs

8.—(1) Where the Scottish Ministers or a NHS trust –

(a) supply a dental appliance which is, at the request of the person supplied, of a type more expensive than the basic type; or

(b) repair such a dental appliance at a cost exceeding that of repairing a dental appliance of the basic type,

(**13**) Section 75A was inserted by the Social Security Act 1988 (c. 7), section 14(2) and amended by the 1988 Act, section 14(2) and Schedule 2, paragraph 13 and by the 1990 Act, section 66(1), and Schedule 9, paragraphs 19(13)(a) and (b).