SCOTTISH STATUTORY INSTRUMENTS

2001 No. 430

NATIONAL HEALTH SERVICE

The National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2001

Made - - - -	*21st November 2001*
Laid before the Scottish Parliament - - - -	*22nd November 2001*
Coming into force - -	*14th December 2001*

The Scottish Ministers, in exercise of the powers conferred by sections 19(2), 25(2), 27(2), 69(1) and (2), 75(a), 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2001 and shall come into force on 14th December 2001.

Interpretation

2.—(1) In these Regulations–

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

"accepted disablement" means physical or mental injury or disease which is accepted by the Scottish Ministers as attributable to or aggravated by service in the armed forces of the Crown or such other service as they may determine;

(**1**) 1978 c. 29; section 19(2) was amended by the National Health Service (Primary Care) Act 1997 (c. 46) ("the 1997 Act"), Schedule 2, paragraph 39(2); section 25(2) was amended by the European Communities (Medical, Dental and Nursing Professions) (Linguistic Knowledge) Order 1981 (S.I. 1981/432), article 4(3), by the Health and Medicines Act 1988 (c. 49), Schedule 2, paragraph 11 and by the National Health Service and Community Care Act 1990 (c. 19) ("the 1990 Act"), section 40(2) and Schedule 9, paragraph 19(6), the 1997 Act, Schedule 2, paragraph 43 and Schedule 3, Part I and the Health Act 1999 (c. 8) ("the 1999 Act"), section 56(3); section 27(2) was amended by the National Health Service (Amendment) Act 1986 (c. 66), section 3(3) and the 1990 Act, Schedule 9, paragraph 19(7); section 105(7), which was amended by the Health Services Act 1980 (c. 41), Schedule 6, paragraph 5 and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24, and by the 1999 Act, Schedule 4, paragraph 60, contains provisions relevant to the making of regulations; section 108(1) contains definitions of "prescribed" and "regulations" relevant to the exercise of the statutory powers under which these Regulations are made. See section 66(1) of the 1999 Act in relation to any provision of that Act being taken to be a pre-commencement enactment within the meaning of the Scotland Act 1998 (c. 46) ("the 1998 Act"). The functions of the Secretary of State were transferred to the Scottish Ministers, by virtue of section 53 of the 1998 Act.

"appliance" means an appliance, other than a contraceptive appliance, which is a listed appliance within the meaning of section 27(1) of the Act;

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

"chemist" includes any person, other than a doctor, providing pharmaceutical services;

"dentist" means a registered dental practitioner;

"doctor" means a registered medical practitioner;

"drugs" includes medicines but does not include contraceptive substances;

"elastic hosiery" means anklet, legging, knee-cap, below-knee or thigh stocking;

"exemption" means any remission granted under or by virtue of these Regulations;

"exemption certificate" means a certificate issued pursuant to these Regulations authorising a person to claim exemption from charges payable under these Regulations;

"the General Medical Services Regulations" means the National Health Service (General Medical Services) (Scotland) Regulations 1995(**2**);

"medical list" has the meaning assigned to it by regulation 4(1) of the General Medical Services Regulations;

"nurse prescriber" means a nurse or health visitor of a description specified in paragraph (2);

"out-patient" means a person receiving treatment under the Act otherwise than under Part II of the Act and who is not for the purpose of receiving that treatment resident in a hospital;

"patient" means–

(a) any person for whose treatment a doctor is responsible under his terms of service or in connection with a pilot scheme; or

(b) any person who applies to a chemist for the provision of pharmaceutical services, and includes for the purposes of these Regulations a person acting on behalf of such a person;

"pharmaceutical services" means services provided under section 27 of the Act;

"pilot scheme" shall be construed in accordance with section 1(1) of the National Health Service (Primary Care) Act 1997(**3**);

"prescription form" means a form on which the provision of pharmaceutical services may be ordered by a Board or an NHS trust or by a doctor or dentist pursuant to the provisions of their terms of service or a dentist performing personal dental services in accordance with a pilot scheme under Part I of the National Health Service (Primary Care) Act 1997, or by a nurse prescriber and which contains on its reverse side a form of declaration of entitlement to exemption;

"terms of service" has the meaning respectively in respect of a doctor, a chemist or a dentist assigned to it in the General Medical Services Regulations, the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995(**4**) or the National Health Service (General Dental Services) (Scotland) Regulations 1996(**5**);

"the Travelling Expenses and Remission of Charges Regulations" means the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 1988(**6**);

"treatment" includes examination and diagnosis.

(**2**) S.I. 1995/416 to which there are amendments not relevant to these Regulations.
(**3**) 1997 c. 46.
(**4**) S.I. 1995/414 to which there are amendments not relevant to these Regulations.
(**5**) S.I. 1996/177 to which there are amendments not relevant to these Regulations.
(**6**) S.I. 1988/546 as amended by S.I. 1989/393 and 616, 1990/551, 917 and 1665, 1991/575, 1992/754, 1993/642 and 2049, 1995/700 and 2381, 1996/429 and 2391, 1997/1012 and 2455 and 1988/2772 and S.S.I. 1999/63 and 2000/79.

(2) The specified description of a nurse or health visitor mentioned in the definition of "nurse prescriber" in paragraph (1) is–

(a) a person who is registered in Part 1 or 12 of the register maintained under the Nurses, Midwives and Health Visitors Act 1997(**7**) (referred to below in this paragraph as "the professional register"), has a district nursing qualification additionally recorded in the professional register maintained under rule 11 of the Nurses, Midwives and Health Visitors Rules 1983(**8**), and is, at the time of ordering the listed drug or medicine or listed appliance–

(i) employed as a district nurse by a Board or an NHS trust; or

(ii) employed as a nurse by a doctor whose name is included in a medical list or who, at that time, is assisting in the performance of personal medical services under a pilot scheme; or

(b) a person who is registered in Part 11 of the professional register as a health visitor and is, at the time of ordering the listed drug or medicine or listed appliance–

(i) employed as a health visitor by a Board or NHS trust; or

(ii) employed as a health visitor by a doctor whose name is included in a medical list or who, at that time, is assisting in the performance of personal medical services under a pilot scheme,

against whose name (in each case) is recorded in the professional register an annotation signifying that that person is qualified to order drugs, medicines and appliances for patients.

(3) For the purpose of these Regulations–

(a) the supply of quantities of the same drug in more than one container against an order on one prescription form shall be deemed to be the supply of only one quantity of a drug; and

(b) the supply against an order on one prescription form of more than one appliance of the same type or the supply against an order on one prescription form of two or more component parts of the same appliance shall be deemed to be the supply of only one appliance, however any piece of elastic hosiery shall be deemed to be a separate appliance.

(4) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation in, or as the case may be, the Schedule to these Regulations which bears that number, and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

Supply of drugs and appliances by chemists

3.—(1) A chemist who provides pharmaceutical services to a patient shall make and recover from the patient–

(a) in respect of the supply of an appliance specified in column 1 of Schedule 1 a charge in the sum specified in column 2 of Schedule 1 in respect of that appliance; and

(b) in any other case, in respect of the supply of each quantity of a drug and each appliance not so specified, a charge in the sum of £6.10;

except where a declaration of entitlement to exemption on the prescription form is duly completed by or on behalf of the patient.

(**7**) 1997 c. 24.
(**8**) Approved by S.I. 1983/873 to which there are amendments not relevant to these Regulations.

(2) For the purposes of this regulation, where a quantity of a drug ordered on one prescription form is ordered to be supplied by instalments during a period of not more than 14 days, only one charge shall be payable and it shall be payable upon the supply of the first instalment.

(3) A chemist, notwithstanding the provisions of his terms of service, shall be under no obligation to provide pharmaceutical services in respect of an order on a prescription form unless the chemist is first paid by the patient the charge payable under paragraph (1)(a) or (1)(b) or the exception set out in paragraph (1) is applicable.

(4) A chemist who makes and recovers a charge under paragraphs (1) or (2) shall, if so required by the patient, give the patient a receipt for the amount received on a form provided for the purpose by the Board which contains forms of declaration in support of an application for repayment.

(5) Any sum which a Board is under a duty to pay or cause to be paid to a chemist in respect of the provision by the chemist of pharmaceutical services, other than such provision to which the exception set out in paragraph (1) applies, shall be reduced by the sum specified in paragraph (1)(b) in respect of each quantity of a drug supplied and by the sum specified in paragraph (1)(b), or as the case may require, the sum specified in column 2 of Schedule 1 in respect of each appliance supplied as part of such services.

Supply of drugs and appliances by doctors

4.—(1) A doctor, who provides pharmaceutical services to a patient in pursuance of the provisions of regulation 34 of the General Medical Services Regulations (and otherwise than under paragraph 15(1) of Schedule 1 to those Regulations) shall make and recover from that patient–

(a) in respect of the supply of an appliance specified in column 1 of Schedule 1 a charge in the sum specified in column 2 of Schedule 1 in respect of that appliance; and

(b) in any other case, in respect of the supply of each quantity of a drug and each appliance not so specified, a charge in the sum specified in regulation 3(1)(b),

except where the patient or a person on the patient's behalf declares that the patient is entitled to exemption.

(2) For the purposes of this regulation where a doctor supplies a quantity of a drug by instalments during a period of not more than 14 days, only one charge shall be payable and it shall be payable upon the supply of the first instalment.

(3) A doctor shall be under no obligation to supply drugs or appliances in respect of which the doctor is required by the provisions of paragraph (1) to make and recover a charge, unless the doctor is first paid by the patient the charge prescribed by paragraph (1)(a) or (1)(b), or the exception set out in paragraph (1) is applicable.

(4) A doctor shall as soon as practicable after the end of each month send a sum of money equal to the total of the charges required to be made and recovered by the doctor pursuant to the provisions of paragraph (1) during that month to the Board on whose medical list the doctor is included, or, if the doctor is included on more than one medical list, to the Board which pursuant to the provisions of the Statement published under regulation 35 of the General Medical Services Regulations causes payment to be made to the doctor for the provision of general medical services on behalf of all the Boards concerned.

(5) A doctor who makes and recovers a charge under paragraphs (1) or (2) shall, if so required by the patient, give the patient a receipt for the amount received on a form provided for the purpose by the Board which contains forms of declaration in support of an application for repayment.

Supply of drugs and appliances to out-patients

5.—(1) A Board or an NHS trust which at a hospital supplies to an out-patient drugs (otherwise than for administration in the hospital) or appliances for the purposes of the patient's treatment, shall make and recover from the out-patient–

(a) in respect of the supply of an appliance specified in column 1 of Schedule 1 or of Schedule 2 a charge in the sum specified in column 2 of Schedule 1 or of Schedule 2 in respect of that appliance; and

(b) in respect of the supply of each quantity of a drug and each appliance not so specified, a charge in the sum specified in regulation 3(1)(b).

(2) For the purposes of this regulation only one charge in respect of each quantity of a drug supplied by a hospital or by a chemist against an order on one prescription form shall be payable notwithstanding that such quantity is by order of the prescriber to be supplied on more than one day during a period of 14 days.

(3) A Board or an NHS trust which makes and receives a charge under this regulation shall, if so required by the patient, give the patient a receipt for the amount paid on a form which contains forms of declaration in support of an application for repayment.

Fabric supports and wigs

6.—(1) A Board or an NHS trust which, otherwise than under Part II of the Act, supplies to a patient for the purposes of the patient's treatment an appliance of a description specified in column 1 of Schedule 3 shall make and recover from the patient a charge in the sum specified in column 2 of Schedule 3 in respect of that appliance.

(2) A Board or an NHS trust which makes and recovers a charge under this regulation shall, if so required by the patient making the payment, give the patient a receipt for the amount received.

(3) No charge under this regulation shall be payable by or on behalf of a patient to whom the Scottish Ministers have issued an exemption certificate in respect of treatment for accepted disablement in respect of the supply of an appliance which the patient requires for the purpose of the treatment of that disablement.

(4) Where a patient has paid a charge which, but for paragraph (3), would be authorised by paragraph (1) the patient may claim a refund of that charge by presenting to the Board or, as the case may be, the NHS trust the receipt for it together with–

(a) the certificate mentioned in paragraph (3); and

(b) if the patient was referred by a doctor to the Board or, as the case may be, the NHS trust for treatment, either–

(i) a certificate from the doctor certifying that it was for the accepted disablement; or

(ii) a statement that such a certificate was surrendered to the Board or, as the case may be, the NHS trust on or before the supply of the appliance.

(5) The Board or, as the case may be, the NHS trust, if satisfied by the evidence so produced that the charge to which the receipt relates was not properly payable, shall repay to the patient the amount of the charge and return any certificate to which paragraph (3) refers which the patient may have submitted.

Exemptions

7.—(1) Subject to the provisions of paragraphs 1(1) and 4 of Schedule 11 to the Act and to the following provisions of this regulation, no charge shall be payable under these Regulations other than regulation 6 by–