Draft Regulations laid before Parliament under section 126(1A) of the National Health Service Act 1977, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No. [ ]

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Dental Charges) Regulations 2005

Made - - - -	*2005*
Coming into force - -	*1st April 2006*

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred upon her by sections 79, 83A and 126(4) of, and Schedule 12ZA to, the National Health Service Act 1977(**1**);

In accordance with section 126(1A) of that Act(**2**), a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and application

1.—(1) These Regulations may be cited as the National Health Service (Dental Charges) Regulations 2005 and shall come into force on 1st April 2006.

(2) These Regulations apply in relation to England.

Interpretation

2.—(1) In these Regulations—

(**1**) 1977 c.49. Section 79 was inserted by section 183 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43) ("the 2003 Act"). Section 83A was inserted by section 14(1) of the Social Security Act 1988 (c.7) and amended by section 25 of, and paragraph 6 of Schedule 2 to, the Health and Medicines Act 1988 (c.49), article 2 of S.I. 1998/2385, article 3(1) of, and paragraph 5 and 13 of Schedule 1 to, S.I. 2000/90, section 66(1) of, and paragraph 18 (5) of Schedule 9 to the National Health Service and Community Care Act 1990 (c.19) ("the 1990 Act"), section 2(1) of, and paragraph 40 of Schedule 1 to, the Health Authorities Act 1995 (c.17) , section 41(10) of, and paragraph 19 of Schedule 2 to, the National Health Service (Primary Care) Act 1997 (c.46), section 2(5) of, and paragraphs 1 and 32 of Part 1 of Schedule 2 to, the National Health Service Reform and Health Care Professions Act 2002 (c.17) ("the 2002 Act") and by sections 34 and 184 of, and paragraphs 23 and 32(b) of Schedule 4 to, and paragraphs 7 and 31 of Schedule 11 to, the 2003 Act. Section 126(4) was amended by section 65(2) of the 1990 Act, section 65(1) of, and paragraphs 4 and 37 of Schedule 4 to, the Health Act 1999 (c.8) ("the 1999 Act"), section 67(1) of, and paragraphs 5 and 13 of Part 1 of Schedule 5 to, the Health and Social Care 2001(c.15) and section 6(3)(c) and 37(1) of the 2002 Act. Schedule 12ZA was inserted by section 183 of the 2003 Act. The functions of the Secretary of State under these provisions are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), as amended by section 66(5) of the 1999 Act. See section 128(1) of the National Health Service Act 1977, as amended by section 26 of the 1990 Act, for the meaning of "prescribed" and "regulations".

(**2**) Section 126(1A) was inserted by section 183(3)(b) of the Health and Social Care Act 2003 (c.43).

"the Act" means the National Health Service Act 1977;

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

"course of treatment" means—

(a) an examination of a patient, an assessment of his oral health, and the planning of any treatment to be provided to that patient as a result of that examination and assessment, and

(b) the provision of any planned treatment (including any treatment planned at a time other than at the time of the initial examination) to that patient up to the date on which—

(i) each and every component of the planned treatment has been provided to the patient, or

(ii) the patient either voluntarily withdraws from, or is withdrawn by the provider from, treatment,

by one or more providers of relevant primary dental services;

"dental appliance" means a denture or bridge and for the purposes of this definition, a denture includes an obturator;

"Dental Charges Regulations 1989" means the National Health Service (Dental Charges) Regulations 1989(**3**);

"dental public health services" means services provided under section 16CB(4)(c) of the Act;

"General Dental Services Regulations 1992" means the National Health Service (General Dental Services) Regulations 1992(**4**);

"orthodontic appliance" means a device used in the mouth to move or immobilise the teeth in order to correct or prevent malocclusion;

"orthodontic treatment" means treatment of, or treatment to prevent, malocclusion of the teeth and jaws, and irregularities of the teeth;

"patient" includes (when the context requires) 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 relevant primary dental service is provided;

"patient record" means a form supplied by a Primary Care Trust for the purpose of maintaining a record of treatment, and may include an electronic form;

"prison" includes a young offender institution but not a secure training centre or a naval, military or air force prison, and for the purposes of this definition—

(a) "secure training centre" means a place in which offenders subject to detention and training orders under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (offenders under 18: detention and training orders)(**5**) may be detained and given training and education and prepared for their release, and

(b) "young offender institution" means a place for the detention of offenders sentenced to detention in a young offender institution or to detention in a young offender institution as part of a longer custodial sentence, including custody for life;

"prisoner" means a person who is detained in a prison in which medical, dental, ophthalmic, pharmaceutical or nursing services are provided under the Act by, or under arrangements made by, a Primary Care Trust otherwise than by virtue of section 18A(5) of the Act (provision of services etc);

(**3**) S.I. 1989/394. This has been amended by S.I. 1990/1638, S.I. 1991/581, S.I. 1992/369, S.I. 1993/419, S.I. 1994/530, S.I. 1995/444, S.I. 1996/389, S.I. 1997/558, S.I. 1998/490, S.I. 1998/2221, S.I. 1999/544, S.I. 2000/596, S.I. 2001/707, S.I. 2001/2807, S.I. 2002/544, S.I. 2002/2353, S.I. 2003/586, S.I. 2003/2382, S.I. 2004/696, S.I. 2004/1091 and S.I. 2005/576

(**4**) S.I. 1992/661. Relevant amendments are to paragraph 4 of Schedule 1 to S.I. 1992/661. Paragraph 4 of Schedule 1 was amended by S.I. 1996/2051, S.I. 2001/2421, S.I. 2001/3963 and S.I. 2002/2469,

(**5**) 2000 c.6.

"relevant primary dental services" means dental treatment (including urgent treatment and orthodontic treatment) provided and dental appliances and orthodontic appliances supplied—

(i) under section 16CA(2) of the Act (dental services provided by a Primary Care Trust or Local Health Board);

(ii) under a general dental services contract; or

(iii) in accordance with arrangements under section 28C of the Act (personal medical and dental services);

"relevant Primary Care Trust" means in relation to a person providing relevant primary dental services—

(i) where a Primary Care Trust is a party to a general dental services contract or an agreement under section 28C of the Act (personal medical or dental services) for the provision of relevant primary dental services with that person, that Primary Care Trust;

(ii) where a Primary Care Trust is providing relevant primary dental services itself under section 16CA(2) of the Act (dental services provided by a Primary Care Trust or Local Health Board) or pursuant to an agreement under section 28C of the Act (personal medical or dental services), that Primary Care Trust;

(iii) where an NHS trust or NHS foundation trust is providing relevant primary dental services pursuant to an agreement under section 28C of the Act (personal medical or dental services) for the provision of relevant primary dental services, the Primary Care Trust in whose area all or most of the hospitals, establishments and facilities of the NHS trust or NHS foundation trust are situated; or

(iv) where a Primary Care Trust, NHS trust or NHS foundation trust supplies dental appliances under the Act otherwise than as part of relevant primary dental services, that Primary Care Trust or the Primary Care Trust in whose area all or most of the hospitals, establishments and facilities of the NHS trust or NHS foundation trust are situated;

"restoration" means a filling, root filling, inlay, porcelain veneer or crown;

"trauma" means damage to teeth, gingival tissues or alveoli caused by a force arising outside the mouth, resulting in mobility, luxation, subluxation or fracture of the hard tissues or injury to the soft tissues;

"treatment" means all proper and necessary dental treatment which a provider of relevant primary dental services usually undertakes for a patient and which the patient is willing to undergo, including examination, diagnosis, advice on and planning of treatment, preventive care and treatment, periodontal treatment, conservative treatment, surgical treatment, the supply and repair of dental appliances and orthodontic appliances, orthodontic treatment, the taking of radiographs, the provision of sedation in connection with such treatment, the supply of listed drugs and the issue of prescriptions whether or not provided on referral to the provider of relevant primary dental services;

"urgent treatment" means one or more of the treatments listed in Schedule 4 that are provided to a person in circumstances where—

(a) prompt care and treatment is provided because, in the opinion of the dental practitioner, that person's oral health is likely to deteriorate significantly, or the person is in severe pain by reason of his oral condition; and

(b) care and treatment is provided only to the extent that is necessary to prevent that significant deterioration or address that severe pain,

and "urgent course of treatment" shall be construed accordingly;

(2) A reference to the Secretary of State includes a reference to a Special Health Authority or Primary Care Trust exercising functions on her behalf.

Charges for the provision of dental services

3.—(1) Subject to paragraph (2) below, a charge of the amount provided for in, and calculated in accordance with, regulation 4 may be made and recovered in respect of—

(a) the provision of relevant primary dental services; and

(b) the supply of dental appliances under the Act otherwise than as part of relevant primary dental services.

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

(a) a supply under the Act, otherwise than as part of relevant primary dental services, of dental appliances 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;

(b) a prisoner;

(c) the provision of dental public health services;

(d) the removal of sutures; or

(e) the examination and assessment of a patient leading to—

(i) the issue of a prescription,

(ii) the repair of a dental appliance,

(iii) the arrest of bleeding, or

(iv) the removal of sutures,

if, at the same time, no other treatment listed in Schedule 1, 2 or 4 is provided and no dental appliances listed in Schedule 3 are supplied.

Calculation of charges

4.—(1) Subject to paragraph (6), a Band 1 charge, that is to say a charge of £15.50, may be made and recovered in respect of any course of treatment, the entirety of the components of which are set out in Schedule 1, provided as part of relevant primary dental services.

(2) Subject to paragraph (6), a Band 2 charge, that is to say a charge of £42.40, may be made and recovered in respect of any course of treatment, one or more of the components of which are set out in Schedule 2, provided as part of relevant primary dental services, irrespective of whether the remainder of the components of the course of treatment are set out in Schedule 1.

(3) Subject to paragraph (6), a Band 3 charge, that is to say a charge of £189.00 may be made and recovered in respect of any course of treatment, one or more of the components of which are set out in Schedule 3, provided as part of relevant primary dental services, irrespective of whether the remainder of the components of the course of treatment are set out in Schedule 1 or 2.

(4) A Band 3 charge, that is to say a charge of £189.00, may be made and recovered in respect of dental appliances supplied under the Act otherwise than as part of relevant primary dental services.

(5) A Band 1 charge, that is to say a charge of £15.50, may be made and recovered in respect of any urgent course of treatment, the entirety of the components of which are set out in Schedule 4, provided as part of relevant primary dental services.

(6) For the purposes of paragraphs (1) to (3) and (5) above, only one charge may be made for any one course of treatment or urgent course of treatment provided, notwithstanding that a number of individual treatments may be provided or dental appliances or orthodontic appliances supplied during that course of treatment and a number of individual treatments may be provided during that urgent course of treatment.

(7) Where—

(a) during a course of treatment a patient voluntarily withdraws from, or is withdrawn by the provider from, treatment; and

(b) at least one of the components of that course of treatment has not been completed,

the charge which may be made and recovered for that course of treatment is the charge which is payable under paragraphs (1) to (3) and (5) of this regulation for the components of the course of treatment which have been completed but not for any components which are incomplete.

(8) Where a dental appliance, an orthodontic appliance or a type of dental treatment is not listed in one of Schedules 1 to 4, the Secretary of State shall determine into which of the Schedules that appliance or treatment should fall so that the charge for a course of treatment or urgent course of treatment, or the supply of a dental appliance under the Act otherwise than as part of relevant primary dental services, can be determined in accordance with paragraphs (1) to (5) above.

Effect of referral to another provider of dental services on the calculation of charges

5. Where a patient has commenced a course of treatment or urgent course of treatment with one provider of relevant primary dental services but is referred to—

(a) an alternative provider of relevant primary dental services for part of the course of treatment or urgent course of treatment; or

(b) a hospital or other service provider under Part 1 of the Act for the supply of a dental appliance as part of the course of treatment,

only one charge for the course of treatment or urgent course of treatment calculated in accordance with regulation 4 may be made and recovered from the patient.

Circumstances in which charges cannot be made for treatment that occurs after a course of treatment is completed

6.—(1) Subject to paragraphs (2) and (3), where a provider of relevant primary dental services has provided a restoration to a patient as part of a course of treatment or an urgent course of treatment for which the relevant charge calculated in accordance with regulation 4 has been made, or would have been made if the patient was not exempt from being charged, and within the relevant period that restoration has to be repaired or replaced to secure oral health, no charge may be made or recovered for the repair or replacement of the restoration.

(2) Paragraph (1) shall not apply where—

(a) within the relevant period, a person other than the provider of relevant primary dental services who carried out the original restoration has provided treatment on the tooth in respect of which the restoration was provided;

(b) the patient was advised at the time of the restoration, and it was recorded on the patient record, that—

(i) the restoration was intended to be temporary in nature, or

(ii) a different form of restoration was more appropriate but, notwithstanding that advice, the patient insisted on the restoration that was provided; or

(c) the repair or replacement is required as a result of trauma.

(3) In this regulation, "the relevant period" means the 12 month period beginning on the date on which the restoration was provided and ceasing 12 months after that date.

(4) Where a provider of relevant primary dental services has completed a course of treatment other than an urgent course of treatment but, within 2 months of that course of treatment being completed, the same provider determines that the patient requires further treatment which falls within the same or a lower charging band, calculated in accordance with paragraphs (1) to (4) of regulation 4, as the