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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 158**

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

**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;

“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(1);

“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(2);

“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(3);

“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(4);

“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(5) published under regulation 22 of the 1996 Regulations;

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(1) 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.

(2) 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.

(3) The definition of “estimate” in regulation 2(1) of S.I. 1996/177 was amended by S.S.I. 1999/51.

(4) Section 12A was inserted by section 31 of the 1990 Act.

(5) Published by the Scottish Executive.

“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)(6), (4)(7) 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 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(8) 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(9).

### **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).

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(6) Paragraph 2(3) was amended by the 1988 Act, section 25 and Schedule 2, paragraph 15(2).

(7) 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).

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

(9) Paragraph 7 was amended by S.I. 1998/2224.

(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
- (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)(10) 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.

(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).

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

### **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<sup>(11)</sup>.

### **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,

they or, as the case may be, the NHS trust may make and recover from the patient a charge equal to the difference between the cost of supplying or repairing the appliance and the cost of supplying or repairing an appliance of the basic type, in addition to any charge under regulation 2(1).

### **Charges for replacement – dental services**

9.—(1) Where a dental practitioner providing general dental services or providing services under a pilot scheme replaces a dental appliance supplied as part of those services and it is determined in accordance with Schedule 3 that the replacement is necessitated by –

- (a) an act or omission on the part of the person supplied; or
- (b) if the act or omission occurred when the person supplied was under 16 years of age, an act or omission of the person supplied or of the person having charge of the person supplied when the act or omission occurred,

the dental practitioner may make and recover a charge from the relevant person.

(2) The amount of the charge to be made and recovered under paragraph (1) is, subject to paragraph (3), the Statement remuneration for the supply of the dental appliance.

(3) If the Health Board considers–

- (a) that payment of the full amount of the charge under paragraph (1) would involve undue hardship to the relevant person; or
- (b) that the replacement, though necessitated by the relevant person’s act or omission, was not wholly necessitated by lack of reasonable care on the part of the relevant person,

it may determine that the charge shall not be payable, or that its amount shall be reduced.

(4) In this regulation, “relevant person” means–

- (a) where paragraph (1)(b) applies, the person having charge of the person supplied when the act or omission occurred;
- (b) in any other case, the person supplied.

### **Discontinuation of treatment – dental services**

10. A dental practitioner providing general dental services or services under a pilot scheme may decline–

- (a) to begin treatment; or
- (b) where treatment has begun, to continue with it,

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<sup>(11)</sup> 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).

until the practitioner or the Health Board has received payment of the amount of any charge payable to the practitioner or, as the case may be, the Health Board in accordance with these Regulations.

#### **Reduction of remuneration and accounting for charges – general dental services**

**11.**—(1) Subject to paragraph (2), the remuneration which would otherwise be payable by the Agency to a dental practitioner providing general dental services shall be reduced by the amount of the charges authorised by these Regulations in respect of those services.

(2) Paragraph (1) does not apply to remuneration under Determination II of the Statement of Dental Remuneration.

(3) A dental practitioner remunerated under Determination II of the Statement of Dental Remuneration shall account for and pay to the Health Board, in such manner as it may require, the amount of any charges recovered from a patient under these Regulations.

#### **Functions of the Scottish Dental Practice Board in relation to pilot schemes**

**12.** The Board shall have the following powers in relation to pilot schemes:—

- (a) to approve, or refuse to approve, the fees referred to in regulation 4(3) and for that purpose to direct a dental practitioner to submit to the Board such information as it may require;
- (b) to require specified evidence to be supplied for the purposes of regulation 5(2)(b); and
- (c) to refer a matter mentioned in paragraph 1 of Schedule 3 to the relevant Health Board.

#### **Transitional provision**

**13.** Where, on or after 1st April 2003, appliances are supplied, or other dental services are provided, in pursuance of a contract or arrangement made before that date for the provision of general dental services or provision of dental services under a pilot scheme, regulation 4(5) shall not have effect in respect of that supply or provision and regulation 14 shall be treated as not having effect in relation to regulation 4(5) of the National Health Service (Dental Charges) (Scotland) Regulations 1989(12).

#### **Revocations**

**14.** The Regulations specified in column (1) of Schedule 4 are revoked to the extent specified in column (3) of that Schedule.

St. Andrew's House, Edinburgh  
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