

# HEALTH ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part II - the National Health Service: Scotland

##### *Section 59: Recovery of charges and payments*

328. *Section 59* inserts new sections 99ZA and 99ZB into the 1978 Act and amends section 105(3). It contains provisions for a new civil penalty to deter patient evasion of NHS charges. The penalty will apply to NHS charges for prescriptions, dental treatment or optical services, including those provided for hospital outpatients, and to payments or benefits such as NHS optical vouchers or free NHS sight tests.
329. It is intended that regulations will be made to provide for a penalty to be imposed where a person fails to pay an NHS charge, or claims a payment to which he is not entitled, towards the cost of an NHS charge or service. Exemptions from charges are granted on a number of grounds, including age, certain medical conditions, receipt of some Social Security benefits or low income. The regulation making power in the new section 99ZB will allow regulations to provide for a penalty notice to be sent requiring the patient to pay the original charge and an additional penalty, where it is found that an exemption, reduction or payment has been claimed incorrectly.
330. Under the powers in new section 99ZB, regulations will be made which will set out the information that penalty notices must contain, the amount of the penalty payable, the payment period and the arrangements for payment. The amount of the penalty will be subject to the maximum in subsection (2) which is either £100 or 5 times the unpaid charge, whichever is the less. Subsection (3) provides a power allowing these maxima to be changed by Order which, under amended section 105(3), would be subject to affirmative resolution procedure in Parliament.
331. Under new sections 99ZB(4) and (5), regulations may also provide that, where the penalty charge is not paid within the period prescribed, a surcharge may be levied of up to 50% of the penalty charge. All sums payable under the penalty provisions will be recoverable as a civil debt.
332. Where more than one person may be liable for payment, for example, where a patient has a representative who signs forms or claims on his behalf, new section 99ZA(3) provides for them to be liable for payment “jointly and severally”. In practice, either the patient or the representative could be held liable to pay according to the circumstances but the penalty may only be recovered once. Under new section 99ZB(7)(b), a person shall not be liable if he shows that he did not act “wrongfully, or with lack of due care”.