

1987 No. 1634 (S.119)

NATIONAL HEALTH SERVICE, SCOTLAND

**The National Health Service (General Dental Services)
(Scotland) Amendment Regulations 1987**

Made - - - - - *15th September 1987*

Laid before Parliament *17th September 1987*

Coming into force *1st October 1987*

The Secretary of State, in exercise of powers conferred on him by sections 25(1), (2) and(5), 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(a), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the National Health Service (General Dental Services) (Scotland) Amendment Regulations 1987 and shall come into force on 1st October 1987.

(2) In these Regulations, “the principal Regulations” means the National Health Service (General Dental Services) (Scotland) Regulations 1974(b).

Amendment of the principal Regulations

2. After Part VII of the principal Regulations there shall be inserted the following Part:—

“Part VIII

PAYMENTS IN CONSEQUENCE OF SUSPENSION

Interpretation of Part VIII

33. In this Part of these Regulations, unless the context otherwise requires—

- (a) “claimant” means a person claiming to be entitled to, or receiving, a payment;
- “erasure” means the erasure of a person’s name from the register;
- “fees” does not include remuneration by way of salary;
- “Health Committee” means the Committee of that name being a Committee of the General Dental Council and constituted in accordance with section 2(4) of the Dentists Act 1984(c);
- “immediate suspension” means suspension by virtue of an order under section 30(3) of the Dentists Act 1984 except such a suspension terminated by the court under section 30(6) of that Act;

(a) 1978 c.29; section 25(2) was amended by S.I. 1981/432; section 25(5) was inserted by the Health and Social Services and Social Security Adjudications Act 1983 (“the 1983 Act”) (c.41), section 16(a); section 105(7) was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5, and Schedule 7, and by the 1983 Act, Schedule 9, paragraph 24; see section 108(1) for definition of “regulations”.

(b) S.I. 1974/505; the relevant amending instrument is S.I. 1986/1571.

(c) 1984 c.24.

“interim suspension order” means an order under section 32 of the Dentists Act 1984;

“payment” means a payment under Part VIII of these Regulations;

“register” means the dentists register referred to in section 14(1) of the Dentists Act 1984, and “registration” means registration in that register;

“suspension date” means the date on which suspension of a person’s registration takes effect;

- (b) a reference to a direction or order of the Health Committee is a reference to a direction or order of that Committee under the Dentists Act 1984.

Entitlement to payment

34.—(1) A dentist whose registration is suspended by an interim suspension order or by a direction or an order of the Health Committee shall be entitled to payment in accordance with this Part of these Regulations.

(2) Entitlement as provided for by paragraph (1) shall cease in the event of erasure or of termination of the said suspension.

(3) No payment shall be made to a person—

- (a) whose registration has been suspended by a direction or order of the Health Committee after he has received total payments in accordance with this Part covering twelve months of such suspension, whether in respect of one or more periods of suspension, and whether or not those twelve months were consecutive;
- (b) in respect of any part of a third or subsequent period of suspension by a direction or order of the Health Committee, no account being taken of any period of such suspension before 1st October 1987; or
- (c) in respect of any part of a period of suspension, where in the two years immediately preceding the suspension date he received no fees for the provision of general dental services.

(4) No payment shall be made to a person for any part of a period of suspension—

- (a) earlier than 1st October 1987;
- (b) earlier than 8 weeks before the date on which an application for payment is received by the Health Board, unless that Board is satisfied that the lateness of the application is due to illness or other reasonable cause;
- (c) during which his name is not included in the dental list of any Health Board;
- (d) during which he is absent from the United Kingdom;
- (e) for which he is entitled to any benefit under a contract of insurance against the risk of the suspension of his registration, or of the circumstances which led to it, or for which the Health Board is satisfied he could have been so entitled but for his failure to enter into such a contract or to pay any premium due under such a contract;
- (f) during which he is serving a term of imprisonment;
- (g) during which he is remanded in custody in connection with a criminal offence for which he is subsequently convicted; or
- (h) during which he is in breach of any condition of bail in connection with a criminal offence for which he is subsequently convicted.

Application for payment

35.—(1) An application for payment shall be made to the Health Board in whose dental list the claimant’s name was included immediately before the suspension date; and where his name was then included in the list of more than one Health Board, the application shall be made to the Health Board by which the larger or largest total amount of fees was payable to him in the two years immediately preceding that date.

(2) An application for payment shall—

- (a) be in writing;
- (b) be made by the claimant or, where he is incapable of applying, on his behalf; and

- (c) contain or be supported by such information as the Health Board may reasonably require for the purpose of establishing the claimant's entitlement to payment.

(3) Where the claimant's name was immediately before the suspension date on the dental list of one or more Health Boards and on that of one or more Family Practitioner Committees, the application for payment shall be made to whichever of those bodies by which the larger or largest total amount of fees was payable to him in the two years immediately preceding that date.

Amounts and times of payment

36.—(1) The Health Board to whom an application for payment is made in accordance with regulation 35, shall, if satisfied that, having made such enquiries as it considers relevant, the claimant is eligible for payment by virtue of regulation 34, determine that he shall in respect of any period for which he is so entitled receive payment which, subject to paragraphs (2) to (6) below, shall be calculated as follows:—

- (a) where his registration is suspended by a direction or order of the Health Committee—
- (i) £1,935 per month for each of the first six months for which he is entitled to payment, whether in respect of one or more periods of such suspension and whether or not those six months are consecutive, and
 - (ii) £967 per month thereafter;
- (b) where his registration is suspended by an interim suspension order—
- (i) where the period of interim suspension ends with an order for erasure or immediate suspension, £967 per month for the period of interim suspension, and
 - (ii) in any other case, £1,935 per month.

(2) Where in the period of two years immediately preceding the suspension date the total amount of fees received by the claimant for the provision of general dental services was less than £107,103, payment made to him shall (subject to any further reduction under paragraph (3)) be in the same proportion to the amount otherwise payable in accordance with paragraph (1) as that total amount of fees is to £107,103.

(3) Where the claimant's name was included in the dental list of the Health Board to which the application is made for a period of less than two years immediately preceding the suspension date, payment made to him shall be in the same proportion to the amount otherwise payable in accordance with paragraph (1) or paragraph (2) as the number of complete months in that lesser period is to 24.

(4) Subject to regulation 34(3)(b), where the claimant's registration has been suspended by an interim suspension order or by a direction or order of the Health Committee within a period of two years after the expiry of a previous period of such suspension, the references in paragraphs (2) and (3) above to the suspension date shall be taken as references to the suspension date applicable to that previous period.

(5) Where the Health Board has to make a determination as to payment at a time when it does not know whether or not the period of a person's interim suspension will end with an order for erasure or immediate suspension, or whether or not he will be convicted of a criminal offence, it shall make that determination as though his period of suspension did so end or he was convicted of the offence; but it shall review that determination and make appropriate adjustment as to past payment, if subsequently that period does not so end or he is not convicted of the offence.

(6) Any payment shall, so far as is reasonably practicable, be made by the Health Board at the end of each month in arrears, and an appropriate proportion of the monthly amount shall be paid where the claimant is entitled to a payment for part only of a month.

Changes in circumstances

37.—(1) A claimant shall notify the Health Board in writing immediately of any changes in his circumstances which he might reasonably consider might affect his entitlement to, or the amount of, any payment made or to be made to him in terms of this Part, and in particular of erasure, immediate suspension or termination of suspension of his registration.

(2) Where the Health Board considers, whether or not following a notification under paragraph (1), that there has been a change of circumstances affecting a claimant's entitlement to payment, it shall make such adjustment to payment as it considers to be appropriate.

Overpayments

38. Where the Health Board considers that a payment has been made to a claimant in error or in circumstances where he was not entitled to it, it shall, except to the extent that the Secretary of State on the Health Board's application directs otherwise, draw the fact of overpayment to the attention of the claimant and—

(a) where he agrees that the overpayment has occurred; or

(b) where he does not so agree but, the matter having been referred under regulation 7(1)(a) of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1974(a) for investigation, the Health Board, or the Secretary of State on appeal, decides that there has been an overpayment,

the overpayment shall be recoverable either by deduction from the fees to which the claimant is otherwise entitled or in some other manner.”.

3. In Part I of Schedule I to the principal Regulations (terms of service) paragraph 9A(b) shall be deleted and the following substituted:—

“Preventive treatment

9A. A dentist may undertake the application of topical fluoride preparations or fissure sealants to persons under the age of 16 where necessary to maintain dental health.”.

New St. Andrew's House, Edinburgh
15th September 1987

Michael B Forsyth
Parliamentary Under Secretary of State,
Scottish Office

(a) S.I. 1974/504, to which there are amendments not relevant to these Regulations.

(b) Paragraph 9A was inserted by S.I. 1986/1571.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (General Dental Services) (Scotland) Regulations 1974 ("the principal Regulations") by the insertion, by way of regulation 2, of a new Part VIII (comprising regulations 33-38) into the principal Regulations. The new Part VIII makes provision for payments to be made to dentists whose registration under the Dentists Act 1984 is suspended by an interim suspension order or by a direction or order of the Health Committee. Under section 25(4) of the National Health Service (Scotland) Act 1978 a dentist with whom arrangements have been made for the provision of general dental services and whose registration is so suspended is not permitted to provide those services in person during the suspension, although the suspension does not result in termination of the arrangements.

In particular provision is made in the new Part VIII for the following matters:-

- (a) entitlement to payment (regulation 34 of the principal Regulations), including restrictions on entitlement (regulation 34(3) and (4));
- (b) application for payment (regulation 35);
- (c) amounts and times of payment (regulation 36); two different rates of payment depending upon the circumstances of the suspension, subject also to a reduction in cases where the dentist has low earnings or has been on the dental list of a Health Board for less than two years;
- (d) changes in circumstances (regulation 37);
- (e) overpayments (regulation 38).

Regulation 3 of these Regulations amends Schedule 1 to the principal Regulations so as to enable dentists to provide fissure sealants as preventive treatment to persons under 16.