

2003 No. 158

NATIONAL HEALTH SERVICE

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

Made 6th March 2003

Laid before the Scottish Parliament 10th March 2003

Coming into force 1st April 2003

Arrangement of Regulations

1. Citation, commencement and interpretation.
2. Charges for supply of dental appliances.
3. Charges for other dental services.
4. Calculation of charges.
5. Conditions for exemption under the Act.
6. Making and recovery of charges.
7. Remission and repayment.
8. Charges for more expensive supplies and repairs.
9. Charges for replacement - dental services.
10. Discontinuation of treatment - dental services.
11. Reduction of remuneration and accounting for charges - general dental services.
12. Functions of the Scottish Dental Practice Board in relation to pilot schemes.
13. Transitional provision.
14. Revocations.

Schedule 1 Calculation of charge for supply of appliance on referral.

Schedule 2 Exemptions - categories and evidence.

Schedule 3 Manner of determining charge for replacement.

Schedule 4 Revocations.

The Scottish Ministers, in exercise of the powers conferred by sections 4, 25, 70(1A), 71(1), 71A, 73, 74(b), 75, 105 and 108(1) of, and paragraphs 2(6) and 3(3) and (5) of Schedule 11 to, the National Health Service (Scotland) Act 1978(a), sections 20(1), (3), (5) and (8), 39(1) and 40(2)

(a) 1978 (c.29); section 25 was amended by the Health Services Act 1980 (c.53) ("the 1980 Act"), Schedules 6 and 7, S.I. 1981/432, the Health and Social Security and Social Security Adjudications Act 1983 (c.41), section 16, the Dentists Act 1984, section 54(1) and Schedule 5, paragraph 12, the Health and Medicines Act 1988 (c.49) ("the 1988 Act"), Schedule 2, paragraph 11, the National Health Service and Community Care Act 1990 (c.19) ("the 1990 Act"), sections 40(2) and (3) and 66(1) and Schedule 9, paragraph 19(6) and the National Health Service (Primary Care) Act

of the National Health Service (Primary Care) Act 1997(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

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(b);

“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(c);

“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(d);

“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(e);

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

“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.

1997 (c.46), section 41(10) and (12) and Schedule 2, paragraph 43 and Schedule 3 and was extended by the 1988 Act, section 17; sections 70(1A) and 71A were inserted by, and section 71(1) was amended by, the 1988 Act, section 11; section 73 was amended by the Health and Social Security Act 1984 (c.48) (“the 1984 Act”), Schedule 8, Part 1 and the 1990 Act, section 66(1) and Schedule 9, paragraph 19(11); section 74 was amended by the 1990 Act, Schedule 9, paragraph 19(12); section 75 was amended by the 1984 Act, Schedule 8; section 105(7), which contains provisions relevant to the making of regulations, was amended by the 1980 Act, Schedule 6, paragraph 5 and Schedule 7, paragraph 24, the 1990 Act, Schedule 9 and the Health Act 1999 (c.8), sections 59 and 65 and Schedule 4, paragraph 60; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made; paragraph 2(6) of Schedule 11 was amended by the 1984 Act, Schedule 8; paragraph 3(3) and (5) of Schedule 11 was amended by the 1980 Act, Schedule 5, paragraph 7(3). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

- (a) 1997 (c.46); section 40(2) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.
- (b) 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.
- (c) 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.
- (d) The definition of “estimate” in regulation 2(1) of S.I. 1996/177 was amended by S.S.I. 1999/51.
- (e) Section 12A was inserted by section 31 of the 1990 Act.
- (f) Published by the Scottish Executive.

(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)(a), (4)(b) 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(c) 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(d).

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).

(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.

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

(b) 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).

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

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

(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)(a) 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.

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

(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).

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(a).

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.

(a) 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).

(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,

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(a).

(a) S.I. 1989/363; relevant amending instruments are S.I. 1998/2258 and S.S.I. 2000/44, 2001/69 and 2002/99.

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
6th March 2003

MALCOLM CHISHOLM
A member of the Scottish Executive

SCHEDULE 1

CALCULATION OF CHARGE FOR SUPPLY OF APPLIANCE ON REFERRAL

1. There shall first be taken an amount ("£a") which is the greater of the following:–
 - (a) the amount of the charges payable under regulations 2(1) and 3(1) which have been paid to the dental practitioner by the patient in respect of services provided under the contract or arrangement; or
 - (b) the amount of the charges payable under those regulations, including any amount already paid, which would be payable to the dental practitioner by the patient in respect of those services if no charge fell to be made in respect of the supply of the appliance.
2. Then £a shall be compared with the full amount of the charges payable to the dental practitioner by the patient in respect of services provided under the contract or arrangement ("£b") and–
 - (a) if £a equals or exceeds £b, there is no charge for the supply of the appliance;
 - (b) if £a is less than £b, the charge for the supply of the appliance is the lesser of–
 - (i) £b minus £a, or
 - (ii) 80% of the Statement remuneration for the supply of the appliance.

SCHEDULE 2

EXEMPTIONS – CATEGORIES AND EVIDENCE

<i>Column (1) Category</i>	<i>Column (2) Evidence</i>
1. Under 18 years of age.	1. The person's birth certificate
2. Under 19 years of age and receiving qualifying full-time education (within the meaning of paragraph 7 of Schedule 11 to the Act)(a).	2. The person's birth certificate and a document signed by the principal or other appropriate officer of the recognised educational establishment, or by or on behalf of the person providing instruction by other comparable means, to the effect that the person is receiving full-time instruction at the establishment or by other comparable means.
3. Expectant mother.	3. A certificate, signed by a medical practitioner, as to the pregnancy.
4. Having borne a child in the previous 12 months.	4. The child's birth certificate.

(a) Paragraph 7 of Schedule 11 was inserted by the Health Services Act 1980 (c.563), Schedule 5, paragraph 8.

SCHEDULE 3

MANNER OF DETERMINING CHARGE FOR REPLACEMENT

1. Where the Board, on considering an estimate submitted for the approval of a free replacement of a dental appliance supplied as part of general dental services, considers that there are grounds for believing that the replacement is necessitated by such an act or omission as is referred to in regulation 9(1), it may refer the matter to the Health Board for investigation.

2. The Health Board shall make such inquiry into any matter referred to it under paragraph 1 or, in the case of services provided under a pilot scheme, any such matter coming to its attention as it thinks fit and if either—

- (a) in its opinion the circumstances so require; or
- (b) the person supplied or (if he is under 16 years of age) the person in charge of the person supplied so requires,

the inquiry shall take the form of an oral hearing by a sub-committee of the Health Board appointed for the purpose which shall report to the Health Board on the matter.

3. The Health Board, having considered any report made by its sub-committee under paragraph 2—

- (a) shall determine whether the replacement is necessitated by an act or omission on the part of the person supplied or (if the act or omission occurred when the person supplied was under 16 years of age) of the person supplied or of the person having charge of the person supplied when the act or omission occurred; and
- (b) if it is so necessitated, shall determine in accordance with regulation 9(2) and (3), the amount of the charge to be made and recovered.

4. The Health Board shall communicate its determination to—

- (a) the relevant person (within the meaning of regulation 9(4));
- (b) the dental practitioner replacing the appliance; and
- (c) the Board.

SCHEDULE 4
REVOCATIONS

<i>Column (1)</i> <i>Regulations revoked</i>	<i>Column (2)</i> <i>References</i>	<i>Column (3)</i> <i>Extent of revocation</i>
The National Health Service (Dental Charges) (Scotland) Regulations 1989	S.I. 1989/363	The whole Regulations
The National Health Service (General Dental Services) (Miscellaneous Amendments) (Scotland) Regulations 1990	S.I. 1990/1772	Regulation 17
The National Health Service (Dental Services) (Miscellaneous Amendments) (Scotland) Regulations 1991	S.I. 1991/569	Regulation 7
The National Health Service (Dental Charges) (Scotland) Amendment Regulations 1992	S.I. 1992/458	The whole Regulations
The National Health Service (Dental Services)(Miscellaneous Amendments) (Scotland) Regulations 1993	S.I. 1993/523	Regulation 4
The National Health Service (Dental Charges) (Scotland) Amendment Regulations 1994	S.I. 1994/636	The whole Regulations
The National Health Service (Dental Charges) (Scotland) Amendment Regulations 1995	S.I. 1995/703	The whole Regulations
The National Health Service (Dental Charges) (Scotland) Amendment Regulations 1996	S.I. 1996/472	The whole Regulations
The National Health Service (Dental Charges) (Scotland) Amendment Regulations 1997	S.I. 1997/585	The whole Regulations
The National Health Service (Dental Charges) (Scotland) Amendment Regulations 1998	S.I. 1998/610	The whole Regulations
The National Health Service (Dental Charges) (Scotland) Amendment (No. 2) Regulations 1998	S.I. 1998/2258	The whole Regulations
The National Health Service (Dental Services)(Miscellaneous Amendments) (Scotland) Regulations 1999	S.I. 1999/724	Regulations 15, 16 and 17

<i>Column (1)</i> <i>Regulations revoked</i>	<i>Column (2)</i> <i>References</i>	<i>Column (3)</i> <i>Extent of revocation</i>
The National Health Service (Dental Charges) (Scotland) Amendment Regulations 2000	S.S.I. 2000/44	The whole Regulations
The National Health Service (Dental Charges) (Scotland) Amendment Regulations 2001	S.S.I. 2001/69	The whole Regulations
The National Health Service (General Dental Services and Dental Charges) (Scotland) Amendment Regulations 2002	S.S.I. 2002/99	Regulation 3

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate, with a number of minor drafting amendments, the provisions of the National Health Service (Dental Charges) (Scotland) Regulations 1989 (“the 1989 Regulations”). The 1989 Regulations and all subsequent amendments are revoked by regulation 14 and Schedule 4 of these Regulations.

They provide for the making and recovery of charges for dental appliances, supplied or repaired under the National Health Service (NHS) in Scotland, and for other dental treatment provided as part of the NHS general dental services or services provided under a pilot scheme.

The “Statement of Dental Remuneration” referred to in regulation 1(2) is available from NHS Boards and primary care NHS Trusts.

Regulation 4(5) increases the maximum contribution which a patient may be required to make towards the aggregate cost of dental treatment and appliances under Part II of the National Health Service (Scotland) Act 1978.

Regulation 13 is a transitional provision which ensures that the increased amount applies only where the contract or arrangement leading to the provision of such treatment and the supply of such appliances is made on or after 1st April 2003. Where the contract or arrangement was made before that date but the supply was made on or after that date then the previous rate applies.

2003 No. 158

NATIONAL HEALTH SERVICE

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

£3.00

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under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
450 03/03 19593

