

2023 No. 247

NATIONAL HEALTH SERVICE

**The National Health Service (General Dental Services)
(Miscellaneous Amendment) (Scotland) Regulations 2023**

<i>Made</i>	- - - -	<i>5th September 2023</i>
<i>Laid before the Scottish Parliament</i>		<i>6th September 2023</i>
<i>Coming into force</i>	- -	<i>1st November 2023</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 17G, 25(1), 28A(4) and 105(7) of the National Health Service (Scotland) Act 1978(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (General Dental Services) (Miscellaneous Amendment) (Scotland) Regulations 2023 and come into force on 1 November 2023.

(2) In these Regulations, “the General Dental Services Regulations” means the National Health Service (General Dental Services) (Scotland) Regulations 2010(b).

Amendment of the National Health Service (Choice of Dental Practitioner) (Scotland) Regulations 1998

2.—(1) The National Health Service (Choice of Dental Practitioner) (Scotland) Regulations 1998(c) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation)—

(a) omit the “and” at the end of the definition of “pilot scheme”,

(b) after the definition of “practice premises” insert—

““secure accommodation” has the meaning given in section 202(1) of the Children’s Hearings (Scotland) Act 2011(d); and

(a) 1978 c. 29. Section 17G was inserted by section 24 of the National Health Service (Primary Care) Act 1997 (c. 46). Section 25(1) was amended by section 15 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13). Section 28A was substituted by section 57 of the Health Act 1999 (c. 8) (“the 1999 Act”). Section 105(7) was amended by paragraph 5(1) of schedule 6 and schedule 7 of the Health Services Act 1980 (c. 53), paragraph 24 of schedule 9 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), and paragraph 60 of schedule 4 of the 1999 Act. See section 66(1) of the 1999 Act in relation to any provision of that Act being taken to be a pre-commencement enactment within the meaning of the Scotland Act 1998 (c. 46) (“the 1998 Act”). The functions of the Secretary of State, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) S.S.I. 2010/208, relevantly amended by S.S.I. 2016/53, S.S.I. 2017/289, S.S.I. 2019/174 and S.S.I. 2022/170.

(c) S.I. 1998/2259, relevantly amended by S.S.I. 2010/208.

(d) 2011 asp 1.

“young offenders institution” has the meaning given in section 19(1)(b) of the Prisons (Scotland) Act 1989^(a)”.

(c) in paragraph (3) for ““care and treatment” and “continuing care arrangement”” substitute “and “care and treatment””.

(3) Omit regulation 2(3) (procedure for choosing a dentist).

(4) In regulation 3 (exercise of choice of dentists in certain cases)—

(a) omit the “and” at the end of paragraph (c)(ii),

(b) after paragraph (c) insert—

“(ca) on behalf of any person in secure accommodation by the provider of the secure accommodation or a person duly authorised by the provider; and”,

(c) in paragraph (d)—

(i) omit “, remand centre”,

(ii) for “Secretary of State” substitute “Scottish Ministers”.

Amendment of the National Health Service (Dental Charges) (Scotland) Regulations 2003

3.—(1) The National Health Service (Dental Charges) (Scotland) Regulations 2003^(b) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation), omit the definition of “continuing care arrangement”.

(3) In regulation 3(2)(e) (charges for other dental services), for “, 14(5) (treatment on referral) or 18(4) (occasional treatment)” substitute “or 14(5) (treatment on referral)”.

(4) In regulation 4(2)(b) (calculation of charges) omit “a continuing care arrangement or”.

Amendment of the National Health Service (Discipline Committees) (Scotland) Regulations 2006

4.—(1) The National Health Service (Discipline Committees) (Scotland) Regulations 2006^(c) are amended as follows.

(2) For the definition of “treatment” in regulation 2(1) (interpretation) substitute—

““treatment” in relation to general dental services, except in relation to regulation 6(7)(c), means care and treatment within the meaning of the General Dental Services Regulations;”.

Amendment of the General Dental Services Regulations

5. The General Dental Services Regulations are amended in accordance with regulations 6 to 15.

Amendment of regulation 2 of the General Dental Services Regulations

6. In regulation 2(1) (interpretation)—

(a) in the definition of “assistant”, in paragraph (ii), before “salaried” insert “contractor or a”,

(b) omit the definitions of “continuing care arrangement” and “occasional treatment”,

(c) after the definition of “scheme member” insert—

““secure accommodation” has the meaning given in section 202(1) of the Children’s Hearings (Scotland) Act 2011;”.

(a) 1989 c. 45.

(b) S.S.I. 2003/158, relevantly amended by S.S.I. 2011/168.

(c) S.S.I. 2006/330, relevantly amended by S.S.I. 2010/226.

- (d) omit the “and” at the end of paragraph (b) of the definition of “vocational training number”,
- (e) insert “and” after the definition of “working day”,
- (f) after the definition of “working day” insert—
 ““young offenders institution” has the meaning given in section 19(1)(b) of the Prisons (Scotland) Act 1989.”.

Amendment of regulation 18 of the General Dental Services Regulations

7. In regulation 18 (transfer of continuing care and capitation arrangements)—
- (a) in paragraph (1) omit “continuing care arrangements or” in both places that it occurs,
 - (b) in paragraphs (2) and (3) omit “continuing care arrangements or”,
 - (c) the regulation’s heading becomes “Transfer of capitation arrangements”.

Amendment of regulation 22 of the General Dental Services Regulations

8. In regulation 22 (statement of dental remuneration), in Column 2 of the table, in the subject matter beginning “A Scale of Fees” omit “a continuing care arrangement or” and “occasional treatment and”.

Amendment of regulation 23 of the General Dental Services Regulations

9. In regulation 23 (approval of payments)—
- (a) in paragraph (1), omit “a continuing care arrangement or” in both places that it occurs,
 - (b) in paragraph (2)—
 - (i) in sub-paragraph (a) omit “a continuing care arrangement or”,
 - (ii) insert “or” at the end of sub-paragraph (a),
 - (iii) omit the “or” at the end of sub-paragraph (b),
 - (iv) omit sub-paragraph (c),
 - (v) for “, treatment on referral, or occasional treatment” substitute “or treatment on referral”,
 - (c) In paragraph (3) omit “or occasional treatment”.

Amendment of regulation 27 of the General Dental Services Regulations

10. Omit paragraph (6) of regulation 27 (prior approval – patterns of treatment).

Amendment of regulation 35 of the General Dental Services Regulations

11. In regulation 35 (schedules), omit “3 (information to be provided about care and treatment under general dental services)”.

Amendment of schedule 1 of the General Dental Services Regulations

- 12.—(1) Schedule 1 (terms of service for dentists) is amended as follows.
(2) For paragraph 3 (general dental services) substitute—

“General dental services

3.—(1) In providing general dental services for any person under these Regulations a contractor shall provide for a person with whom a capitation arrangement has been entered into, care and treatment under that arrangement.

(2) A contractor may provide general dental services under these Regulations by way of treatment on referral for a person who is receiving dental services from another dentist (whether or not pursuant to the Act).”.

(3) Omit paragraph 4 (a continuing care arrangement).

(4) For paragraph 5 (a capitation arrangement) substitute—

“A capitation arrangement

5.—(1) A person may apply in writing (including by an electronic communication) to enter into a capitation arrangement with a contractor.

(2) A contractor who accepts a person for care and treatment under a capitation arrangement agrees to provide that care and treatment in order to manage the patient’s oral health and must—

- (a) ensure that at the time at which the contractor accepts the patient or, where sub-paragraph (5) applies, at the time of a dentist’s first examination of the patient, a dentist examines the patient and charts the patient’s decayed, missing or filled teeth on the patient record,
- (b) provide education and advice to the patient (or arrange for the provision of education and advice by a person with suitable training and experience) in connection with the patient’s oral health, including information about any relevant care programmes,
- (c) ensure that care and treatment is provided and delivered—
 - (i) in a manner determined by the contractor in discussion with the patient, and
 - (ii) within a clinically appropriate timescale,
- (d) provide the patient with a treatment plan which sets out—
 - (i) any treatment required, an estimate of the NHS charge for that treatment and arrangements for how that treatment will be provided,
 - (ii) the approximate period following which a further examination is recommended by the dentist, and
 - (iii) any treatment to be provided by way of private care and treatment as an alternative to the care and treatment proposed under general dental services, including particulars of the cost of that treatment,
- (e) provide the patient with emergency cover in accordance with paragraph 6, and
- (f) repair or replace in accordance with paragraph 7 any restoration which requires repair or replacement.

(3) A contractor must provide a patient with a revised treatment plan where—

- (a) in the opinion of the dentist, the care and treatment included in the treatment plan provided under sub-paragraph (2)(d) needs to be varied, or
- (b) the patient requests a new treatment plan.

(4) Where a contractor accepts the transfer of a capitation arrangement the contractor must—

- (a) consider whether the patient should be provided with a new treatment plan,
- (b) other than where the transfer is between contractors providing general dental services at the same practice premises, assume the obligation in sub-paragraph (2)(a), and
- (c) assume the obligations in sub-paragraph (2)(b), (c), (e) and (f).

(5) A dental nurse or dental therapist can, on behalf of a contractor, accept a patient under the age of three years of age for care and treatment under a capitation arrangement.

(6) Where a person falls within any of the descriptions in sub-paragraph (7)—

- (a) an application under sub-paragraph (1) is to be made on their behalf by a person mentioned in the relevant description in sub-paragraph (7) (“the representative”),
 - (b) any information (including education and advice) that is to be provided under this paragraph is to be provided to that representative, and
 - (c) any discussion under sub-paragraph (2)(c)(i) is to be undertaken with that representative.
- (7) The descriptions are—
- (a) a person under the age of 16 years, in which case the representative may be either parent, or in the absence of both parents, the guardian or other adult person who has care of the child,
 - (b) a person who is an adult with incapacity, in which case the representative may be—
 - (i) the primary carer of that person, or
 - (ii) a person authorised under the Adults with Incapacity (Scotland) Act 2000(a) to act on the person’s behalf,
 - (c) a person under the age of 18 who is in the care of—
 - (i) a local authority under the Children (Scotland) Act 1995(b), in which case the representative is a person duly authorised by that authority,
 - (ii) a voluntary organisation, in which case the representative is that organisation or a person authorised by it,
 - (d) a person in secure accommodation, in which case the representative is the provider of the secure accommodation or a person authorised by it,
 - (e) a person detained in a prison or young offenders institution, in which case the representative is a person authorised by the Scottish Ministers.”.
- (5) In paragraph 6 (emergency cover)—
- (a) in sub-paragraph (1) omit “paragraph 18 and” and “a continuing care arrangement or”,
 - (b) in sub-paragraph (1A)(c), for “continuing care” substitute “capitation”,
 - (c) in sub-paragraph (3) omit “the continuing care arrangement or”.
- (6) In paragraph 7 (repair or replacement of restorations)—
- (a) for sub-paragraph (1) substitute—

“(1) Subject to sub-paragraph (3) the contractor shall, as part of a capitation arrangement, repair or replace at no charge to the patient any restoration specified in sub-paragraph (2) which the contractor or another contractor or dentist acting on the contractor’s behalf or from whom the capitation arrangement was transferred had provided by way of personal dental services in connection with a pilot scheme or has provided under general dental services under that capitation arrangement.”,
 - (b) in sub-paragraph (2) for “pinlay” substitute “onlay” and for “secure” substitute “manage”,
 - (c) in sub-paragraph (3)(a)(ii), omit “occasional”,
 - (d) in sub-paragraph (3)(b) for “4(1)(b) or (c) or 5(1)(c) or (d)” substitute “5(2)(d) or (3)”,
 - (e) in sub-paragraph (3)(b)(ii) for “secure” substitute “manage”,
 - (f) in sub-paragraph (4) for “continuing care” substitute “capitation”.
- (7) Omit paragraph 8 (duration of a continuing care arrangement),
- (8) In paragraph 9(b) (duration of a capitation arrangement)—

(a) 2000 asp 4.
 (b) 1995 c. 36.
 (c) Sub-paragraph (1A) was inserted by S.S.I. 2019/174.

- (a) in head (ii) for “and care arrangement is to provided” substitute “arrangement is to be provided”,
 - (b) omit head (iii).
- (9) In paragraph 10 (termination of a continuing care arrangement or a capitation arrangement)(a)—
- (a) in sub-paragraph (A1), omit “a continuing care arrangement or”,
 - (b) in sub-paragraph (1), omit “a continuing care arrangement before it terminates in accordance with paragraph 8, or”,
 - (c) in sub-paragraph (1A) for “continuing care” substitute “capitation”,
 - (d) in sub-paragraph (2) for “secure and maintain” substitute “manage”,
 - (e) in sub-paragraph (2A) for “(1)” substitute “(1A)”,
 - (f) in sub-paragraph (4), omit “a continuing care arrangement or”,
 - (g) in sub-paragraph (7)(b) omit “a continuing care arrangement or”,
 - (h) the paragraph’s heading becomes “Termination of a capitation arrangement”.
- (10) In paragraph 11 (violent patients)—
- (a) in sub-paragraph (A1) for “continuing care” substitute “capitation”,
 - (b) in sub-paragraphs (1) and (4), omit “a continuing care arrangement or”.
- (11) In paragraph 11A (violent behaviour against domiciliary care dentists)(b), for “continuing care” substitute “capitation” in the following places—
- (a) sub-paragraph (7),
 - (b) sub-paragraph (8),
 - (c) sub-paragraph (9),
 - (d) sub-paragraph (10) (both places),
 - (e) sub-paragraph (11)(a).
- (12) In paragraph 12 (referral to another contractor or to a hospital or other service)—
- (a) in sub-paragraph (1) omit “a continuing care arrangement or”,
 - (b) in sub-paragraph (2)(a)(ii) for “secure and maintain” substitute “manage”.
- (13) In paragraph 13(2)(za) (referral to dental students)(c), for “continuing care” substitute “capitation”.
- (14) In paragraph 14 (treatment on referral)—
- (a) in sub-paragraphs (1) and (2) omit “otherwise than under Part III of this Schedule”,
 - (b) in sub-paragraph (5) for “pinlay” substitute “onlay”,
 - (c) in sub-paragraph (6)(a)(ii) omit “occasional”.
- (15) In paragraph 15 (inability of contractor to complete care and treatment under a continuing care arrangement or a capitation arrangement or treatment on referral)—
- (a) omit “a continuing care arrangement or”,
 - (b) the paragraph’s heading becomes “Inability of contractor to complete care and treatment under a capitation arrangement or treatment on referral”.
- (16) In paragraph 16 (care and treatment summaries) omit “a continuing care arrangement or”.
- (17) In paragraph 17 (mixing of general dental services and private care and treatment)—
- (a) in sub-paragraph (1)(a) and (2)(a)(i)—
 - (i) omit “a continuing care arrangement or”,

(a) Paragraph 10 was amended by S.S.I. 2016/53 and S.S.I. 2019/174.
 (b) Paragraph 11A was inserted by S.S.I. 2019/174.
 (c) Sub-paragraph (2)(za) was inserted by S.S.I. 2019/174.

- (ii) for “secure and maintain” substitute “manage”,
- (b) omit sub-paragraphs (3)(a) and (c).
- (18) Omit part III (occasional treatment).
- (19) In paragraph 22 (standards of care)—
 - (a) In sub-paragraphs (1)(b) and (2)(b) omit “19,”,
 - (b) in sub-paragraphs (1)(d) and (2)(d) omit “occasional treatment and”,
 - (c) in sub-paragraphs (1)(d) and (e) and (2)(d) and (e) for “secure and maintain” substitute “manage”.
- (20) In paragraph 27 (records)—
 - (a) in sub-paragraph (1)—
 - (i) omit “a continuing care arrangement or” in both places it occurs,
 - (ii) omit “(c) occasional treatment”,
 - (iii) for “securing and maintaining” substitute “managing”,
 - (iv) omit “or occasional treatment”,
 - (b) in sub-paragraph (2)—
 - (i) omit “a continuing care arrangement or”,
 - (ii) omit “or occasional treatment”.
- (21) In paragraph 28 (prior approval of care and treatment) omit sub-paragraph (6).
- (22) In paragraph 30(2) (completion of claim forms) for “18” substitute “26”.
- (23) In paragraph 32 (completion of care and treatment under a continuing care arrangement or a capitation arrangement or treatment on referral)—
 - (a) in sub-paragraph (1) omit “a continuing care arrangement or”,
 - (b) the paragraph’s heading becomes “Completion of care and treatment under a capitation arrangement or treatment on referral”.
- (24) In paragraph 50 (attendance at the care home)(a)—
 - (a) in sub-paragraph (3) for “informs” to the end of the sub-paragraph substitute “applies to enter into a capitation arrangement, the domiciliary care dentist must, within 6 weeks beginning with the day on which the application was made, examine and accept the patient in accordance with paragraph 5 of this schedule.”,
 - (b) in sub-paragraphs (4) and (5) for “continuing care” substitute “capitation”.
- (25) In paragraph 51(1) (in-hours emergencies), for “continuing care” substitute “capitation”.
- (26) In paragraph 54(2)(a) (voluntary removal of designation as a domiciliary care dentist), for “continuing care” substitute “capitation”.

Omission of schedule 3 of the General Dental Services Regulations

13. Schedule 3 (information to be provided about care and treatment under general dental services) is omitted.

Amendment of schedule 4 of the General Dental Services Regulations

14. In paragraph 1 of Part II of schedule 4 (prior approval of care and treatment) omit “a continuing care arrangement or” and “, or any occasional treatment”.

(a) Paragraphs 50 to 55 were inserted by S.S.I. 2019/174.

Amendment of schedule 5 of the General Dental Services Regulations

15. In schedule 5 (information to be included in patient information leaflets), after paragraph 3 insert—

- “**4.** Details of arrangements in an emergency.
- 5.** Details of repairs and replacements which are provided free of charge.
- 6.** Details of arrangements if the dentist with whom a patient has entered into a capitation arrangement is not available.
- 7.** Details of care and treatment available under general dental services.
- 8.** Explanation of NHS charges for general dental services and of entitlement to exemptions from and remission of these charges.
- 9.** Explanation of the arrangements for cancelling appointments.
- 10.** Explanation of the importance of regular care.
- 11.** The consequences of termination of a capitation arrangement.”.

Transitional and savings provision

16. Subject to regulation 17 where, prior to 1 November 2023, a person has entered into a continuing care arrangement under paragraph 4 of schedule 1 of the General Dental Services Regulations or a capitation arrangement under paragraph 5 of that schedule (each arrangement being referred to in this regulation and regulation 17 as an “existing arrangement”), and the existing arrangement has not been terminated as at that date, that existing arrangement is to be treated for all purposes as if it was a capitation arrangement under paragraph 5 of that schedule as substituted by regulation 12(4) of these Regulations.

17. Where a restoration is carried out under an existing arrangement between 1 November 2022 and 31 October 2023, paragraph 7 of schedule 1 of the General Dental Services Regulations applies as if the amendments made by these regulations had not been made.

St Andrew’s House,
Edinburgh
5th September 2023

JENNI MINTO
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments, principally to the National Health Service (General Dental Services) (Scotland) Regulations 2010 (“the General Dental Services Regulations”), to make provision for a new capitation arrangement and remove references to occasional treatment.

Regulations 2 to 4 make consequential amendments to the National Health Service (Choice of Dental Practitioner) (Scotland) Regulations 1998 (“the 1998 Regulations”), the National Health Service (Dental Charges) (Scotland) Regulations 2003 and the National Health Service (Discipline Committees) (Scotland) Regulations 2006. The 1998 Regulations are also amended to update provision about making applications on behalf of persons wishing to receive dental services.

Regulations 5 to 15 amend the General Dental Services Regulations. Regulation 12(4) makes provision for the new capitation paragraph which replaces paragraph 5 of schedule 1 of the General Dental Services Regulations. The new capitation paragraph makes provision for an application to be made in writing and sets out the things that a contractor must do in accepting a patient under a capitation arrangement. These Regulations amend other provisions in the General Dental Services Regulations to remove references to continuing care arrangements (which will no longer be provided) and to amend references to “securing and maintaining” oral health as the new capitation paragraph now provides for “managing” oral health.

Regulation 6(a) amends the definition of “assistant” in regulation 2 of the General Dental Services Regulations to reflect that dentists undertaking vocational training may be supervised by a contractor.

Regulation 12(6)(b) and (14) amend provisions in schedule 1 of the General Dental Services Regulations to do with repair or replacement of restorations and treatment on referral to substitute “onlay” for “pinlay” in the list of restorations which are to be repaired or replaced.

Regulation 12(17) amends paragraph 17 of schedule 1 of the General Dental Services Regulations to remove the restriction on providing treatment under general dental services and treatment privately on the same tooth, and to remove the restriction on private provision of general anaesthesia for care and treatment to be provided under general dental services.

Regulation 12(18) removes Part III (occasional treatment) of schedule 1 of the General Dental Services Regulations. As a consequence, these Regulations amend other provisions in the General Dental Services Regulations to remove references to occasional treatment.

Regulation 13 removes schedule 3 of the General Dental Services Regulations and regulation 15 moves the majority of the information that is required to be provided to patients into schedule 5.

Regulations 16 and 17 make transitional and savings provision respectively. Regulation 16 transfers over existing capitation and continuing care arrangements which become capitation arrangements under the new paragraph 5 of schedule 1 of the General Dental Services Regulations. Regulation 17 saves the duty to repair or replace a restoration carried out in the year prior to these Regulations coming into force.

A Business and Regulatory Impact Assessment and Equality Impact Assessment have been prepared and placed in the Scottish Parliament Information Centre and are available online at legislation.gov.uk.

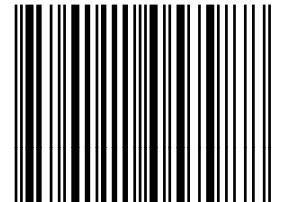
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