

Draft Regulations laid before Parliament under section 126(1A) of the National Health Service Act 1977, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No. []

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Dental Charges) Regulations 2005

Made - - - - 2005
Coming into force - - 1st April 2006

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred upon her by sections 79, 83A and 126(4) of, and Schedule 12ZA to, the National Health Service Act 1977(1);

In accordance with section 126(1A) of that Act(2), a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and application

1.—(1) These Regulations may be cited as the National Health Service (Dental Charges) Regulations 2005 and shall come into force on 1st April 2006.

(2) These Regulations apply in relation to England.

Interpretation

2.—(1) In these Regulations—

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- (1) 1977 c.49. Section 79 was inserted by section 183 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43) (“the 2003 Act”). Section 83A was inserted by section 14(1) of the Social Security Act 1988 (c.7) and amended by section 25 of, and paragraph 6 of Schedule 2 to, the Health and Medicines Act 1988 (c.49), article 2 of S.I. 1998/2385, article 3(1) of, and paragraph 5 and 13 of Schedule 1 to, S.I. 2000/90, section 66(1) of, and paragraph 18 (5) of Schedule 9 to the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), section 2(1) of, and paragraph 40 of Schedule 1 to, the Health Authorities Act 1995 (c.17), section 41(10) of, and paragraph 19 of Schedule 2 to, the National Health Service (Primary Care) Act 1997 (c.46), section 2(5) of, and paragraphs 1 and 32 of Part 1 of Schedule 2 to, the National Health Service Reform and Health Care Professions Act 2002 (c.17) (“the 2002 Act”) and by sections 34 and 184 of, and paragraphs 23 and 32(b) of Schedule 4 to, and paragraphs 7 and 31 of Schedule 11 to, the 2003 Act. Section 126(4) was amended by section 65(2) of the 1990 Act, section 65(1) of, and paragraphs 4 and 37 of Schedule 4 to, the Health Act 1999 (c.8) (“the 1999 Act”), section 67(1) of, and paragraphs 5 and 13 of Part 1 of Schedule 5 to, the Health and Social Care Act 2001(c.15) and section 6(3)(c) and 37(1) of the 2002 Act. Schedule 12ZA was inserted by section 183 of the 2003 Act. The functions of the Secretary of State under these provisions are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), as amended by section 66(5) of the 1999 Act. See section 128(1) of the National Health Service Act 1977, as amended by section 26 of the 1990 Act, for the meaning of “prescribed” and “regulations”.
- (2) Section 126(1A) was inserted by section 183(3)(b) of the Health and Social Care Act 2003 (c.43).

“the Act” means the National Health Service Act 1977;

“bridge” means a fixed or a removable bridge which takes the place of any teeth;

“course of treatment” means—

- (a) an examination of a patient, an assessment of his oral health, and the planning of any treatment to be provided to that patient as a result of that examination and assessment, and
- (b) the provision of any planned treatment (including any treatment planned at a time other than at the time of the initial examination) to that patient up to the date on which—
 - (i) each and every component of the planned treatment has been provided to the patient, or
 - (ii) the patient either voluntarily withdraws from, or is withdrawn by the provider from, treatment,

by one or more providers of relevant primary dental services;

“dental appliance” means a denture or bridge and for the purposes of this definition, a denture includes an obturator;

“Dental Charges Regulations 1989” means the National Health Service (Dental Charges) Regulations 1989(3);

“dental public health services” means services provided under section 16CB(4)(c) of the Act;

“General Dental Services Regulations 1992” means the National Health Service (General Dental Services) Regulations 1992(4);

“orthodontic appliance” means a device used in the mouth to move or immobilise the teeth in order to correct or prevent malocclusion;

“orthodontic treatment” means treatment of, or treatment to prevent, malocclusion of the teeth and jaws, and irregularities of the teeth;

“patient” includes (when the context requires) 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 relevant primary dental service is provided;

“patient record” means a form supplied by a Primary Care Trust for the purpose of maintaining a record of treatment, and may include an electronic form;

“prison” includes a young offender institution but not a secure training centre or a naval, military or air force prison, and for the purposes of this definition—

- (a) “secure training centre” means a place in which offenders subject to detention and training orders under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (offenders under 18: detention and training orders)(5) may be detained and given training and education and prepared for their release, and
- (b) “young offender institution” means a place for the detention of offenders sentenced to detention in a young offender institution or to detention in a young offender institution as part of a longer custodial sentence, including custody for life;

“prisoner” means a person who is detained in a prison in which medical, dental, ophthalmic, pharmaceutical or nursing services are provided under the Act by, or under arrangements made by, a Primary Care Trust otherwise than by virtue of section 18A(5) of the Act (provision of services etc);

(3) S.I. 1989/394. This has been amended by S.I. 1990/1638, S.I. 1991/581, S.I. 1992/369, S.I. 1993/419, S.I. 1994/530, S.I. 1995/444, S.I. 1996/389, S.I. 1997/558, S.I. 1998/490, S.I. 1998/2221, S.I. 1999/544, S.I. 2000/596, S.I. 2001/707, S.I. 2001/2807, S.I. 2002/544, S.I. 2002/2353, S.I. 2003/586, S.I. 2003/2382, S.I. 2004/696, S.I. 2004/1091 and S.I. 2005/576

(4) S.I. 1992/661. Relevant amendments are to paragraph 4 of Schedule 1 to S.I. 1992/661. Paragraph 4 of Schedule 1 was amended by S.I. 1996/2051, S.I. 2001/2421, S.I. 2001/3963 and S.I. 2002/2469,

(5) 2000 c.6.

“relevant primary dental services” means dental treatment (including urgent treatment and orthodontic treatment) provided and dental appliances and orthodontic appliances supplied—

- (i) under section 16CA(2) of the Act (dental services provided by a Primary Care Trust or Local Health Board);
- (ii) under a general dental services contract; or
- (iii) in accordance with arrangements under section 28C of the Act (personal medical and dental services);

“relevant Primary Care Trust” means in relation to a person providing relevant primary dental services—

- (i) where a Primary Care Trust is a party to a general dental services contract or an agreement under section 28C of the Act (personal medical or dental services) for the provision of relevant primary dental services with that person, that Primary Care Trust;
- (ii) where a Primary Care Trust is providing relevant primary dental services itself under section 16CA(2) of the Act (dental services provided by a Primary Care Trust or Local Health Board) or pursuant to an agreement under section 28C of the Act (personal medical or dental services), that Primary Care Trust;
- (iii) where an NHS trust or NHS foundation trust is providing relevant primary dental services pursuant to an agreement under section 28C of the Act (personal medical or dental services) for the provision of relevant primary dental services, the Primary Care Trust in whose area all or most of the hospitals, establishments and facilities of the NHS trust or NHS foundation trust are situated; or
- (iv) where a Primary Care Trust, NHS trust or NHS foundation trust supplies dental appliances under the Act otherwise than as part of relevant primary dental services, that Primary Care Trust or the Primary Care Trust in whose area all or most of the hospitals, establishments and facilities of the NHS trust or NHS foundation trust are situated;

“restoration” means a filling, root filling, inlay, porcelain veneer or crown;

“trauma” means damage to teeth, gingival tissues or alveoli caused by a force arising outside the mouth, resulting in mobility, luxation, subluxation or fracture of the hard tissues or injury to the soft tissues;

“treatment” means all proper and necessary dental treatment which a provider of relevant primary dental services usually undertakes for a patient and which the patient is willing to undergo, including examination, diagnosis, advice on and planning of treatment, preventive care and treatment, periodontal treatment, conservative treatment, surgical treatment, the supply and repair of dental appliances and orthodontic appliances, orthodontic treatment, the taking of radiographs, the provision of sedation in connection with such treatment, the supply of listed drugs and the issue of prescriptions whether or not provided on referral to the provider of relevant primary dental services;

“urgent treatment” means one or more of the treatments listed in Schedule 4 that are provided to a person in circumstances where—

- (a) prompt care and treatment is provided because, in the opinion of the dental practitioner, that person’s oral health is likely to deteriorate significantly, or the person is in severe pain by reason of his oral condition; and
- (b) care and treatment is provided only to the extent that is necessary to prevent that significant deterioration or address that severe pain,

and “urgent course of treatment” shall be construed accordingly;

(2) A reference to the Secretary of State includes a reference to a Special Health Authority or Primary Care Trust exercising functions on her behalf.

Charges for the provision of dental services

3.—(1) Subject to paragraph (2) below, a charge of the amount provided for in, and calculated in accordance with, regulation 4 may be made and recovered in respect of—

- (a) the provision of relevant primary dental services; and
- (b) the supply of dental appliances under the Act otherwise than as part of relevant primary dental services.

(2) No charge shall be made and recovered under paragraph (1) in respect of—

- (a) a supply under the Act, otherwise than as part of relevant primary dental services, of dental appliances 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;
- (b) a prisoner;
- (c) the provision of dental public health services;
- (d) the removal of sutures; or
- (e) the examination and assessment of a patient leading to—
 - (i) the issue of a prescription,
 - (ii) the repair of a dental appliance,
 - (iii) the arrest of bleeding, or
 - (iv) the removal of sutures,

if, at the same time, no other treatment listed in Schedule 1, 2 or 4 is provided and no dental appliances listed in Schedule 3 are supplied.

Calculation of charges

4.—(1) Subject to paragraph (6), a Band 1 charge, that is to say a charge of £15.50, may be made and recovered in respect of any course of treatment, the entirety of the components of which are set out in Schedule 1, provided as part of relevant primary dental services.

(2) Subject to paragraph (6), a Band 2 charge, that is to say a charge of £42.40, may be made and recovered in respect of any course of treatment, one or more of the components of which are set out in Schedule 2, provided as part of relevant primary dental services, irrespective of whether the remainder of the components of the course of treatment are set out in Schedule 1.

(3) Subject to paragraph (6), a Band 3 charge, that is to say a charge of £189.00 may be made and recovered in respect of any course of treatment, one or more of the components of which are set out in Schedule 3, provided as part of relevant primary dental services, irrespective of whether the remainder of the components of the course of treatment are set out in Schedule 1 or 2.

(4) A Band 3 charge, that is to say a charge of £189.00, may be made and recovered in respect of dental appliances supplied under the Act otherwise than as part of relevant primary dental services.

(5) A Band 1 charge, that is to say a charge of £15.50, may be made and recovered in respect of any urgent course of treatment, the entirety of the components of which are set out in Schedule 4, provided as part of relevant primary dental services.

(6) For the purposes of paragraphs (1) to (3) and (5) above, only one charge may be made for any one course of treatment or urgent course of treatment provided, notwithstanding that a number of individual treatments may be provided or dental appliances or orthodontic appliances supplied during that course of treatment and a number of individual treatments may be provided during that urgent course of treatment.

(7) Where—

(a) during a course of treatment a patient voluntarily withdraws from, or is withdrawn by the provider from, treatment; and

(b) at least one of the components of that course of treatment has not been completed,

the charge which may be made and recovered for that course of treatment is the charge which is payable under paragraphs (1) to (3) and (5) of this regulation for the components of the course of treatment which have been completed but not for any components which are incomplete.

(8) Where a dental appliance, an orthodontic appliance or a type of dental treatment is not listed in one of Schedules 1 to 4, the Secretary of State shall determine into which of the Schedules that appliance or treatment should fall so that the charge for a course of treatment or urgent course of treatment, or the supply of a dental appliance under the Act otherwise than as part of relevant primary dental services, can be determined in accordance with paragraphs (1) to (5) above.

Effect of referral to another provider of dental services on the calculation of charges

5. Where a patient has commenced a course of treatment or urgent course of treatment with one provider of relevant primary dental services but is referred to—

(a) an alternative provider of relevant primary dental services for part of the course of treatment or urgent course of treatment; or

(b) a hospital or other service provider under Part 1 of the Act for the supply of a dental appliance as part of the course of treatment,

only one charge for the course of treatment or urgent course of treatment calculated in accordance with regulation 4 may be made and recovered from the patient.

Circumstances in which charges cannot be made for treatment that occurs after a course of treatment is completed

6.—(1) Subject to paragraphs (2) and (3), where a provider of relevant primary dental services has provided a restoration to a patient as part of a course of treatment or an urgent course of treatment for which the relevant charge calculated in accordance with regulation 4 has been made, or would have been made if the patient was not exempt from being charged, and within the relevant period that restoration has to be repaired or replaced to secure oral health, no charge may be made or recovered for the repair or replacement of the restoration.

(2) Paragraph (1) shall not apply where—

(a) within the relevant period, a person other than the provider of relevant primary dental services who carried out the original restoration has provided treatment on the tooth in respect of which the restoration was provided;

(b) the patient was advised at the time of the restoration, and it was recorded on the patient record, that—

(i) the restoration was intended to be temporary in nature, or

(ii) a different form of restoration was more appropriate but, notwithstanding that advice, the patient insisted on the restoration that was provided; or

(c) the repair or replacement is required as a result of trauma.

(3) In this regulation, “the relevant period” means the 12 month period beginning on the date on which the restoration was provided and ceasing 12 months after that date.

(4) Where a provider of relevant primary dental services has completed a course of treatment other than an urgent course of treatment but, within 2 months of that course of treatment being completed, the same provider determines that the patient requires further treatment which falls within the same or a lower charging band, calculated in accordance with paragraphs (1) to (4) of regulation 4, as the

previous treatment and that further treatment is provided (whether or not within 2 months of that course of treatment being completed) by the same provider, no charge may be made or recovered in respect of that further treatment.

(5) In paragraph (4), “completed” means the patient has been provided with each and every component of the course of treatment.

Conditions for exemption under the Act

7.—(1) It is a condition of the exemption under paragraph 1(1) of Schedule 12ZA to the Act in respect of the provision of relevant primary dental services or a supply of a dental appliance under the Act otherwise than as part of relevant primary dental services—

- (a) that a written declaration on a form provided for that purpose by the relevant Primary Care Trust shall be made to the effect that that person is, at the relevant date, within one of the specified categories; and
- (b) where the Secretary of State, an NHS trust, an NHS foundation trust or a Primary Care Trust so requires, that the specified evidence shall be supplied by or on behalf of that person.

(2) In this regulation “the relevant date” means—

- (a) where a dental appliance is supplied under the Act otherwise than as part of relevant primary dental services, the date of the examination leading to the supply of the appliance; or
- (b) where relevant primary dental services are provided, the date of the initial examination and assessment leading to the provision of a course of treatment.

(3) The declaration referred to in paragraph (1) shall be made by the person to whom the services are to be provided, except that where the request for services is made by another person on his behalf it shall be made instead by the person who requests the services.

(4) Nothing in paragraph (1)(b) prevents the Secretary of State, an NHS trust, an NHS foundation trust or a Primary Care Trust 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 5 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

8.—(1) Where any charge is payable under regulation 4(4) in respect of the supply of a dental appliance under the Act otherwise than as part of relevant primary dental services, a Primary Care Trust, NHS trust or NHS foundation trust —

- (a) may, on arranging to supply it, make the appropriate charge;
- (b) may, on supplying it or having it available for supply, recover the appropriate charge from the patient (if it has not previously been paid); and
- (c) shall, on receiving a sum for payment (in full or in part) of the charge payable under these Regulations, give a receipt for it on—
 - (i) a paper form provided for that purpose by the relevant Primary Care Trust; or
 - (ii) an electronic form which identifies the person who supplied the dental appliance, the patient, the amount of the charge paid and the date on which it is paid.

(2) A provider of relevant primary dental services, in providing relevant primary dental services for which a charge may be made under regulations 4(1) to (3) or (5)—

- (a) may, on arranging to provide a course of treatment or urgent course of treatment, make the appropriate charge;
 - (b) shall require the patient to acknowledge, on the appropriate part of the form supplied for that purpose by the relevant Primary Care Trust, and before that form is sent to the Secretary of State, his obligation to pay a charge which is made;
 - (c) may, on completing the course of treatment or urgent course of treatment, recover the charge from the patient (if it has not previously been paid);
 - (d) shall, on receiving a sum for payment (in full or in part) of the charge payable under these Regulations, give a receipt for it on—
 - (i) a paper form provided for that purpose by the relevant Primary Care Trust; or
 - (ii) an electronic form which identifies the provider of the relevant primary dental services, the patient, the amount of the charge paid and the date on which it is paid.
- (3) Where a provider of relevant primary dental services has commenced a course of treatment or urgent course of treatment with regard to a patient and refers the patient to—
- (a) an alternative provider of relevant primary dental services for part of the course of treatment or urgent course of treatment; or
 - (b) a hospital or other service provider under Part 1 of the Act for the supply of a dental appliance as part of that course of treatment,

only the original provider of the relevant primary dental services may make and recover the charge set out in regulation 4 and shall comply with sub-paragraphs (b) and (d) of paragraph (2) above.

(4) Where a declaration has been made under regulation 7(1)(a), but the person about whom the declaration has been made is not at the relevant date within one of the specified categories, and in consequence of the declaration, a charge has not been recovered—

- (a) in respect of relevant primary dental services; or
- (b) in respect of a dental appliance supplied under the Act otherwise than as part of relevant primary dental services,

the Secretary of State may recover the charge from the person who made the declaration (whether or not the obligation to pay has been acknowledged).

(5) In this regulation, “relevant date” and “the specified categories” have the same meaning as in regulation 7.

Remission and repayment of charges under other regulations

9. 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 83A of the Act providing for remission and repayment.

Repayment of charges

10.—(1) This regulation applies to any person who—

- (a) pays any charge for relevant primary dental services or the supply of a dental appliance under the Act otherwise than as part of relevant primary dental services, payable pursuant to section 79 of the Act; and
- (b) would, but for regulation 7, be exempt from the charge under paragraph 1(1) of Schedule 12ZA to the Act.

(2) Subject to the following provisions of this regulation, any person to whom this regulation applies is entitled to have such a charge repaid.

(3) Subject to paragraph (4), it is a condition of the entitlement to a repayment under this regulation that the person makes a claim to the Secretary of State for the repayment—

- (a) within—
 - (i) three months after payment of the charge, or
 - (ii) such further period as the Secretary of State may for good cause allow; and
- (b) in a manner approved by the Secretary of State for that purpose; and
- (c) supported by such evidence as the Secretary of State may reasonably require.

(4) Subject to paragraph (5), where the person is unable for the time being to act, another person may make a claim on that person's behalf.

(5) The Secretary of State may refuse to accept a claim made by one person on behalf of another where, in the Secretary of State's opinion—

- (a) the person on whose behalf the claim is made is able to act; or
- (b) the person making the claim is not a suitable person to act on behalf of that other person.

(6) If satisfied that a person is entitled to repayment under this regulation, the Secretary of State shall cause a repayment to be made to that person in such manner as appears to the Secretary of State to be appropriate in the circumstances of the particular case.

Charges for replacement in the course of the provision of relevant primary dental services

11.—(1) Where a provider of relevant primary dental services replaces a dental appliance or orthodontic appliance supplied as part of those services and it is determined in accordance with Schedule 6 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 him when the act or omission occurred,

the provider of relevant primary dental services 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), 30% of the Band 3 charge (rounded down, where necessary, to the nearest whole ten pence) as set out in regulation 4(3).

(3) If the Secretary of State 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 his part,

she 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.

Reduction of remuneration and accounting for charges in relation to providers of relevant primary dental services

12.—(1) Subject to paragraphs (2) and (3), where a provider of relevant primary dental services has provided relevant primary dental services for which a charge is payable under these Regulations, the remuneration which would otherwise be payable by the relevant Primary Care Trust to that provider shall be reduced by the amount of that charge, irrespective of whether or not that charge has been recovered by the provider.

(2) A dental practitioner remunerated by a Primary Care Trust providing relevant primary dental services under section 16CA (2) of the Act (dental services provided by a Primary Care Trust or Local Health Board) shall comply with the requirements in paragraphs (b) and (d) of regulation 8(2) and shall account for and pay to that Primary Care Trust, in such manner as it may require, the amount of any charges recovered from a patient under these Regulations.

(3) A dental practitioner remunerated by a Primary Care Trust, NHS trust or NHS foundation trust providing relevant primary dental services pursuant to an agreement for relevant primary dental services made under section 28C of the Act (personal medical or dental services) shall comply with the requirements in paragraphs (b) and (d) of regulation 8(2) and shall account and pay to the body by which he is remunerated, in such manner as it may require, the amount of any charges recovered from a patient under these Regulations.

Transitional provisions

13.—(1) Subject to paragraphs (2) to (8) of this regulation, any charge which is payable under the Dental Charges Regulations 1989 prior to 1 April 2006 but which has not been made and recovered before that date, may be made and recovered in accordance with the provisions of those Regulations as though they remained in force.

(2) Where a person, who is not otherwise exempt from paying a charge under these Regulations, as part of the provision of general dental services or services under a pilot scheme—

- (a) has been accepted by a dentist for care and treatment under a continuing care arrangement or for services under a pilot scheme;
- (b) is provided with a plan for treatment on a form supplied for that purpose by a Primary Care Trust—
 - (i) in relation to a continuing care arrangement, pursuant to paragraph 4(1)(b) of Schedule 1 to the General Dental Services Regulations 1992, on or after 1 January 2006, or
 - (ii) in relation to services under a pilot scheme, in accordance with the Secretary of State's Directions to Health Authorities Concerning the Implementation of Pilot Schemes (Personal Dental Services)(6), on or after 1 January 2006;
- (c) has not been provided with all the treatment listed on that form prior to 1 April 2006; and
- (d) receives part of the treatment listed on that form on or after 1 April 2006,

a charge in accordance with paragraph (3) may be made and recovered for that treatment.

(3) The charge which may be made and recovered from a person falling within paragraph (2) is the lower of the charges set out in sub-paragraphs (a) and (b)—

- (a) the charge for the treatment listed on the plan referred to in paragraph (2)(b), which has been provided to the patient, calculated in accordance with regulation 4 of the Dental Charges Regulations 1989; or

(6) These Directions were made in August 1998 and are available at www.dh.gov.uk.

- (b) the charge for the treatment listed on the plan referred to in paragraph (2)(b), which has been provided to the patient, calculated in accordance with regulation 4 of these Regulations.
- (4) The calculation by the provider as to which of the charges referred to in paragraph (3) is the lower shall take place on—
- (a) the date on which the final treatment listed on the plan referred to in paragraph (2)(b) is provided; or
 - (b) where a patient voluntarily withdraws from, or is withdrawn by the provider from, treatment before the final treatment listed on the plan referred to in paragraph (2)(b) has been provided, the date on which the withdrawal takes place.
- (5) Regulation 6(4) applies to a person falling within paragraph (2) and the 2 month period referred to in regulation 6(4) shall be deemed to run from—
- (a) the date on which the final treatment listed on the form referred to in paragraph (2)(b) is provided; or
 - (b) where a patient voluntarily withdraws from, or is withdrawn by the provider from treatment, before the final treatment listed on the plan referred to in paragraph (2)(b) has been provided, the date on which the withdrawal takes place .
- (6) Where—
- (a) an arrangement has been made for a dental appliance to be supplied on or after 1 January 2006 otherwise than as part of general dental services or services under a pilot scheme; and
 - (b) the dental appliance is not supplied prior to 1 April 2006,
- the charge that may be made and recovered for the supply of that appliance is the lower of—
- (i) the charge for the supply of the appliance calculated in accordance with regulation 4 of the Dental Charges Regulations 1989, or
 - (ii) the charge for the supply of the appliance calculated in accordance with regulation 4(4) of these Regulations.
- (7) Where a person, who is not otherwise exempt from paying a charge under these Regulations, as part of the provision of general dental services is provided with at least part of a course of occasional treatment within the meaning of paragraph 17 of Schedule 1 to the General Dental Services Regulations 1992 on or after 1 January 2006 but prior to 1 April 2006 where—
- (a) every treatment included in that course of occasional treatment is listed in Schedule 4 to these Regulations and therefore constitutes an urgent course of treatment under these Regulations;
 - (b) not all treatment included in that course of occasional treatment has been provided prior to 1 April 2006; and
 - (c) part of the course of occasional treatment is provided on or after 1 April 2006,
- the charge that may be made and recovered for that treatment is the lower of—
- (i) the charge for the course of occasional treatment, which has been provided to the patient, calculated in accordance with regulation 4 of the Dental Charges Regulations 1989, or
 - (ii) the charge for the urgent course of treatment, which has been provided to the patient, calculated in accordance with regulation 4 of these Regulations.
- (8) The calculation by the provider as to which of the charges referred to in paragraph (7) is lower shall take place on—
- (a) the date on which the final treatment in the course of occasional treatment referred to in paragraph (7) is provided; or

- (b) where a patient voluntarily withdraws from, or is withdrawn by the provider from treatment, before the final treatment in the course of occasional treatment has been provided, the date on which the withdrawal takes place.
- (9) Where a person who falls within paragraph (2), (6) or (7) has paid part or all of a charge prior to 1 April 2006 for treatment provided or appliances supplied and that charge is higher than the charge he is required to pay under paragraph (3), (6) or (7) respectively, he is entitled to have repaid to him the amount of the charge he has paid in excess of the charge he is required to pay.
- (10) The repayment to a person in accordance with paragraph (9) shall be made by the provider who has provided treatment or supplied dental appliances to that person under this regulation.
- (11) For the purposes of this regulation—
- (a) “continuing care arrangement” means an arrangement between the dentist and the patient whereby the dentist provides care and treatment in accordance with paragraph 4 of Schedule 1 to the General Dental Services Regulations 1992;
 - (b) “dentist” means a registered dental practitioner;
 - (c) “general dental services” has the meaning given in section 35(1A) of the Act;
 - (d) “pilot scheme” means a pilot scheme under Part I of the National Health Service (Primary Care) Act 1997(7).

Revocations

14. The Regulations listed in Schedule 7 are hereby revoked.

Signed by authority of the Secretary of State for Health

Date

Department of Health

SCHEDULE 1

Regulation 4(1)

Band 1 Charges – Diagnosis, treatment planning and maintenance

- (a) clinical examination, case assessment and report
- (b) orthodontic case assessment and report
- (c) advice, dental charting, diagnosis and treatment planning
- (d) radiographic examination, including panoramic and lateral headplates, and radiological report
- (e) study casts including in association with occlusal analysis
- (f) colour photographs
- (g) instruction in the prevention of dental and oral disease including dietary advice and dental hygiene instruction
- (h) surface application as primary preventive measures of sealants and topical fluoride preparations
- (i) scaling, polishing and marginal correction of fillings
- (j) taking material for pathological examination
- (k) adjustments to and easing of dentures or orthodontic appliances
- (l) treatment of sensitive cementum

SCHEDULE 2

Regulation 4(2)

Band 2 Charges - Treatment

- (a) non-surgical periodontal treatment including root-planing, deep scaling, irrigation of periodontal pockets and subgingival curettage and all necessary scaling and polishing
- (b) surgical periodontal treatment, including gingivectomy, gingivoplasty or removal of an operculum
- (c) surgical periodontal treatment, including raising and replacement of a mucoperiosteal flap, curettage, root planing and bone resection
- (d) free gingival grafts
- (e) permanent fillings in amalgam, composite resin, synthetic resin, glass ionomer, compomers, silicate or silico-phosphate, including acid etch retention
- (f) sealant restorations
- (g) endodontic treatment of permanent or retained deciduous teeth
- (h) pulpotomy
- (i) apicectomy
- (j) extraction of teeth
- (k) transplantation of teeth
- (l) oral surgery including surgical removal of cyst, buried root, unerupted tooth, impacted tooth or exostosed tooth and alveolectomy
- (m) soft tissue surgery in relation to the buccal cavity and lips
- (n) frenectomy, frenoplasty and frenotomy
- (o) relining and rebasing dentures including soft linings

- (p) addition of tooth, clasp, labial or buccal flange to dentures
- (q) splints (other than laboratory fabricated splints) in relation to periodontally compromised teeth and in connection with external trauma
- (r) bite raising appliances (other than laboratory fabricated appliances)

SCHEDULE 3

Regulation 4(3) and (4)

Band 3 Charges - Provision of Appliances

- (a) porcelain, composite or acrylic mastique veneers, including acid etch retention
- (b) inlays, pinlays, onlays and palatal veneers, in alloys containing 60% or more fine gold, porcelain, composite resin and ceramics

Crowns including any pin or post aids to retention

- (c) full or three quarter crown cast in alloys containing not less than 33⅓% fine gold or platinum or palladium
- (d) full or jacket crown cast in alloys containing stainless steel or cobalt chromium or nickel chromium
- (e) crown in porcelain, synthetic resin and other non-metallic crowns
- (f) full or jacket crowns in alloys containing not less than 33⅓% fine gold or platinum or palladium, or alloys containing stainless steel or cobalt chromium or nickel chromium, with thermally bonded porcelain
- (g) jacket crown thermally bonded to wrought platinum coping
- (h) prefabricated full or jacket crown, including any pin or post retention
- (i) crowns in other materials

Bridges including any pin or post aids to retention

- (j) bridges in alloys containing 60% or more fine gold with or without thermally bonded facings
- (k) bridges cast in alloys containing stainless steel, cobalt chromium or nickel chromium, with or without thermally bonded facings
- (l) acid etch retained bridges
- (m) bridges in other materials
- (n) provision of full (complete) or partial dentures, overdentures and obturators in synthetic resin or metal or both synthetic resin and metal, including any cast or wrought metal components or aids to retention
- (o) orthodontic treatment and appliances
- (p) other custom made appliances excluding sports guards

SCHEDULE 4

Regulation 4(5)

Urgent Treatment under Band 1 Charge

- (a) examination, assessment and advice

- (b) radiographic examination and radiological report
- (c) dressing of teeth and palliative treatment
- (d) pulpectomy or vital pulpotomy
- (e) re-implantation of a luxated or subluxated permanent tooth following trauma including any necessary endodontic treatment
- (f) repair and refixing of inlays and crowns
- (g) refixing a bridge
- (h) temporary bridges
- (i) extraction of not more than 2 teeth
- (j) provision of post-operative care including treatment of infected sockets
- (k) adjustment and alteration of dentures or orthodontic appliances
- (l) urgent treatment for acute conditions of the gingivae or oral mucosa, including treatment for pericoronitis or for ulcers and herpetic lesions, and any necessary oral hygiene instruction in connection with such treatment
- (m) treatment of sensitive cementum or dentine
- (n) incising an abscess
- (o) other treatment immediately necessary as a result of trauma
- (p) not more than 1 permanent filling in amalgam, composite resin, synthetic resin, glass ionomer, compomers, silicate or silico-phosphate including acid etch retention

SCHEDULE 5

Regulation 7

Exemptions – Categories and Evidence

<i>(1)</i> <i>Category</i>	<i>(2)</i> <i>Evidence</i>
1. Under 18 years of age.	1. The person’s birth certificate
2. 18 years of age and receiving qualifying full-time education (within the meaning set out in paragraph 1(2) of Schedule 12ZA to the Act)	2. The person’s birth certificate and a document signed by the principal or another officer of the recognised educational establishment (within the meaning of paragraph 1(3)(a) of Schedule 12ZA to the Act), 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 registered medical practitioner or a registered midwife, as to the pregnancy
4. Having borne a child in the previous 12 months	4. The child’s birth certificate

SCHEDULE 6

Regulation 11

Manner of determining Charge for Replacement

1. Where the Secretary of State, on considering a claim submitted for the approval of a free replacement of a dental appliance or an orthodontic appliance supplied in the course of the provision of relevant primary dental services, considers that there are grounds for believing that—

- (a) the replacement is necessitated by such an act or omission as is referred to in regulation 11(1); or
- (b) the replacement, although necessitated by such an act or omission as is referred to in regulation 11(1), was not wholly necessitated by a lack of reasonable care as is referred to in regulation 11(3),

she may investigate the matter.

2. The Secretary of State may make such inquiry into any matter falling within paragraph 1 as she thinks fit and if either—

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

the inquiry shall take the form of an oral hearing by a committee appointed by the Secretary of State for the purpose.

3. The Secretary of State, having considered any report made by the 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 him when the act or omission occurred;
- (b) if it is so necessitated, shall determine whether the replacement was not wholly necessitated by a lack of reasonable care as referred to in regulation 11(3); and
- (c) if it is so necessitated, shall determine, in accordance with regulation 11(2) and (3), the amount of the charge to be made and recovered.

4. The Secretary of State shall communicate her determination to—

- (a) the relevant person (within the meaning of regulation 11(4));
- (b) the provider of relevant primary dental services replacing the dental appliance or orthodontic appliance; and
- (c) the relevant Primary Care Trust.

SCHEDULE 7

Regulation 14

Revocations

The National Health Service (Dental Charges) Regulations 1989 ([S.I. 1989/394](#))

The National Health Service (Dental Charges) Amendment Regulations 1993 ([S.I. 1993/419](#))

The National Health Service (Dental Charges) Amendment Regulations 1998 ([S.I. 1998/2221](#))

The National Health Service (Dental Charges) Amendment (No.2) Regulations 2001 ([S.I. 2001/2807](#))

The National Health Service (Miscellaneous Dental Charges Amendments) Regulations 2002
([S.I. 2002/2353](#))

The National Health Service (Dental Charges) Amendment Regulations 2004 ([S.I. 2004/1091](#))

The National Health Service (Dental Charges) Amendment Regulations 2005 ([S.I. 2005/576](#))

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the National Health Service (Dental Charges) Regulations 1989 (“the 1989 Regulations”), as amended. They provide for the making and recovery of charges for the provision of dental treatment and the supply of dental appliances under the National Health Service Act 1977 (“the Act”) and reflect the new dental charging powers in section 79 of, and Schedule 12ZA to, the Act, which were inserted by section 183 of the Health and Social Care (Community Health and Standards) Act 2003 as a substitute for sections 78A, 79 and 79A, and for the paragraphs of Schedule 12 to the Act which dealt with dental charges.

The Regulations provide for charges for the following:—

- the provision of dental treatment, including urgent treatment and orthodontic treatment, and the supply of dental and orthodontic appliances by a provider of relevant primary dental services (regulation 3);
- the supply of dental appliances under the Act otherwise than by a provider of relevant primary dental services (regulation 3);
- the replacement, as part of relevant primary dental services, of a dental or orthodontic appliance lost or damaged by an act or omission of the patient (regulation 11 and Schedule 6).

Regulation 3(2) sets out a number of circumstances in which no charge may be made and recovered for the provision of dental treatment or the supply of dental appliances under the Act. Other circumstances in which no charge may be made for dental services under the Act are set out in Schedule 12ZA of the Act.

Regulation 4 sets out the applicable charges and the system for calculating those charges. Where a patient receives a course of treatment (which may include the supply of dental or orthodontic appliances) from a provider of relevant primary dental services, the charge that will be payable for that course of treatment, if none of the exemptions from charging apply, will be determined by examining in which of the Schedules to the Regulations each of the components of the course of treatment is listed. If any of the components of the course of treatment are listed in Schedule 3, a Band 3 charge of £189 will be payable. If any of the components of the course of treatment are listed in Schedule 2 and none of the components are listed in Schedule 3, a Band 2 charge of £42.40 will be payable. If all of the components of the course of treatment are listed in Schedule 1, a Band 1 charge of £15.50 will be payable.

Where a dental appliance is supplied under the Act otherwise than by a provider of relevant primary dental services and none of the exemptions from charging apply, a Band 3 charge will be payable. Where a patient receives an urgent course of treatment and each component of that course of treatment is listed in Schedule 4, a Band 1 charge will be payable.

Regulation 11 provides that where a patient receives a replacement dental or orthodontic appliance, the need for which it is determined in accordance with the procedure set out in Schedule 6 was brought about by an act or omission of the patient, the charge that will be payable for the replacement will be 30% of the Band 3 charge of £189 rounded down to the nearest 10 pence. The regulation does give the Secretary of State the power to reduce the charge or to determine that it shall not be payable in certain circumstances.

The Regulations provide that only one charge for a course of treatment may be made and recovered even if provided by more than one provider (regulation 5); for circumstances in which charges cannot be made and recovered for both treatment provided after a course of treatment is complete and for the repair or replacement of a restoration (regulation 6); for conditions for statutory exemptions from charges (regulation 7 and Schedule 5); for the procedure for making and recovering charges due under the Regulations (regulation 8); for the repayment of charges which have been paid where a person has the benefit of a statutory exemption but has not complied with the conditions in regulation 7 (regulation 10); for a reduction in the remuneration of a provider of relevant primary dental services by the amount of the charges payable under the Regulations and for a dental practitioner remunerated by either a Primary Care Trust, NHS trust or NHS foundation trust, which is providing relevant primary dental services itself, to account for, and pay to, the body by which he is remunerated the amount of the charges he has recovered from patients under these Regulations (regulation 12); and for the revocation of superseded Regulations on dental charges (Regulation 14 and Schedule 7).

Regulation 13 makes transitional provision for persons who, on or after 1 January 2006, are provided with a plan for treatment as part of the provision of general dental services or services under a pilot scheme and who receive part of that treatment prior to 1 April 2006 and part of that treatment after 1 April 2006. The provider calculates whether the overall charge for the treatment listed on the plan is lower if calculated in accordance with the 1989 Regulations or in accordance with these Regulations and the lower charge is payable. A similar calculation as to which of the charges is lower and, therefore, payable will also occur where an arrangement has been made for a dental appliance to be supplied on or after 1 January 2006 but that appliance is not supplied prior to 1 April 2006. Transitional provision is also made for a person who is provided with at least part of a course of occasional treatment, as part of the provision of general dental services, between 1 January 2006 and 1 April 2006, where a further part of the course of occasional treatment is provided on or after 1 April 2006, in circumstances where each and every treatment included in that course of occasional treatment is listed in Schedule 4 to these Regulations (Urgent Treatment under Band 1 Charge). In these circumstances, the provider will calculate whether the overall charge for the treatment received is lower if calculated as a course of occasional treatment in accordance with the 1989 Regulations or if calculated as an urgent course of treatment in accordance with these Regulations, and the lower charge is payable. The Directions referred to in paragraph (2)(b)(ii) of Regulation 13 which set out the requirements for a plan for treatment in relation to services under a pilot scheme are available from www.dh.gov.uk.

If a person has paid some or all of the charges due for treatment under the 1989 Regulations prior to 1 April 2006 and, using the above mentioned calculations, it is determined that the amount paid is in excess of the amount due under the transitional provisions, the provider must repay the excess amount paid to that person.