



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART IV U.K.

#### POWERS OF THE SECRETARY OF STATE

##### *Regulations as to certain charges*

- 69 Charges for drugs, medicines or appliances or pharmaceutical services. S**
- (1) Regulations may provide for the making and recovery in such manner as may be prescribed of such charges as may be prescribed in respect of—
    - (a) the supply under this Act (otherwise than under Part II) of drugs, medicines or appliances (including the replacement and repair of those appliances),
    - (b) such of the pharmaceutical services referred to in Part II as may be prescribed.
  - (2) Regulations under subsection (1) may provide for the grant, on payment of such sums as may be prescribed by those regulations, of certificates conferring on the persons to whom the certificates are granted exemption from charges otherwise exigible under the regulations in respect of drugs, medicines and appliances supplied during such period as may be prescribed, and different sums may be so prescribed in relation to different periods.
  - (3) The additional provisions of paragraphs 1 and 4 of Schedule 11 have effect in relation to this section.
- 70 Charges for dental or optical appliances. S**
- (1) Regulations may provide for the making and recovery in such manner as may be prescribed of charges of such amounts as are mentioned in sub-paragraph (1) of paragraph 2 of Schedule 11, in respect of the supply under this Act of such<sup>F1</sup> optical appliances as are mentioned in that sub-paragraph.

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[<sup>F2</sup>(1A) Regulations may provide for the making and recovery in such manner as may be prescribed of charges of amounts calculated in accordance with section 71A in respect of the supply under this Act of dentures and other dental appliances of prescribed descriptions.]

(2) If the Secretary of State, after consultation with the university associated with any hospital providing facilities for clinical dental teaching, is satisfied that it is expedient in the interests of dental training or education that the charges imposed by subsection [<sup>F3</sup>(1A)] should be remitted in the case of dental services provided at that hospital, either generally or subject to limitations or conditions, he may by order provide for that purpose.

Any order made under this subsection may be revoked or varied by a subsequent order made by the Secretary of State after such consultation as is mentioned above.

(3) The additional provisions of paragraphs 2 and 5 of Schedule 11 have effect in relation to this section.

#### Textual Amendments

- F1** Words repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), **Sch. 3**
- F2** S. 70(1A) inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. **11(4)**
- F3** “(1A)” substituted for “(1)” by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(1), **Sch. 2 para. 12**

## 71 Charges for dental treatment. **S**

(1) A charge of [<sup>F4</sup>an amount calculated in accordance with section 71A] may be made and recovered, in such manner as may be prescribed, in respect of any services provided as part of the general dental services under Part II, not being—

[<sup>F5</sup>(a) oral health assessments and dental examinations carried out on or after 1st April 2006;]

(a)

<sup>F6</sup>(b) the repair of appliances other than prescribed appliances;

(c) the arrest of bleeding; <sup>F6</sup>

(d)

<sup>F6</sup>The additional provisions of paragraphs 3 and 5 of Schedule 11 have effect in relation to this subsection.

(2) Regulations may provide that, in the case of such special dental treatment as may be prescribed, being treatment provided as part of the general dental services [<sup>F7</sup>(but not being oral health assessments or dental examinations carried out on or after 1st April 2006)], such charges as may be prescribed may be made and recovered by the person providing the services.

#### Textual Amendments

- F4** Words substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. **11(5)**
- F5** S. 71(1)(a) inserted (7.3.2006 for certain purposes, otherwise 1.4.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), ss. **12(2)(b)(i)**, 43(3); S.S.I. 2005/492, **art. 3(e)**, Sch. 3; S.S.I. 2006/121, **art. 3(a)**, Sch. 1

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- F6** S. 71(1)(a)(d) and word “or” preceding (d) repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), [Sch. 3](#)
- F7** Words in s. 71(2) inserted (7.3.2006 for certain purposes, otherwise 1.4.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), [ss. 12\(2\)\(b\)\(ii\)](#), 43(3); S.S.I. 2005/492, [art. 3\(e\)](#), Sch. 3; S.S.I. 2006/121, [art. 3\(a\)](#), Sch. 1

**Modifications etc. (not altering text)**

- C1** By [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 11\(7\)](#) it is provided that s. 71(1) shall cease to have effect so far as it provides that a charge may not be authorised for the clinical examination of a patient and any report on that examination

**[<sup>F8</sup>71A Calculation of charges for dental appliances and treatment. S**

- (1) Subject to the following provisions of this section, regulations may make such provision as to the amount of any charge—
- (a) authorised by section 70(1A) for the supply of dentures or other dental appliances; or
  - (b) authorised by section 71 for the provision of services, as appears to the Secretary of State to be appropriate.
- (2) Without prejudice to the generality of subsection (1) above, regulations may provide that any such charge in respect of appliances or services supplied or provided under Part II of this Act—
- (a) shall be of an amount equal—
    - (i) to the practitioner’s remuneration in respect of the supply or provision; or
    - (ii) to any part of that remuneration; or
  - (b) shall be otherwise calculated by reference to that remuneration.
- (3) Without prejudice to the generality of subsection (1) above, regulations may provide that any charge which is so authorised in respect of appliances supplied otherwise than under Part II of this Act—
- (a) shall be of an amount equal—
    - (i) to the remuneration a practitioner would receive for a supply under that Part of equivalent appliances; or
    - (ii) to any part of such remuneration; or
  - (b) shall be otherwise calculated by reference to such remuneration.
- (4) The charge shall not exceed the amount which the Secretary of State considers to be the cost to the health service of the supply or provision.
- (5) In this section “cost to the health service” does not include—
- (a) any fee in respect of a visit by a practitioner to a patient; or
  - (b) any fee or part of a fee payable by a patient in pursuance of regulations under section 71(2) or section 73(b) or 74(b).]

**Textual Amendments**

- F8** S. 71A inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 11\(6\)](#)

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## 72 Charges in respect of services etc. provided under sections 37, 38 and 41. **S**

Regulations may provide for the recovery of such charges as may be prescribed—

- (a) in respect of such services provided under section 37 (prevention of illness, care and after-care) as may be prescribed, not being services provided in a hospital;
- (b) in respect of such articles or services provided under section 38 (care of mothers and young children) as may be prescribed, not being articles or services provided in a hospital, and not being a drug, a medicine or an appliance of a type normally supplied;
- (c) from persons availing themselves of any service under section 41 (except advice on contraception),

and may provide for the remission of any such charge, in whole or in part, in such circumstances as may be prescribed.

## 73 Charges for more expensive supplies. **S**

Regulations may provide for the making and recovery of such charges as may be prescribed—

- (a) by the Secretary of State in respect of the supply by him of any appliance or vehicle which is, at the request of the person supplied, of a more expensive type than the prescribed type, or in respect of the replacement or repair of any such appliance, or the replacement of any such vehicle, or the taking of any such action in relation to the vehicle as is mentioned in section 46(2).
- (b) by persons providing [<sup>F9</sup>personal dental services in accordance with section 17C arrangements or] general dental services <sup>F10</sup> in respect of the supply, as part of those services, of any dental <sup>F10</sup> appliance which is, at the request of the person supplied, of a more expensive type than the prescribed type or in respect of replacement or repair of any such appliance.
- [<sup>F11</sup>(c) by a National Health Service trust in respect of the supply by them of any appliance or vehicle which is, at the request of the person supplied, of a more expensive type than the prescribed type, or in respect of the replacement or repair of any such appliance, or the replacement of any such vehicle.]

### Textual Amendments

- F9** Words in 73(b) inserted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I paras. 32, 47; S.I. 1998/1998, art. 2(2)(b), Sch. 2
- F10** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, Sch. 8 Pt. I
- F11** S. 73(c) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(11)

## 74 Charges for repairs and replacements in certain cases. **S**

Regulations may provide for the making and recovery of such charges as may be prescribed—

- (a) by the Secretary of State in respect of the replacement or repair of any appliance or vehicle supplied by him, or
- (b) by persons providing [<sup>F12</sup>personal dental services in accordance with section 17C arrangements or] general dental services <sup>F13</sup> in respect of the

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replacement or repair of any dental <sup>F13</sup> appliance supplied as part of those services, [<sup>F14</sup>or]

[<sup>F14</sup>(c) by an NHS trust in respect of the replacement or repair of any appliance or vehicle supplied by them,]

if it is determined in the prescribed manner that the replacement or repair is necessitated by an act or omission 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.

#### Textual Amendments

**F12** Words in s. 74(b) inserted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I paras. 32, 48; S.I. 1998/1998, art. 2(2)(b), Sch. 2

**F13** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, Sch. 8 Pt. I

**F14** S. 74(c) and preceding word “or” inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(12)

## 75 Sums otherwise payable to those providing services. **S**

Regulations made—

(a) under sections 69 to 71 and under sections 73 and 74 providing for the making and recovery of charges in respect of any services, may provide for the reduction of the sums which would otherwise be payable by a Health Board to the persons by whom those services are provided by the amount of the charges authorised by the regulations in respect of those services;

[<sup>F15</sup>(b) for the purposes of section 70(1A) in relation to appliances provided as part of—

(i) general dental services, or

(ii) personal dental services provided in accordance with section 17C arrangements,

may provide for the reduction of the sums which would otherwise be payable by a Health Board to the persons by whom those services are provided by the amount of the charges authorised by section 70(1A) in respect of those appliances.]

#### Textual Amendments

**F15** S. 75(b) substituted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I paras. 32, 49; S.I. 1998/1998, art. 2(2)(b), Sch. 2

## [<sup>F16</sup>75A Remission and repayment of charges and payment of travelling expenses. **S**

(1) Regulations may provide in relation to prescribed descriptions of persons—

(a) for the remission or repayment of the whole or any part of any charges which would otherwise be payable by them in pursuance of section 69(1) above, section 70(1) [<sup>F17</sup>or, (1A)] above [<sup>F18</sup>section 70A(1) above] or section 71 above [<sup>F19</sup>or section 20 of the National Health Service (Primary Care) Act 1997];

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- [<sup>F20</sup>(b) for the payment by the Scottish Ministers, in such cases as may be prescribed, of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred for the purpose of their obtaining—
- (i) any services provided under this Act,
  - (ii) any services in respect of which the costs are reimbursable under section 75B,
  - (iii) any services authorised to be received in another EEA state or Switzerland under Article 20(2) or (3) or Article 27(3) of Regulation (EC) 883/2004.]
- (c) where they are persons whose travelling expenses are payable by virtue of paragraph (b) above, for the payment by the Secretary of State in such cases as may be prescribed of expenses necessarily incurred by them (and by any companion whose travelling expenses are so payable) in obtaining overnight accommodation for the purpose mentioned in that paragraph [<sup>F21</sup>and]
- [<sup>F21</sup>(d) for the payment by the Secretary of State to NHS trusts of such sums as will reimburse them for any sums paid by them as travelling expenses in such cases as may be prescribed].
- (2) Descriptions of persons may be prescribed for the purposes of paragraph (a), (b) [<sup>F22</sup>, (c) or (d)] of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria-
- (a) their age;
  - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
  - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
  - (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit;
  - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits; and
  - (f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.
- (3) Regulations under this section may direct how a person's resources and requirements are to be calculated and, without pre-judice to the generality of this subsection, may direct that they shall be calculated—
- (a) by a method set out in the regulations;
  - (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;
  - (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
  - (d) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.
- (4) Regulations under this section which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—
- (a) as it has effect at the time when the regulations are made; or

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(b) both as it has effect at that time and as amended subsequently.]

#### Textual Amendments

- F16** S. 75A inserted by Social Security Act 1988 (c. 7, SIF 113:1), s. 14(2)
- F17** Words inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), Sch. 2 para. 13
- F18** Words in s. 75A(1)(a) inserted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I paras. 32, 51; S.I. 1998/1998, art. 2(2)(b), Sch. 2
- F19** Words in s. 75A(1)(a) inserted (29.9.1998) by S.I. 1998/2385, art. 3
- F20** S. 75A(1)(b) substituted (7.7.2010) by The National Health Service (Reimbursement of the Cost of EEA Treatment) (Scotland) Regulations 2010 (S.S.I. 2010/283), reg. 4
- F21** S. 75A(1)(d) and preceding word “and” inserted by National Health Service and Community Care Act 1990 (c.19, SIF 113:2), s. 66(1), Sch. 9 para. 19(13)(a)
- F22** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(13)(b)

#### [<sup>F23</sup>75B Reimbursement of the cost of services provided in another EEA state **S**

- (1) A Health Board must reimburse the cost of eligible services incurred by or on behalf of an eligible person on or after 23rd August 2010, but this is subject to the limits applicable under subsections (3) and (4), to subsections (6) and (7) and to any deduction applicable under section 75D.
- (2) Eligible services are services provided by an authorised provider in an EEA state other than the UK, which are necessary to treat or diagnose a medical condition of the eligible person and are—
  - (a) services, not being specified services, that are the same as or equivalent to those that the Health Board in whose area the eligible person resides would make or have made available under this Act in the circumstances of the person's case;
  - (b) specified services for which the Health Board in whose area the eligible person resides has given authorisation under section 75C; or
  - (c) services—
    - (i) which are neither the same as nor equivalent to services that the Health Board would make available under this Act in the circumstances of the person's case; and
    - (ii) for which the Health Board has given authorisation under section 75C.
- (3) In respect of services other than dental services, a Health Board may limit the amount payable by way of reimbursement under subsection (1) to the amount that the same or equivalent services would have cost the Health Board in whose area the eligible person resides if those services had been provided under this Act otherwise than in accordance with this section and section 75C.
- (4) In respect of dental services a Health Board may limit the amount payable by way of reimbursement under subsection (1) to the amount that would have been payable in respect of the same or equivalent services if those services had been provided under this Act otherwise than in accordance with this section and section 75C.
- (5) Where the same or equivalent services referred to in subsection (4) would have required approval from the Dental Practice Board, the Health Board—

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- (a) may require the eligible person to submit evidence as to the clinical necessity of the dental services; and
  - (b) may decline to reimburse the costs of any services which were not clinically necessary.
- (6) The duty in subsection (1) does not apply where the cost of the eligible services was incurred in connection with an arrangement which was entered into by or on behalf of the eligible person in the course of business and under which the applicant for reimbursement has gained or might be expected to gain any financial benefit.
- (7) This section and section 75C do not apply in circumstances where Articles 20 and 27(3) of Regulation (EC) 883/2004 apply.
- (8) In this section and sections 75C and 75D—
- “authorised provider” in relation to services provided in an EEA state other than the United Kingdom means a person who is lawfully providing services;
  - “eligible person” means a person who is ordinarily resident in Scotland;
  - “eligible services” has the meaning given in subsection (2) of this section;
  - “services” includes any goods, including drugs, medicines and appliances which are used or supplied in connection with the provision of a service, but does not include accommodation other than hospital accommodation; and
  - “specified services” means those services comprising—
    - (a) services which would require a stay in hospital accommodation for at least one night;
    - (b) medical treatment that involves general anaesthesia, epidural anaesthesia or intravenously administered sedation;
    - (c) dental treatment that involves general anaesthesia or intravenously administered sedation;
    - (d) services whose provision involves the use of specialised or cost-intensive medical infrastructure or medical equipment.

#### Textual Amendments

**F23** Ss. 75B-75D inserted (7.7.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/283\)](#), **reg. 3(3)**

#### 75C Prior authorisation **S**

- (1) An eligible person may apply to the Health Board in whose area that person resides for prior authorisation for the purposes of section 75B.
- (2) Prior authorisation must be given if the eligible services are specified services which—
  - (a) are the same as or equivalent to those that the Health Board in whose area the eligible person resides would make available under this Act in the circumstances of the person's case; and
  - (b) are not available to the eligible person from the Health Board without undue delay.
- (3) Prior authorisation may be given for any other eligible services falling within section 75B(2)(b) or (c).

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- (4) “Undue delay” means that the services cannot be provided within a period of time which is acceptable on the basis of medical evidence as to the clinical needs of the eligible person, taking into account that person's state of health at the time the decision is made and the probable course of the medical condition to which the services relate.
- (5) In assessing whether there is undue delay for the purposes of subsection (2), the Health Board must consider—
  - (a) the eligible person's medical history;
  - (b) the extent of any pain, disability, discomfort or other suffering that is attributable to the medical condition to which the services are to relate;
  - (c) whether any such pain, disability, discomfort or suffering makes it impossible or extremely difficult for the patient to carry out ordinary daily tasks; and
  - (d) the extent to which the services would be likely to alleviate, or enable the alleviating of, the pain, disability, discomfort or suffering.
- (6) Any authorisation under this section must be in writing.

#### Textual Amendments

**F23** Ss. 75B-75D inserted (7.7.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/283\)](#), **reg. 3(3)**

## 75D Deduction of NHS charges **S**

- (1) A Health Board may deduct from any amount to be reimbursed under section 75B(1), in whole or in part, any NHS charge which would have been payable by the eligible person for the same service or an equivalent service if the service had been made available by the Health Board in whose area the eligible person resides.
- (2) Subsection (1) does not apply to the extent that the eligible person would, if the services received had been provided under this Act otherwise than in accordance with sections 75B and 75C, be entitled to any exemption or remission from any NHS charge.
- (3) In this section “NHS charge” means any charge payable in accordance with sections 69 to 74 or regulations made under those sections.]

#### Textual Amendments

**F23** Ss. 75B-75D inserted (7.7.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/283\)](#), **reg. 3(3)**

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