

**1989 No. 363 (S.39)**

**NATIONAL HEALTH SERVICE, SCOTLAND**

**The National Health Service (Dental Charges)  
(Scotland) Regulations 1989**

*Made* - - - - - *7th March 1989*

*Laid before Parliament* *10th March 1989*

*Coming into force* *1st April 1989*

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The Secretary of State, in exercise of the powers conferred on him by sections 4, 25, 70(1A), 71(1), 71A, 73, 74(b), 75, 105 and 108(1) of, and paragraphs 2(6) and 3(3) and (5) of Schedule 11 to, the National Health Service (Scotland) Act 1978(a) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

### **Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (Dental Charges) (Scotland) Regulations 1989 and shall come into force on 1st April 1989.

(2) In these Regulations, unless the context otherwise requires -

“the Act” means the National Health Service (Scotland) Act 1978;

“the 1988 Act” means the Health and Medicines Act 1988(b);

“basic type” means, in relation to a dental appliance, a type no more expensive than that which is clinically necessary for such a reasonable standard of dental efficiency and oral health as is necessary to safeguard general health;

“the Board” means the Scottish Dental Practice Board constituted under section 4 of the Act(c);

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

“dental estimate form” has the same meaning as in the National Health Service (General Dental Services) (Scotland) Regulations 1974(d);

“denture” does not include an obturator;

“Health Board” means a Health Board constituted under section 2 of the Act;

“patient” includes a person who pays or undertakes to pay a charge on behalf of a person to whom a dental appliance is supplied or to whom some other service is provided;

“Statement of Dental Remuneration” means the Statement published under regulation 26 of the National Health Service (General Dental Services) (Scotland) Regulations 1974;

“Statement remuneration” has the meaning given by regulation 4(2) and (3);

“supply”, in relation to an appliance, includes its replacement.

(3) A reference to a numbered regulation or Schedule is to the regulation in, or Schedule to, these Regulations bearing that number and a reference in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number.

### **Charges for supply of dental appliances**

2.—(1) Subject to paragraph 2(3), (4) and (8) of Schedule 11 to the Act (which provides for circumstances in which no charge may be made) and to paragraph (2), a charge of the amount provided for by regulation 4 may be made and recovered under section 70(1A) of the Act in accordance with these Regulations in respect of the supply under the Act of dentures and bridges.

(2) No charge shall be made and recovered under section 70(1A) of the Act in respect of-

(a) a supply, otherwise than as part of general dental services, to a person who has undergone operative procedures affecting the mandible, the maxilla or the soft tissues of the mouth as part of treatment for invasive tumours; or

(b) a supply as part of general dental services for which a charge may be made under regulation 8(2).

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(a) 1978 c.29; for the definitions of “prescribed” and “regulations” see section 108(1); section 4 was amended by section 12 of the Health and Medicines Act 1988 (c.49) (“the 1988 Act”); section 70(1A) and section 71A were inserted by, and section 71 was amended by, the 1988 Act, section 11; section 105, which contains provisions relevant to the making of regulations, was amended by the Health Services Act 1980 (c.53) (“the 1980 Act”), Schedule 6, paragraph 5 and Schedule 7, paragraph 24 and by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9; paragraph 2 of Schedule 11 was amended by the 1980 Act, Schedule 5, paragraph 6, and by the 1988 Act, section 11(8) and Schedule 2, paragraph 15 and Schedule 3; paragraph 3(4) of Schedule 11 was amended by the 1980 Act, Schedule 5, paragraph 7(2); paragraph 3(5) of Schedule 11 was amended by the 1980 Act, Schedule 5, paragraph 7(3).

(b) 1988 c.49.

(c) See section 12(1) of the 1988 Act.

(d) S.I. 1974/505; relevant amending instruments are S.I. 1979/705, 1980/1220, 1981/900, 1984/1491, 1985/1552, 1986/1571, 1987/1634 and 1988/854.

### **Charges for other general dental services**

3.—(1) Subject to section 71(1)(b) and (c) of, and paragraph 3(4) of Schedule 11 to, the Act (which provide for circumstances in which no charge may be made) and to paragraph (2), the amount of the charge which may be made and recovered under section 71(1) of the Act in respect of services provided as part of general dental services is that provided for by regulation 4.

- (2) No charge shall be made and recovered under section 71(1) of the Act in respect of—
- (a) the supply of a dental appliance described in regulation 2(1);
  - (b) a visit by a dental practitioner to a patient;
  - (c) the opening by a dental practitioner of his surgery outside his normal opening hours in order to provide emergency treatment; or
  - (d) the attendance at the surgery of a dental practitioner providing emergency treatment of a medical practitioner or of another dental practitioner, specifically with a view to the administration of a general anaesthetic in connection with emergency treatment.

### **Calculation of charges**

4.—(1) Subject to paragraphs (4) and (5), the amount of the charge which may be made and recovered—

- (a) under section 70(1A) of the Act for the supply of an appliance described in regulation 2(1);
- (b) under section 71(1) of the Act for the provision of services other than those described in regulation 3(2),

is 75% of the Statement remuneration (rounded down, where necessary, to the nearest whole penny), being an amount not exceeding that which the Secretary of State considers to be the cost to the health service (within the meaning of section 71A(5) of the Act) of the supply or provision.

(2) In these Regulations “Statement remuneration” means—

- (a) in relation to the supply (whether or not as part of general dental services) of an appliance described in regulation 2(1), the remuneration provided for by the Statement of Dental Remuneration as that payable to a dental practitioner for the supply of an appliance of that type;
- (b) in relation to other services provided in pursuance of a contract or arrangement for the provision of general dental services, the total amount provided for by that Statement as that payable to the dental practitioner for the provision of those services under that contract or arrangement.

(3) For the purposes of paragraph (2), where the Statement remuneration for any service is a fee of such amount as the Board may in its discretion approve, whether or not subject to a maximum, the amount is—

- (a) if the Board has approved a fee for the service, the amount of the fee so approved, notwithstanding any subsequent variation of that amount on appeal<sup>(a)</sup>;
- (b) if the Board has refused to approve a fee for the service, the amount of any fee authorised for it on appeal.

(4) Where a dental practitioner—

- (a) has, under a contract or arrangement for the provision of general dental services, begun to provide for a patient services which include the supply of an appliance described in regulation 2(1); and
- (b) has referred that patient, for the supply of that appliance otherwise than as part of general dental services, to a Health Board or to a hospital or other person or body with which arrangements have been made for the provision of services under the Act,

the amount of the charge for that supply shall be calculated in accordance with Schedule 1, and the dental practitioner shall provide the Health Board, hospital or other person or body with a written statement of the amounts mentioned in sub-paragraphs (a) and (b) of paragraph 1 of that Schedule.

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(a) See S.I. 1974/504, regulation 19: the relevant amending instrument is S.I. 1988/878.

(5) The amount of the charges payable under sections 70 and 71 of the Act in respect of all dental appliances supplied and other services provided in pursuance of any one contract or arrangement for the provision of general dental services shall not exceed £150 in the aggregate; and £150 is the sum prescribed for the purposes of paragraph 3(3) of Schedule 11 to the Act.

#### **Conditions for exemption under the Act**

5.—(1) It is a condition of the exemption under sub-paragraph (4) of paragraph 2 of Schedule 11 to the Act in respect of the supply of a dental appliance to a person otherwise than as part of general dental services that—

- (a) a written declaration on a form provided for that purpose by the Secretary of State shall be made to the effect that that person is, at the time of the examination or first examination leading to the supply of the appliance, within one of the specified categories; and
- (b) where the Secretary of State so requires, the specified evidence shall be supplied by or on behalf of that person.

(2) It is a condition of the exemptions under sub-paragraph (4) of paragraph 2 and sub-paragraph (4) of paragraph 3 of Schedule 11 to the Act in respect of the supply of a dental appliance, or other services provided, to a person as part of general dental services that—

- (a) a written declaration on a dental estimate form shall be made to the effect that that person is, on the date of the contract or arrangement for the service, within one of the specified categories; and
- (b) where the Board so requires, the specified evidence shall be supplied by or on behalf of that person.

(3) The declarations referred to in paragraphs (1)(a) and (2)(a) shall be made by the person to whom the services are to be provided, except that where the application for services is made by another person on his behalf (a) it shall be made instead by the person who applies for the services.

(4) Nothing in paragraph (1)(b) or (2)(b) prevents the Secretary of State or the Board 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 2 and “the specified evidence”, in relation to any of those categories, means the evidence specified in relation to it in column (2) of that Schedule.

#### **Making and recovery of charges**

6.—(1) Where any charge is payable under section 70 of the Act in respect of the supply of a dental appliance under the Act otherwise than as part of general dental services, the Secretary of State or Health Board may—

- (a) on arranging to supply it, make the appropriate charge; and
- (b) on supplying it or having it available for supply, recover the appropriate charge from the patient (if it has not previously been paid).

(2) In providing general dental services for which a charge may be made under section 70 or section 71 of the Act, a dental practitioner—

- (a) may, on arranging to provide the service, make the appropriate charge;
- (b) shall require the patient to acknowledge, on the appropriate part of the dental estimate form, and before that form is sent to the Board, his obligation to pay a charge which is made;
- (c) may, on providing the service, recover the charge from the patient (if it has not previously been paid); and
- (d) shall, on receiving a sum in payment (in full or in part) of the charge, give a receipt for it on a form provided for that purpose by the Health Board or a form to the like effect.

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(a) See S.I. 1974/505, regulation 20.

(3) Where a declaration in support of a claim for exemption has been made under regulation 5(2)(a) but the claim is not substantiated, and in consequence of the claim a dental practitioner has not recovered a charge in respect of an appliance supplied or other services provided, a Health Board may recover the charge from the person who made the declaration (whether or not the obligation to pay has been acknowledged).

#### **Remission and repayment**

7. The charges which may be made and recovered by virtue of the preceding provisions of these Regulations are subject to the provisions of regulations made under section 75A(a) of the Act providing for remission or repayment(b).

#### **Charges for more expensive supplies and repairs**

8.—(1) Where the Secretary of State—

- (a) supplies a dental appliance which is, at the request of the person supplied, of a type more expensive than the basic type; or
- (b) repairs such a dental appliance at a cost exceeding that of repairing a dental appliance of the basic type,

he may make and recover from the patient a charge equal to the difference between the cost of supplying or repairing the appliance and the cost of supplying or repairing an appliance of the basic type, in addition to any charge authorised by section 70 of the Act.

(2) Where a dental practitioner providing general dental services, as part of those services and at the request of the person supplied—

- (a) supplies a denture which is of a type more expensive than the basic type;
- (b) repairs such a denture at a cost exceeding that of repairing a denture of the basic type; or
- (c) supplies a bridge which is of a type more expensive than a denture or a bridge of the basic type,

he may, subject to paragraph (4), make and recover from the patient in respect of the supply or repair of the appliance a charge of an amount calculated in accordance with Part I of Schedule 3.

(3) Part II of Schedule 3 shall have effect with respect to the procedure for determining the amount of the charge referred to in paragraph (2).

(4) In the case of an appliance supplied or repaired by a dental practitioner who is remunerated in accordance with Determination VI of the Statement of Dental Remuneration, the Health Board, and not the dental practitioner, shall make and recover the charge.

#### **Charges for replacement – general dental services**

9.—(1) Where a dental practitioner providing general dental services replaces a dental appliance supplied as part of those services and it is determined in accordance with Schedule 4 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 dental practitioner 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), the Statement remuneration for the supply of the dental appliance.

(3) If the Health Board considers—

- (a) that payment of the full amount of the charge under paragraph (1) would involve undue hardship to the relevant person; or
- (b) that the replacement, though necessitated by the relevant person's act or omission, was not wholly necessitated by lack of reasonable care on his part,

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(a) Section 75A was inserted by the Social Security Act 1988 (c.7), section 14(2).

(b) See S.I. 1988/546, as amended by S.I. 1989/393.

it may determine that the charge shall not be payable, or that its amount shall be reduced.

(4) In this regulation, "relevant person" means—

- (a) where paragraph (1)(b) applies, the person having charge of the person supplied when the act or omission occurred;
- (b) in any other case, the person supplied.

#### **Discontinuation of treatment – general dental services**

10. A dental practitioner providing general dental services may decline—

- (a) to begin treatment; or
- (b) where treatment has begun, to continue with it;

until he or the Health Board has received payment of the amount of any charge payable to him or it in accordance with these Regulations.

#### **Reduction of remuneration and accounting for charges – general dental services**

11.—(1) Subject to paragraph (2), the remuneration which would otherwise be payable by a Health Board to a dental practitioner providing general dental services shall be reduced by the amount of the charges authorised by these Regulations in respect of those services.

(2) Paragraph (1) does not apply to remuneration under Determination VI of the Statement of Dental Remuneration.

(3) A dental practitioner remunerated under Determination VI of the Statement of Dental Remuneration shall account for and pay to the Health Board, in such manner as it may require, the amount of any charges recovered from a patient under these Regulations.

#### **Revocations, amendment, savings and application of Regulations**

12.—(1) The regulations specified in column (1) of Schedule 5 are revoked to the extent specified in column (3) of that Schedule.

(2) In Part I of Schedule 1 to the National Health Service (General Dental Services) (Scotland) Regulations 1974 (terms of service), in paragraph 16(a), after head (ii) there is inserted the following head:—

“(iii) regulations 4(4), 6(2) and 8(2) to (4) of, and Schedule 3 to, the National Health Service (Dental Charges) (Scotland) Regulations 1989;”.

(3) These Regulations apply to the supply of a dental appliance otherwise than as part of general dental services only where the examination, or first examination, leading to the supply takes place on or after 1st April 1989; and where the examination or first examination leading to the supply takes place before 1st April 1989, the charge which may be made and recovered in respect of the supply shall be that authorised by the Act and regulations made under it as in force at the time of that examination or first examination.

(4) These Regulations apply to the provision of general dental services only where the contract or arrangement leading to the supply, as part of those services, of a dental appliance or to some other provision of general dental services is made on or after 1st April 1989; and where the contract or arrangement is made before that date, the charge which may be made and recovered in respect of the supply or the other provision of general dental services shall be that authorised by the Act and regulations made under it as in force at the time when that contract or arrangement was made.

St. Andrew's House, Edinburgh  
7th March 1989

*Michael B. Forsyth*  
Parliamentary Under Secretary of State,  
Scottish Office

**CALCULATION OF CHARGE FOR SUPPLY OF APPLIANCE ON REFERRAL**

- 1.** There shall first be taken an amount ("£a") which is the greater of the following—
  - (a) the amount of the charges authorised by sections 70 and 71 of the Act which have been paid to the dental practitioner by the patient in respect of services provided under the contract or arrangement;
  - (b) the amount of the charges authorised by those sections, including any amount already paid, which would be payable to the dental practitioner by the patient in respect of those services if no charge fell to be made in respect of the supply of the appliance.
  
- 2.** Then £a shall be compared with the full amount of the charges payable to the dental practitioner by the patient in respect of services provided under the contract or arrangement ("£b") and—
  - (a) if £a equals or exceeds £b, there is no charge for the supply of the appliance;
  - (b) if £a is less than £b, the charge for the supply of the appliance is—
    - (i) £b minus £a, or
    - (ii) 75% of the Statement remuneration for the supply of the appliance, whichever is the lesser amount.

## EXEMPTIONS – CATEGORIES AND EVIDENCE

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

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



**CHARGES FOR MORE EXPENSIVE SUPPLIES AND REPAIRS –  
GENERAL DENTAL SERVICES****PART I****AMOUNT OF CHARGE**

1. The amount of the charge which may be made and recovered under regulation 8(2) is, subject to paragraph 2, £x plus £y where—
  - (a) £x is the amount of the charge which would be payable by the patient under section 70 of the Act in respect of the supply or repair of the appliance if it were an appliance of the basic type;
  - (b) £y is the difference between—
    - (i) the cost of supplying or repairing the more expensive appliance, and
    - (ii) the fees payable to the dental practitioner in accordance with Determination I of the Statement of Dental Remuneration in respect of the supply or repair of an appliance of the basic type, disregarding for this purpose any maximum fee in respect of combinations of dentures.
2. The aggregate of £x and the charges payable by the patient under sections 70 and 71 of the Act in respect of services provided in pursuance of the contract or arrangement other than the supply or repair of the appliances (“the other charges”) shall not exceed £150, so that—
  - (a) where the other charges are £150 or more, the amount of the charge referred to in paragraph 1 is £y only;
  - (b) where the other charges are of an amount less than £150, £x shall not exceed the difference between that amount and £150.

**PART II****PROCEDURE**

1. A dental practitioner who agrees to a request referred to in regulation 8(2) shall—
  - (a) complete, on a dental estimate form, an estimate for the treatment of the patient, including the supply or repair of an appliance of the basic type;
  - (b) complete a further estimate, on the supplementary estimate form set out in Determination V of the Statement of Dental Remuneration or on a form to the like effect, of the cost of supplying or repairing the more expensive appliance;
  - (c) require the patient to sign both estimates;
  - (d) submit both estimates to the Board for approval of the treatment.
2. If the Board approves the estimates, it shall determine and indicate in the appropriate parts of the dental estimate form—
  - (a) the amount of the charge to be made and recovered under sections 70 and 71 of the Act for the treatment set out in the estimate referred to in paragraph 1(a), other than for the supply or repair of an appliance of the basic type;
  - (b) the amount of the charge which may be made and recovered under regulation 8(2) for the supply or repair of the more expensive appliance.
3. It is a condition of the approval by the Board of an estimate submitted under paragraph 1 that the dental practitioner shall comply, in respect of any such estimate, with the conditions with respect to materials set out in Determination III of the Statement of Dental Remuneration.

## MANNER OF DETERMINING CHARGE FOR REPLACEMENT

1. Where the Board, on considering an estimate submitted for the approval of a free replacement of a dental appliance supplied as part of general dental services, considers that there are grounds for believing that the replacement is necessitated by such an act or omission as is referred to in regulation 9(1), it may refer the matter to the Health Board for investigation.
2. The Health Board shall make such inquiry into the matter referred as it thinks fit and if either-
  - (a) in its opinion the circumstances so require; or
  - (b) the person supplied or (if he is under 16 years of age) the person in charge of him so requires,the inquiry shall take the form of an oral hearing by a sub-committee of the Health Board appointed for the purpose which shall report to the Health Board on the matter.
3. The Health Board, having considered any report made by its sub-committee under paragraph 2-
  - (a) shall determine whether the replacement is necessitated by an act or omission on the part of the person supplied or (if the act or omission occurred when the person supplied was under 16 years of age) of the person supplied or of the person having charge of him when the act or omission occurred; and
  - (b) if it is so necessitated, shall determine in accordance with regulation 9(2) and (3), the amount of the charge to be made and recovered.
4. The Health Board shall communicate its determination to-
  - (a) the relevant person (within the meaning of regulation 9(4));
  - (b) the dental practitioner replacing the appliance;
  - (c) the Board.

SCHEDULE 5

Regulation 12(1)

REVOCATIONS

<i>Column (1)</i> <i>Regulations revoked</i>	<i>Column (2)</i> <i>References</i>	<i>Column (3)</i> <i>Extent of revocation</i>
The National Health Service (General Dental Services) (Scotland) Regulations 1974	S.I. 1974/505	Part V and, in Schedule 1, paragraph 28
The National Health Service (Charges for Appliances) (Scotland) Regulations 1974	S.I. 1974/1910	Regulation 4 and regulation 6 so far as it relates to the replacement of appliances
The National Health Service (Dental and Optical Charges) (Scotland) Regulations 1979	S.I. 1979/705	The only extant regulation (regulation 12)
The National Health Service (General Dental Services) (Scotland) Amendment Regulations 1980	S.I. 1980/1220	Regulation 3
The National Health Service (Dental Charges) (Scotland) Regulations 1988	S.I. 1988/464	The whole Regulations

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations replace with modifications regulations providing for the making and recovery of charges for dental appliances, supplied or repaired under the National Health Service (NHS) in Scotland, and for other dental treatment provided as part of NHS general dental services.

These Regulations provide for charges for—

- (a) the supply of dentures and bridges, whether or not as part of general dental services (regulations 2, 4 and 6 and Schedule 1);
- (b) the provision of other dental treatment as part of general dental services (regulations 3, 4 and 6);
- (c) the supply or repair, whether or not as part of general dental services, of dental appliances of a type more expensive than is clinically necessary (regulation 8 and Schedule 3); and
- (d) the replacement, as part of general dental services, of dental appliances lost or damaged by an act or omission of the patient (regulation 9 and Schedule 4).

(Charges for repair under the NHS, otherwise than as part of general dental services, of dental appliances lost or damaged by an act or omission of the patient remain subject to the more general provisions as to appliances contained in the National Health Service (Charges for Appliances) (Scotland) Regulations 1974.)

The Regulations provide in addition for the conditions for exemption from charges (regulation 5 and Schedule 2), discontinuation of general dental services where charges are not paid (regulation 10), the reduction of a dental practitioner's remuneration by the amount of the charge which is recoverable under the Regulations (regulation 11) and the revocation of the superseded Regulations on dental charges (regulation 12 and Schedule 5).

Changes of substance made by these Regulations are as follows.

Firstly, the basis of the charge for the supply of all dentures and bridges is altered from a specified amount to that which applies to other treatment, namely a formula of 75% of the fees which are or would be payable to a dentist providing general dental services for the supply of a denture or bridge of the relevant type. (The charges fixed since 1st April 1988 were of an amount approximately equal to 75% of those fees). The effect on the level of charges will increase charges for dentures by an average of about 10%. Other charges are not affected, except for a bridge of a Maryland type for which the charge is increased by 1.5%.

Secondly, a provision authorising additional charges for certain types of conservation treatment (gold inlays, pinlays or crowns) more expensive than clinically necessary is removed.

Thirdly, the condition that documentary evidence be produced to support a claim for exemption from charges for dental appliances or other treatment as part of general dental services is extended to cases where exemption is claimed on grounds of being under 18 or under 19 and in full-time education (regulation 5 and Schedule 2), and the nature of the evidence to be produced in all cases of exemption is specified in the Regulations.

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