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 S T A T U T O R Y I N S T R U M E N T S
 

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**1999 No. 2794**
**NATIONAL HEALTH SERVICE, ENGLAND**
**The National Health Service (Penalty Charge)  
Regulations 1999**

<i>Made</i> - - - - -	<i>10th October 1999</i>
<i>Laid before Parliament</i>	<i>11th October 1999</i>
<i>Coming into force</i> - -	<i>1st November 1999</i>

The Secretary of State for Health in exercise of powers conferred by sections 122B(1), (2) and (4), 126(4) and 127(a) of the National Health Service Act 1977(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 (Penalty Charge) Regulations 1999 and shall come into force on 1st November 1999.

- (2) In these Regulations, unless the context otherwise requires—  
 “the Act” means the National Health Service Act 1977; and  
 “surcharge” has the meaning given in regulation 4.

**Service of a penalty notice**

2.—(1) Where a person fails to pay any amount referred to in section 122B(1)(a) or (b) of the Act(b), the responsible authority may serve a penalty notice requiring the person, within the period of 28 days beginning with the date on which the penalty notice was sent, to pay that amount to the responsible authority together with a penalty charge determined in accordance with regulation 3.

- (2) A penalty notice shall be sent by post to the person’s last known address.
- (3) The penalty notice shall state—
- the name of the person liable to pay the amount required to be paid under the penalty notice;
  - the amount recoverable as mentioned in section 122B(1)(a) or (b) of the Act;
  - the amount of the penalty charge calculated in accordance with regulation 3;
  - the sum of the amounts referred to in sub-paragraphs (b) and (c), which shall represent the total amount required to be paid under the penalty notice;

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- (a) 1977 c. 49. See section 128(1) as amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 26(2)(g) and (i), for the definitions of “prescribed” and “regulations”. Section 122B was inserted by section 39 of the Health Act 1999 (c. 8) (“the 1999 Act”). Section 126(4) was amended by section 65(2) of the 1990 Act. As regards Wales, the functions of the Secretary of State under sections 122B, 126(4) and 127(a) of the 1977 Act are transferred to the National Assembly for Wales under article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); these regulations therefore extend only to England.
- (b) Section 122B applies to charges and payments which may under section 122(1) or 122A of the Act be recovered from a person in respect of the provision of those goods and services listed in section 122A(7); section 122A was inserted by section 39 of the 1999 Act. Such charges include charges which may be made and recovered for dental treatment provided in accordance with pilot schemes under section 20 of the National Health Service (Primary Care) Act 1997 (c. 46); see section 39(3) of the 1999 Act.

- (e) in relation to the total amount required to be paid under the penalty notice—
  - (i) the responsible authority to whom that amount shall be paid,
  - (ii) the address to which that amount shall be sent,
  - (iii) the methods by which payment may be made, and
  - (iv) in accordance with paragraph (1), the date by which that amount shall be paid to the responsible authority;
- (f) that if the person fails to pay the amount he is required to pay by the date specified in the penalty notice—
  - (i) the person must also pay to the responsible authority a surcharge, and
  - (ii) the amount of the surcharge he must pay, calculated in accordance with regulation 4(2); and
- (g) that a person is not liable by virtue of a penalty notice—
  - (i) to pay at any time so much of any amount referred to in section 122B(1)(a) or (b) of the Act for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other<sup>(a)</sup>, or
  - (ii) to a penalty charge, or a surcharge, if he shows that he did not act wrongfully, or with any lack of care, in respect of the amount recoverable as mentioned in section 122B(1)(a) or (b) of the Act<sup>(b)</sup>.

### Calculation of penalty charge

3. The amount of the penalty charge shall be whichever is the smaller of—
- (a) £100, and
  - (b) the amount referred to in section 122B(1)(a) or (b) of the Act multiplied by 5.

### Surcharge

4.—(1) Where a person fails to pay the amount required to be paid under the penalty notice in accordance with regulation 2(1), he shall in addition be liable to pay to the responsible authority a further sum (in these regulations referred to as “a surcharge”), calculated in accordance with paragraph (2).

(2) The amount of the surcharge shall be 50% of the amount of the penalty charge (rounded down, where necessary, to the nearest whole penny).

Signed by authority of the Secretary of State for Health

10th October 1999

*John Denham*  
Minister of State,  
Department of Health

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(a) see section 122B(7)(a) of the Act.  
(b) see section 122B(7)(b) of the Act.

### **EXPLANATORY NOTE**

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

These Regulations make provision for a civil penalty to be imposed where a person wrongly fails to pay a NHS charge in respect of the provision of drugs and medicines, dental treatment and appliances, optical services, or any other appliances, or receives a payment or benefit towards the cost of a NHS charge or service to which he is not entitled, such as NHS spectacle vouchers or free NHS sight tests.

Regulation 2 provides for a penalty notice to be issued to a person requiring payment of the amount that the person has failed to pay and an additional penalty charge. It sets out the period within which those amounts must be paid, and the information that the penalty notice must contain. Regulation 3 sets out how the amount of the penalty charge payable shall be calculated.

Regulation 4 provides that where the amount required to be paid under the penalty notice is not paid within the period prescribed, a further sum by way of penalty (“a surcharge”) must be paid.

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