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SCOTTISH STATUTORY INSTRUMENTS

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**1999 No. 121**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Penalty Charge) (Scotland) Regulations 1999**

*Made* - - - - *14th October 1999*  
*Laid before the Scottish*  
*Parliament* - - - - *21st October 1999*  
*Coming into force* - - *16th November 1999*

The Scottish Ministers, in exercise of powers conferred on them by sections 99ZB(1), (2), (4) and (5), 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(1), and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (Penalty Charge) (Scotland) Regulations 1999 and shall come into force on 16th November 1999.

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

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

“surcharge” has the meaning given in regulation 4 of these Regulations.

**Service of a penalty notice**

2.—(1) Where a person fails to pay any amount referred to in section 99ZB(1)(a) or (b) of the Act(2), 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 of these Regulations.

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- (1) 1978 c. 29; section 99ZB was inserted by the Health Act 1999 (c. 8) (“the 1999 Act”), section 59; section 105(7) which contains provisions relevant to the making of Regulations, was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7, by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24 and by the 1999 Act, Schedule 4, paragraph 60; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
- (2) Section 99ZB applies to charges and payments which may under section 99 or 99ZA of the Act be recovered from a person in respect of the provision of those goods and services listed in section 99ZA(7); section 99ZA was inserted by the 1999 Act, section 59. 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 1977 (c. 46); see section 99ZB(8).

- (2) A penalty notice shall be sent by post to the person's last known address.
- (3) The penalty notice shall state—
- (a) the name of the person liable to pay the amount required to be paid under the penalty notice;
  - (b) the amount recoverable as mentioned in section 99ZB(1)(a) or (b) of the Act;
  - (c) the amount of the penalty charge calculated in accordance with regulation 3 of these Regulations;
  - (d) 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;
  - (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) of these Regulations; 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 99ZB(1)(a) or (b) of the Act for which he is jointly and severally liable with another person as at that time has been paid, or ordered by a court to be paid, by that other person<sup>(3)</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 99ZB(1)(a) or (b) of the Act<sup>(4)</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 99ZB(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) of these Regulations, 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).

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(3) see section 99ZB(7)(a) of the Act.

(4) see section 99ZB(7)(b) of the Act

St Andrew's House, Edinburgh  
14th October 1999

*SUSAN C DUNCAN*  
A member of the Scottish Executive

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

These Regulations make provision for a civil penalty to be imposed where a person fails to pay a National Health Service (“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.