

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE (PRIMARY DENTAL SERVICES)**  
**(MISCELLANEOUS AMENDMENTS TO CHARGES) REGULATIONS**  
**2013**

**2013 No. 711**

1. This explanatory memorandum has been prepared by The Department of Health and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument amends –

- (a) The National Health Service (Primary Dental Services (Miscellaneous Amendments and Transitional Provisions) Regulations 2013 (S.I. 2013/364) (“the Miscellaneous Amendments Regulations”)
- (b) The National Health Service (Charges for Drugs and Appliances), (Dental Charges) and (Travel Expenses and Remission Charges) (Amendment) Regulations 2013 (S.I. 2013/475) (“Charges and Expenses Regulations”); and
- (c) the National Health Service (Dental Charges) Regulations 2005 S.I. 2005/3477 (“Dental Charges Regulations”).

2.2 The purpose of this instrument is to-

- (a) revoke certain provisions made in the Miscellaneous Amendments Regulations, which provisions amend the Dental Charges Regulations to introduce a new Band 1A course of treatment for interim care, make transitional arrangements for charges, and make consequential provision;
- (b) revoke provision made in the Charges and Expenses Regulations to uplift the charge payable for a Band 1A course of treatment (because the uplifted charge is reflected in the amendments made by this instrument); and
- (c) to amend the Dental Charges Regulations –
  - (i) to make consequential amendments to regulations 4 and 6;
  - (ii) to insert new regulation 13A which introduces the Band 1A charge (the new regulation 13A corrects a defect in the Miscellaneous Amendments Regulations which did not reflect the policy intention, and clarifies how charges are to be made in relation to different component treatments within a Band 1A course of treatment); and
  - (iii) to insert an amended regulation 13B to correct a transitional charging provision that could have applied retrospectively.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

This legislation will breach the 21-day rule, for which we apologise. A defect in the Miscellaneous Amendments Regulations as laid meant that any treatment delivered within the new Band 1A course of treatment for interim care would be chargeable, and this is not the policy intention. The intention is that a Band 1A course of treatment should only be chargeable

where at least one component of the treatment provided is invasive treatment to patients. This discrepancy between the policy and the regulations came to light as a result of queries raised by the Secondary Legislation Scrutiny Committee. These queries are covered in the Committee's 33<sup>rd</sup> report, placed before the House of Lords to be printed on 19<sup>th</sup> March 2013 and which is available on Parliament's website at <http://www.publications.parliament.uk/pa/ld201213/ldselect/ldsecleg/153/15302.htm>. The Capitation and Quality Scheme 2 pilots scheme will commence on 1st April 2013 and the correct charging regulation needs to apply from that date. In order to achieve this, the Department has had to lay this Instrument at short notice.

#### **4. Legislative Context**

- 4.1 The Instrument amends the regulations referred to in paragraph 2.1 above.
- 4.2 This instrument revokes provision made in the Miscellaneous Amendments Regulations to introduce the new Band 1A charge into the Dental Charges Regulations and related consequential, to enable a new amending provision to be made which corrects a defect in how a Band 1A charge is to be calculated and charged. The instrument also revokes transitional provision made by regulation 13B which applies where interim care planned and provided under the Capitation and Quality Scheme spans the introduction of the new pilot scheme, as the provision could have had inadvertent retrospective effect, and replaces it with a revised transitional provision that does not have this effect. The instruments also revokes the provision made in the new Expenses and Charges Regulation to remove provision uplifting the charge for a Band 1A treatment to £18.00. The charge was originally introduced at £17.50 and needed to be uplifted, but this is no longer necessary as the charge is now introduced at the uplifted rate of £18.00 in amendments made to the Dental Charges Regulations in this instrument.
- 4.3 The instrument inserts new Regulation 13A into the Dental Charges Regulations to provide that a new charge is to apply, but only where one or more of the invasive treatments set out in paragraphs (e) to (g) of Schedule 1A are provided as part of the components of an interim care course of treatment proposed for a patient at an initial examination, where patients are provided with additional interim care as part of treatment under the Capitation and Quality Scheme 2. This reflects the policy intention. The instrument also makes consequential amendments to regulations 4 and 6 of the Dental Charges Regulations to bring the new Band 1A charge within other existing provisions relating to calculation of dental charges (to establish which band charge is applicable in any situation) and to circumstances in which a new charge cannot be made for treatment within a specified period after a course of treatment is completed .
- 4.4 The instrument inserts new regulation 13B to provide that the new charge will only apply where all of the components of an interim care course of treatment are provided after 1st April. This is being done to ensure that nobody who has received treatment that falls within the description of an interim care course of treatment that is provided before 1st April 2013, will be charged the new Band 1A charge. Only the initial examination and

planning for the interim care course of treatment may have taken place before 1<sup>st</sup> April.

## **5. Territorial Extent and Application**

5.1 This Instrument applies to England

## **6. European Convention on Human Rights**

As the Instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 For wider policy background in relation to the extension of the pilots, the capitation and Quality Scheme 2 and the charges that apply, please see the revised Explanatory Memorandum to the Miscellaneous Amendments Regulations. This Explanatory memorandum focuses on the revisions made by this Instrument.

A discrepancy between the policy intention relating to the way in which a Band 1A charge is calculated and charged and the regulations as made and laid came to light as a result of queries raised by the Secondary Legislation Scrutiny Committee in the report, linked to in paragraph 3. In order to ensure that the correct charging regime is in place for 1st April 2013 when the Capitation and Quality Scheme 2 commences, it has been necessary to make this Instrument revoking the defective provision and remaking provision introducing Band 1A which reflects the policy intention relating to charging for a Band 1A course of treatment.

Paragraphs 7.25 – 7.30 in the revised Explanatory Memorandum provided in relation to the Miscellaneous Amendments Regulations sets out the background to dental charging, the pilots and the new Band 1A charge. This instrument reflects the policy intention that a Band 1A charge is only applied where invasive treatments are provided as part of an interim care course of treatment. Further information relating to the reasons for this policy is set out in paragraphs 7.34 – 7.36 of the revised EM

7.2 Consequential provision was required flowing from these amendments to bring Band 1A charges within the ambit of other provisions in the Charges Regulations to ensure that similar protections in place for patients under these Regulations will apply to Band 1A charges. This instrument amends regulation 6 of the Charges Regulations to provide that patients receiving Band 1A courses of treatment have the full protection of the existing regulation on so-called “continuations”. The existing patient charge regulations provide that if a patient receives further NHS dental care within two months of a previous course of treatment banded at the same or lower band as the treatment previously received no additional patient charge is levied.

7.3 Provision had been made at Regulation 13A(4) of the Miscellaneous Amendments Regulations, that where a Band 1A course of treatment was

followed within two months by a further Band 1A or Band 1 course of treatment no new charge could be made. However, it did not provide that the same would apply where a Band 1, 2 or 3 course of treatment was followed within two months by a band 1A course of treatment. The new amendment provides that should this occur, patients in the pilots will have the same protections from being recharged for care within two months as patients in non-pilot practices.

- 7.4 It came to light that transitional provision made by regulation 13B inserted into the Charges Regulations by the Miscellaneous Amendments Regulations could, in the unusual event of a course of interim care provided over a number of appointments which spanned the 1st April introduction of the new charge, result in persons having to pay for treatment that they had received at a time when it would not have been chargeable. This is not the policy, so to correct this inadvertent retrospective effect, the Department has made an amended regulation 13B. This provision ensures that nobody will be charged under the new band 1A charge for treatment provided before 1st April 2013.
- 7.5 As soon as the defects referred to above became apparent the Department took steps to make urgent provision to correct the defects. The revised provisions must come into force for 1st April 2013 to ensure that the correct charging regime is in place for the Capitation and Quality Scheme 2 which starts on that date, and to ensure that patients are not charged for treatment received under the Capitation and Quality Scheme that would otherwise have been provided free. To achieve this, the Department has needed to breach the 21 day rule for laying which it very much regrets.
- 7.6 Because this instrument amends the Miscellaneous Amendments Regulations to a significant extent, we will issue this instrument free of charge to all known recipients of the Miscellaneous Amendments Regulations and the Charges and Expenses Regulations.

### **Consolidation**

- 7.7 As this Instrument is an amending instrument, consolidation is not applicable. Consideration has been given to consolidation more broadly and for further information please see paragraph [cross-refer] of the revised Explanatory Memorandum for the Miscellaneous Amendment Regulations.

## **8. Consultation outcome**

- 8.1 The Department shared a draft of this Instrument with the British Dental Association, and the Patients Association, to canvass their views on the need for this further amending regulation. Both have confirmed that they are content for these Regulations to be made and understand the need for them.

## **9. Guidance**

9.1 Please see paragraph 10 of the revised Explanatory Memorandum for the Miscellaneous Amendment Regulations for information relating to guidance related to these Regulations.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 This change to regulation will not impose any additional costs upon, nor alter the benefits to, dental providers. Band 1A only applies to patients receiving treatment under the Capitation and Quality Scheme 2. As the intention is to bring these payments into line and thus ensure greater equality as between groups of patients receiving NHS dental treatment, it was considered by the Department that an Impact Assessment was not required. The amendment made to the calculation of a Band 1A charge to provide that the charge will only apply for a sub set of the components of a Band 1A course of treatment does not affect this position.

## **11. Regulating small business**

11.1 NHS dental practices are exempt from the Small Firm Impact Test as they are considered as part of the public sector due to their provision of primary dental services for the NHS. Public sector organisations are exempt under this test.

## **12. Monitoring and Review**

12.1 Please see paragraph 13 of the revised Explanatory Memorandum for the Miscellaneous Amendment Regulations for information on the monitoring and review processes for these Regulations.

## **13. Contact**

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