

EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CHARGES FOR DRUGS AND APPLIANCES AND DENTAL CHARGES) (AMENDMENT) REGULATIONS 2017

2017 No. 408

1. Introduction

- 1.1 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 The National Health Service (Dental Charges) Regulations 2005 (S.I. 2005/3477) (“the 2005 Regulations”) provide for charges to be made and recovered for the provision of NHS dental treatment, including urgent treatment and orthodontic treatment, and the supply of dental appliances by a provider of primary dental services. This instrument amends the 2005 Regulations to implement an above inflation uplift to dental charges from 1st April 2017.
- 2.2 The National Health Service (Charges for Drugs and Appliances) Regulations 2015 (S.I. 2015/570) (“the 2015 Regulations”) provide for charges to be made and recovered for the supply of certain drugs, appliances, wigs and fabric supports, and provide for certain exemptions from charging in prescribed circumstances. This instrument amends the 2015 Regulations to increase prescription and other charges payable under them.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Yes. The instrument breaches the 21 day rule. This is due to delays in preparing and clearing the supporting materials. The uplifts to NHS prescription and dental charges are implemented annually to come into force on 1st April of each year. The instrument implements above inflationary uplifts to dental charges, and uplifts to prescriptions charges which are in line with inflation for 2017/18. Any delay in implementing this year’s uplifts would adversely impact on NHS revenue. The Department sincerely apologises for the delay.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 176 of the National Health Service Act 2006 (the 2006 Act) allows regulations to be made to provide for the making and recovery, in such manner as may be prescribed, of charges for relevant dental services. Section 177 of that Act sets out the exemptions to dental charging. The 2005 Regulations set out the applicable charges that may be levied for NHS dental and orthodontic treatment in England, which is provided under contracts known as general dental services contracts or

personal dental services agreements. Uplifts to these charges are usually implemented annually, in line with inflation, by way of amendment of the 2005 Regulations. This instrument implements an above inflation increase to these charges from 1st April 2017.

- 4.2 Section 172 of the Act allows regulations to be made for the making and recovery, in such manner as may be prescribed, of charges for the supply of drugs, medicines and appliances under the Act. The 2015 Regulations set out a scheme for charges for drugs and appliances and some other items supplied to NHS patients in England, and the arrangements for exemption from those charges. This instrument provides for a routine uprating of the amounts that are to be charged under those Regulations from 1st April 2017.

5. Extent and Territorial Application

- 5.1 This instrument extends only to England.
 5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

Dental Charges

- 7.1 As part of the Spending Review settlement, it was agreed to uplift patient charges for NHS dental treatment by approximately 5% in each of the financial years 2016/17 and 2017/18. These increases were announced last year, alongside implementation of the 2016/17 uplift.
- 7.2 Table 1 shows the current charges and the proposed charges for 2017/18. The pre-announced uplift for 2017/18 will result in Band 1 charges increasing by £0.90, Band 2 charges by £2.40 and Band 3 charges by £10.60.

Table 1: Patient charge 2016-17 and 2017-18

	2016/17 (current Patient Charge)	2017/18 (Patient Charge)
Band 1	£19.70	£20.60
Band 2	£53.90	£56.30
Band 3	£233.70	£244.30
Urgent	£19.70	£20.60

For further information about this decision please see the Explanatory Memorandum that was published alongside S.I. 2016/324 on the legislation.gov.org website <http://www.legislation.gov.uk/uksi/2016/324/memorandum/contents> (Hard copies of

this document and the Impact Assessment and Equality Analysis that were published alongside this document on the legislation.gov.org website are available from Dental & Eye Care Services, Rm: 201A Richmond House, Department of Health, 79 Whitehall, London SW1A 2NS).

- 7.3 There will be no changes in respect of those patients who are exempt from dental charges in the financial year 2017/18. Those who are not entitled to exemption but are on low incomes may also be eligible to receive help with health costs under the NHS Low Income Schemes. It has historically been the case that those who can contribute to the cost of dentist services do so, whilst maintaining exemptions and help with health costs for those with the greatest need. We consider that the proposed uplifts in charges are fair and proportionate. For further information on the current exemptions from dental charges and help with health costs that may be available to patients, please refer to the Impact Assessment and Equality Analysis published alongside this Explanatory Memorandum for S.I. 2016/324 referred to above.
- 7.4 Given that it is not proposed to make any changes in respect of those patients who are exempt from charges, we expect that going forward, the percentage of exempt patients receiving treatment will remain at the levels seen in 2014-2015, which was 48.7%.
- 7.5 The Department of Health is considering reform of the dental contract. To that end is trialling different ways of paying NHS dental contractors under a pilot scheme referred to as the Prototype Agreements Scheme. Interim care courses of treatment are only provided to those patients receiving treatment from contractors participating in this Scheme. The charges for such courses of treatment are also increased by this instrument in line with the Band 1 charges increases.

Prescriptions

- 7.6 The 2015 Regulations provide the amount of the charge for an NHS prescription item and certain other appliances supplied by the NHS, the circumstances in which the charge must, or must not, be made and the patients who are exempt from prescription charges. The amendments to the 2015 Regulations made in this instrument increase the single prescription charge in respect of drugs and appliances by 20p, an increase of 2.38%. This increase, combined with the freezing of the fee payable for both the three and the twelve month prescription prepayment certificate, produces an overall increase in prescription charge revenue broadly in line with inflation (as defined by the forecast GDP deflator for 2017/18). This will help provide protection for personal incomes where individuals may require a significant number of prescription items. The increase is in line with Spending Review assumptions. The charge for elastic hosiery will increase in line with the prescription charge.

Prescription prepayment certificates

- 7.7 Prescription prepayment certificates are available to everyone. Three month certificates can be purchased directly from some pharmacists. Three and twelve month certificates can be purchased from the NHS Business Services Authority, by phone, on line or by post. A twelve month prescription prepayment certificate is available to purchase in ten monthly direct debit instalments. Prescription prepayment certificates will save people money if they need more than three items in a three month period, or 13 items or more in a year. Certificate holders pay no further charge at the point of dispensing. There is no limit to the number of items the holder may obtain using the certificate. As indicated above the fee payable for these

certificates is being frozen. The basic charge per item and the charges for prescription prepayment certificates are in table 2.

Wigs and Fabric Supports

7.8 Charges are made for these items when supplied by hospitals or by other bodies through contracts. Charges for these items will be increased by around 1.8%. The current and new charges are in table 3 below. This instrument makes transitional provision in respect of an order for supply given before this instrument comes into force.

7.9 Table 2: Prescription Charges

	2016	2017	Increase
Cost of single item	£8.40	£8.60	£0.20
3-month	£29.10	£29.10	£0.00
12-month	£104.00	£104.00	£0.00

Table 3: Wigs and Fabric Supports

	2016	2017	Increase
Surgical Brassiere	£27.90	£28.40	£0.50
Abdominal or Spinal Supports	£42.20	£42.95	£0.75
Stock modacrylic wig	£68.90	£70.15	£1.25
Partial human hair wig	£182.50	£185.80	£3.30
Full bespoke human hair wig	£266.90	£271.70	£4.80

Consolidation

7.10 The 2005 Regulations were made in December 2005 and may be subject to further amendment in the light of experience with the operation of these powers, and to reflect inflationary increases. There are no plans to consolidate these Regulations.

7.11 However, the Department intends to review patient charges to ensure that the revenue expected as part of the spending review settlement is generated.

7.12 The 2015 Regulations were consolidated in 2015.

8. Consultation outcome

8.1 There is no statutory duty to consult on changes to the 2005 Regulations. The decision to implement these uplifts was taken to support the Five Year Forward View outlined in the Spending Review (as mentioned above in paragraph 7.1), which committed to funding frontline NHS services with an extra £8 billion a year by 2020. Therefore the decision to implement these uplifts has not been the subject of consultation.

8.2 The Department of Health is not required to consult on the 2015 Regulations.

9. Guidance

- 9.1 NHS Dental Charges - NHS Dental Contractors and NHS England will be advised of the new charges by way of a notification from the Department of Health. Patients will be informed of these changes by way of changes to the NHS Choices website which will be updated to reflect the new dental charges, and waiting room notices setting out the new charges which NHS dental contractors are required to display as a term of service.
- 9.2 Prescription, wigs and fabric supports charges - Relevant health care professionals and the public will be advised of the increase to charges for prescriptions and wigs and fabric supports by way of patient information leaflets, the Drug Tariff, the NHS Choices website and the gov.uk website. The Department will request NHS England to provide notification via email bulletins for dissemination to staff.

10. Impact

Dental charges

- 10.1 An Impact Assessment and an Equality Analysis was prepared in relation to the increases to these charges and published alongside S.I. 2016/324 (referred to in paragraph 7.4 above), the instrument which implemented the 2016/17 uplifts, on the legislation.gov.org website.

Prescriptions, wigs and fabric supports charges

- 10.2 In respect of amendments to the 2015 Regulations, there is no impact on business, charities or voluntary bodies.
- 10.3 Amendments to the 2015 Regulations will create a minimal cost to the public sector. To accommodate the increase to the single prescription charge the NHS Business Services Authority will need to amend their systems to reflect the increased level of the charge. Hospitals and other bodies supplying wigs and fabric supports will need to revise arrangements to reflect the new charges.
- 10.4 An Impact Assessment has not been prepared for this instrument in relation to the increases in charges for prescriptions, wigs and fabric supports.
- 10.5 In relation to these charges, we have considered the impact of this instrument in relation to our Public Sector Equality Duty (PSED). The PSED is not simply limited to eliminating discrimination, harassment and victimisation, but also includes positive obligations to promote equality of opportunity and to foster good relations between those who are likely to suffer discrimination and those who are not. When making legislation, Ministers are obliged to have due regard to all aspects of this duty. We have not identified any specific equalities issues in respect of our PSED duty. We have also considered the impact of the Secretary of State's duties under the 2006 Act, for example in relation to promoting autonomy and the improvement in the quality of services. Again we do not consider that there are specific issues in respect of these duties.

11. Regulating small business

- 11.1 The Regulations apply to small businesses, including firms employing up to 20 people. As these Regulations concern the provision of NHS primary care services in England on the basis of nationally determined terms of service, it is not possible to

differentiate between contractors according to their operational turnover or size. This is to ensure the application of agreed nation-wide standard and practice in the provision of such services as part of a nationally determined contractual framework.

- 11.2 This instrument places no new requirements on small businesses. In respect of charges levied it merely changes the amount the patient pays.

12. Monitoring & review

- 12.1 Charges for NHS dental treatment, and for drugs and appliances and other items supplied by the NHS under the 2015 Regulations are monitored by NHS England and the Department of Health and are reviewed annually, to consider what, if any, change in the amounts of such charges should be made.

13. Contact

- 13.1 In relation to the dental charge increases, Amit Bose at the Department of Health Telephone 0207 2105431 or email Amit.Bose@dh.gsi.gov.uk can answer any queries regarding the instrument.
- 13.2 In relation to prescription, wigs and fabric supports charge increases, Rebecca Blessing at the Department of Health Telephone: 0113 2546326 or email: Rebecca.blessing@dh.gsi.gov.uk can answer any queries regarding the instrument.