

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE (DENTAL CHARGES) (AMENDMENT)**  
**REGULATIONS 2020**

**2020 No. 1335**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (“DHSC”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**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 from a patient, who is not exempt, for the provision of dental treatment. This includes urgent treatment and orthodontic treatment, and the supply of dental appliances by a provider of primary dental services. The National Health Service (Dental Charges) (Amendment) Regulations 2020 (“the Regulations”) amend the 2005 Regulations to implement an above inflation uplift of 5% to dental charges from **14th December 2020**.

**3. Matters of special interest to Parliament**

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

- 3.1 In 2018 the Joint Committee on Statutory Instruments (“JSCI”) sought clarification from the department that NHS dental charges payable by patients do not exceed the total cost of NHS treatment provided to those patients. We have responded to this in paragraphs 7.8 through to 7.10 of this explanatory memorandum. We confirm that DHSC had made an analysis, based on national data and using appropriate assumptions that, at a national level, NHS patient charges do not exceed the total cost of NHS treatment provided. As part of the 2020/21 uplift, we have again considered this point and can re-confirm that the latest uplift is not expected to change this position.
- 3.2 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only.

**5. European Convention on Human Rights**

- 5.1 As this instrument is subject to negative resolution procedure and is not subject to parliamentary procedure, no statement is required.

## 6. Legislative Context

- 6.1 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 a manner as may be prescribed, of charges for relevant dental services. Section 177 of the 2006 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 service agreements. Uplifts to these charges are usually implemented annually, by way of amendment to the 2005 Regulations. Prior to 2016/17, uplifts were usually in line with inflation, however since then, uplifts of 5% above the inflationary rate have been implemented.

## 7. Policy background

### *What is being done and why?*

- 7.1 NHS patient charges have existed in dentistry and some other areas of the NHS since 1952. Many patients are exempt or entitled to remission of charges. All those under 18, those under 19 in full time education and expectant and new mothers are exempt and adults on specified income related benefits are entitled to full remission of charges. Support is also available through the NHS Low Income Scheme for those patients who are not eligible for exemption or full remission, providing they meet the income thresholds for eligibility for help with health costs. There will be no changes to the exempt groups.
- 7.2 Dental patient charges were frozen at 2019/20 levels during the height of the Covid-19 pandemic and were to be kept under review. The 5% uplift for the remainder of 2020/21 supports the commitment in the 2015 Spending Review (“SR 2015”) settlement to uplift dental patient charges above inflationary rates. This is the fifth and final year where the above inflationary uplifts will be applied to meet the end of the SR 2015 commitment. The revenue generated has been accounted for within the SR 2015. No decisions have been made on the dental charge uplifts for 2021/22 and beyond.
- 7.3 In 2006, NHS dental treatments moved from a ‘cost per treatment’ payment system, to a system of banded courses of treatment weighted for complexity. Different treatments are incorporated into one of the Bands, with a nationally set charge. The patient charge is collected on behalf of the NHS by the dental practice delivering the treatment and passed on to the NHS. The charges collected have no direct impact on the dentists’ remuneration but are a contribution to the overall NHS healthcare budget. Details of the current treatment bands and costs for the remainder of 2020/21 are set out below in table 1.

**Table 1: Dental treatment bands and applicable patient charge for the remainder of 2020/21**

<b>Band</b>	<b>Description of treatment</b>	<b>Patient charge for 2020/21</b>
<b>1</b>	This band includes examination, diagnosis (including radiographs), advice on how to prevent future problems, scale and polish if clinically	£23.80

	needed, and preventative care (e.g. applications of fluoride varnish or fissure sealant)	
<b>2</b>	This band covers everything listed in band 1, plus any further treatment such as fillings, root canal work or extractions.	£65.20
<b>3</b>	This band covers everything in bands 1 and 2, plus course of treatment including crowns, dentures, bridges and other laboratory work.	£282.80
<b>Urgent</b>	This band covers urgent assessment and specified urgent treatments such as pain relief or a temporary filling.	£23.80

- 7.4 The amount raised through dental patient charges is defined as Patient Charge Revenue (“PCR”). PCR helps the NHS to meet the cost of providing overall NHS services, including NHS Dental Services. It is not a direct contribution to the spend on dental services but shown as a proportion of that spend it is estimated as equivalent to around 30% of the gross cost of funding primary care dental services.
- 7.5 Prior to 2016/17, these charges generally increased annually to take account of inflationary pressures. Any inflationary increase is usually in line with the DHSC’s spending assumptions which use the Government’s preferred inflationary measure, the GDP deflator forecast (which is 1.84% for 2020/21).
- 7.6 As highlighted in paragraph 7.2 the SR 2015 set out the Government’s spending plans for five years; resulting in the decision in 2016 to implement an above inflation uplift of 5% to dental patient charges for 2016/17 and 2017/18. Following this two-year increase, it was agreed to implement a further 5% uplift for 2018/19 and 2019/2020.
- 7.7 For the remainder of 2020/21, it is again being recommended that a further 5% uplift for dental patient charges be implemented from **14th December 2020** to meet the final year of the SR 2015 commitment to generate additional revenue for the NHS.
- 7.8 Under the current dental remuneration system there is intentionally no link at contract level between the remuneration to the dentist for care provided to the patient and patient charges for that treatment. Patient charges are set nationally, while the amount paid to dentists for the provision of NHS dental services (known as the “contract value”) is locally negotiated by NHS England. Individual contract values therefore vary. The patient charges raised make no direct contribution to the remuneration the dentist receives.
- 7.9 However, the analysis DHSC has previously undertaken using national data and using appropriate assumptions continues to suggest that, at a national level, NHS dental charges payable by individual patients do not exceed the total cost of NHS treatment provided to those patients. The percentage of the overall cost of treatment which the charge represents will vary by reference to the particular band in which the relevant treatment falls and the remuneration agreed for individual contracts. However, in general even for contracts where lower than average remuneration has been agreed there is not full cost recovery in respect of any NHS treatment provided to any fee-paying patients and the proposed increase is not expected to change this.
- 7.10 This is because the cost to the NHS of providing a particular treatment is calculated by reference to the contract value, plus any additional payments specified in the

statement of financial entitlement such as business rates, employers' superannuation payments, sickness, maternity, or paternity allowances less any recoveries for under delivered activity.

- 7.11 This proposed uplift of 5% is inclusive of the traditional annual inflationary rates. Revenue generated by this 5% uplift has been accounted for within SR 2015. The final 5% uplift of the SR 2015 commitment continues to find an appropriate balance between the contribution to the costs of the overall NHS budget through patient charges and the costs met directly by the NHS through the contribution of taxpayers.
- 7.12 The proposed 5% uplift is a proportionate increase to dental charges for those who are not on the lowest incomes. Those who qualify for free dental treatment by virtue of being in receipt of specified benefits and those who are exempt from charges under the legislation will remain exempt. Those not entitled to exemptions from dental charge, but who are on low incomes, may also be eligible to receive other help with health costs. Overall, this policy will enable the NHS to generate revenue of up to in 2020/21. The revenue generated can be found in Table 2 below:

**Table 2: Predicted PCR by Band for 2020/21 showing the impact of Covid-19**

£million	2020/21		
	Estimated Patient Charge Revenue	Change in PCR (compared to 2015/16 revenue)	Change in PCR (compared to inflation only increases in 2015/16)
Band 1	£137.5	£-207.3	£-248.1
Band 2	£102.6	£-154.7	£-185.2
Band 3	£66.0	£-99.6	£-119.2
Urgent	£20.4	£-30.7	£-36.7
<b>Total</b>	<b>£326.5</b>	<b>£-492.2</b>	<b>£-589.2</b>

- 7.13 The 5% uplift is being implemented consistently across each of the Bands of charges. The new applicable patient charge for each Band is set out in **Table 3** below:

	2015/16	2016/17	2017/18	2018/19	2019/20 (current)	2020/21
<b>Band 1</b>	£18.80	£19.70	£20.60	£21.60	£22.70	£23.80
<b>Band 2</b>	£51.30	£53.90	£56.40	£59.10	£62.10	£65.20
<b>Band 3</b>	£222.50	£233.70	£244.30	£256.50	£269.30	£282.80
<b>Urgent</b>	£18.80	£19.70	£20.60	£21.60	£22.70	£23.80

- 7.14 In 2018/19, of the total number of NHS courses of dental treatment delivered, 54% were for paying adults. This means the remaining 46% of courses of treatment were delivered to non-paying adults, who were exempt from pay NHS dental charges.

Safeguards are in place to ensure that costs are not a barrier to accessing NHS Dental care for those that are least able to afford it.

- 7.15 In line with previous years, we consider it right that those who can contribute continue to do so, whilst maintaining exemptions and help with health costs for those with the greatest need. The impact of these changes will only effect those of working and pension age with incomes above the thresholds for eligibility for help with health costs. We therefore consider that the proposed uplifts in charges are fair and proportionate and will continue to support the provision of NHS services. Further information on exemptions from dental charges and help with health costs that may be available to patients, please refer to the Impact Assessment published alongside this explanatory memorandum.
- 7.16 We continue to monitor for signs that the increases in charges, despite being relatively modest, are deterring take up among charge payers. There is so far, no sign that take up of services is changing among the charge payer group specifically. Any change in demand for NHS dental services by charge paying patients, however, will continue to be monitored as an indicator that charges may be acting as a deterrent.

## **8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## **9. Consolidation**

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

## **10. Consultation outcome**

- 10.1 There is no statutory duty to consult on changes to the 2005 Regulations. The decision to implement these uplifts was taken as part of the SR 2015 settlement, and revenue generated has been accounted for in the SR 2015. Therefore, the decision to implement these uplifts has not been the subject of consultation.

## **11. Guidance**

- 11.1 NHS Dental Contractors and NHS England will be advised of the new charges by way of a notification from the Department of Health and Social Care.
- 11.2 Patients will be informed of the increase in dental charges through the NHS website and waiting room notices. NHS Dental Contractors are required to display waiting room notices as a term of service.

## **12. Impact**

- 12.1 There is no impact on business, charities or voluntary bodies. The proposed uplifts are not increasing to unprecedented percentage levels, and there is no historical evidence of significant impacts as a result of increase in patient charge.
- 12.2 The impact on the public sector is minimal. There are already systems in place to collect NHS dental charges from patients. The burden on this system is not expected to change because of the proposed increases.

- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the explanatory memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.
- 12.4 In relation to the proposed increase in patient charges, we have considered the impact of this instrument in relation to our Public-Sector Equality Duty (“PSED”) The PSED is not 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.
- 12.5 We have considered the impact of the Secretary of State’s general duties under the 2006 Act, in relation: to providing a comprehensive health service under section 1 (1); having regard to the NHS Constitution (section 1B); and the duty to reduce health inequalities (section 1C). Again, we have not identified any specific issues in relation to these duties.
- 12.6 We have also considered the Government’s Family Test and as the policy intention is retain the current exemptions, we expect there to be a limited impact and will affect those families that are not exempt from charges or eligible for the NHS Low Income Scheme. The additional costs will only relate to the adults in the family.

### **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

### **14. Monitoring & review**

- 14.1 Dental changes are monitored by NHS England and the Department of Health and Social Care and are reviewed annually.

### **15. Contact**

- 15.1 Laurence Bickerton at the Department of Health and Social Care can be contacted with any can be contacted with any queries regarding the instrument. Telephone: 0207 972 2998 Email: [Laurence.bickerton@dhsc.gov.uk](mailto:Laurence.bickerton@dhsc.gov.uk)
- 15.2 Jess Adkins, Deputy Director for Community Based Healthcare, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.
- 15.3 Jo Churchill at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.