

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE (DENTAL CHARGES) (AMENDMENT)**  
**REGULATIONS 2023**

**2023 No. 367**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His 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, 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 uplift of 8.5% to patient charges on 24 April 2023.

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

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

- 3.1 The increase set out in the Statutory Instrument is above the rate of inflation as predicted for April 2023. Patient charges have been frozen since December 2020. This uplift represents three previously planned uplifts that were delayed, and is therefore greater than comparable charges, such as those for NHS prescriptions. The uplift value is comprised the previous standard uplift value of 5% and GDP deflators for 2022/23 and 23/24. A downward adjustment to the uplift value has been applied after the compounding of these figures to support patients with the cost of NHS dental care.

**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 the instrument is subject to negative resolution procedure and does not amend primary legislation, 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 services 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 inflationary rate, have been implemented as part of conditions arising from Spending Reviews. There was no uplift to dental patient charges in 2021 or 2022 due to the impact of the pandemic on the dental sector, which made access to NHS dentistry particularly challenging for many. This uplift is being put in place to reduce pressure on NHS budgets and provide important revenue for the continued delivery of NHS dental care. This amendment uplifts charges by 8.5% in 2023/24 and incorporates a 5% uplift in line with previous changes to the dental patient charges, and the rates of the GDP deflators in 2021/22 and 2022/23. This value has been adjusted down to 8.5% in order to reduce the impact on NHS dental patients who are not exempt from charges.

- 6.2 The 2005 Regulations refer to prototype agreements that some dental practices operated under until April 2022, when the prototype programme finished. The prototype agreements had a different remuneration system than the general dental services contract and personal dental services agreement, but the dental patient charges were the same. No new patients have been treated and no new courses of treatment started on the prototype patient pathways since the 1<sup>st</sup> April 2022. Therefore, no patients are eligible to pay patient charges for any treatment under the prototype contract. As such, the values for the charges under the prototype agreements have not been uplifted. In due course, the Department of Health and Social Care will remove references in legislation that were needed to support the prototype agreement programme. The Department's programme of Dental System Improvements will continue during this time.

## 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 new and expectant 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 exemptions or full remission, providing they meet the income thresholds for eligibility for help with health costs. **There will be no changes to exempt groups.**
- 7.2 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 on the new charges are set out below in table 1.

**Table 1: Dental treatment bands and applicable patient charge for 2023/24**

<b>Band</b>	<b>Description of treatment</b>	<b>New patient charge for 2023/24</b>
<b>1</b>	This band includes examination, diagnosis (including radiographs), advice on how to prevent future problems, scale and polish if clinically needed, and preventative care (e.g. applications of fluoride varnish or fissure sealant).	£25.80
<b>2</b>	This band covers everything listed in band 1, plus any further treatment such as fillings, root canal work or extractions.	£70.70
<b>3</b>	This band covers everything in bands 1 and 2, plus course of treatment including crowns, dentures, bridges and other laboratory work.	£306.80
<b>Urgent</b>	This band covers urgent assessment and specified urgent treatments such as pain relief or a temporary filling.	£25.80

- 7.3 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.
- 7.4 Prior to 2016/17, these charges generally increased annually to take account of inflationary pressures. Any inflationary increase is usually in line with the Department's spending assumptions which use the Government's preferred inflationary measure, the GDP deflator forecast.
- 7.5 In 2016, the decision was made 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 2019/20. However, due to the pandemic, the 5% uplift was not applied in April 2020.
- 7.6 Dental patient charges were frozen at 2019/20 levels during the height of the Covid-19 pandemic and were kept under review. The intended 5% uplift for 2020/21 was delayed and took place in December 2020. Previously, dental patient charge uplifts were implemented annually at the start of each financial year. There was no uplift to dental patient charges in 2021 or 2022 due to the impact of the pandemic.
- 7.7 This uplift is being put in place now to reduce pressure on NHS budgets and provide important revenue to deliver care. This amendment will uplift charges by 8.5% in 2023/24 and incorporates the 5% in line with previous uplifts and associated deflators that would have been used to uplift these charges in 2022/23 and 2023/24. When these values are compounded, they provide an uplift value of 11.3%. In order to support the

continued affordability of NHS dental care for patients who are not exempt from payment, this value has been adjusted down to 8.5%.

- 7.8 Whilst we recognise the 8.5% uplift value is higher than in some other areas of government, we consider that this is proportionate, as NHS dental patient charges have been frozen since December 2020 whilst other similar charges, such as those for NHS prescriptions have increased. This uplift creates only a 0.8% real terms increase compared with December 2020. Dental patients will benefit from the continued provision that this important revenue supports. In recognition of access challenges following the COVID-19 pandemic, the Department has delivered improvements to the NHS dental contract, announced in July 2022, which will improve access for NHS dental patients and which are supported by this uplift. Further work to reform the NHS dental contract and continue improvement is planned for 2023. It is important that current and future work to improve NHS dentistry is not undermined by the risk of reduced funding as a result of lower NHS dental patient charge revenue.
- 7.9 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.
- 7.10 However, the analysis the Department 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. While the percentage of the overall cost of treatment which the charge represents will vary by reference to the band in which the relevant treatment falls and the remuneration agreed for individual contracts, 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.
- 7.11 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.
- 7.12 The uplift is intended to be 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.
- 7.13 The 8.5% uplift is a proportionate increase to dental charges. 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.

- 7.14 Overall, this policy will enable the NHS to generate revenue of approximately £997m in a full non-COVID-19 year. The revenue generated can be found in Table 2 below:

Table 2: Predicted PCR by Band for 2023/24 showing the impact of Covid-19

£million	Additional revenue arising from an 8.5% uplift in a full non-COVID-19 year <sup>1</sup>		
	Estimated Patient Charge Revenue	Change in PCR (compared to 22/23 revenue) <sup>1</sup>	Change in PCR (compared to BAU - inflation only increases)
Band 1	£298	£23.3	£2.4
Band 2	£366	£28.7	£3.0
Band 3	£265	£20.8	£2.1
Urgent	£68	£5.4	£0.6
Total	£997	£78.1	£8.1

Since we hope to return to pre-pandemic delivery in 2023/24, we have adjusted 2022/23 patient charge revenue figures to a pre-pandemic baseline to calculate an estimate for the additional revenue generated from a price uplift.

- 7.15 The 8.5% uplift is being implemented consistently across each of the Bands of charges. The new applicable patient charge for each Band, in addition to the charge levels for the previous 5 years, is set out in Table 3 below:

	2016/17	2017/18	2018/19	2019/20	2020/21 (current)	2023/24
<b>Band 1</b>	£19.70	£20.60	£21.60	£22.70	£23.80	£25.80
<b>Band 2</b>	£53.90	£56.40	£59.10	£62.10	£65.20	£70.70
<b>Band 3</b>	£233.70	£244.30	£256.50	£269.30	£282.80	£306.80
<b>Urgent</b>	£19.70	£20.60	£21.60	£22.70	£23.80	£25.80

- 7.16 In 2020/21, of the total number of NHS courses of dental treatment delivered, 53.2% were for paying adults. This means the remaining 46.8% of courses of treatment were delivered to non-paying adults, patients under the age of 18 and those under 19 and in full time education, who are exempt from paying NHS dental charges. Safeguards such as the NHS Low Income Scheme 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.
- 7.17 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 affect 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. For 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.

- 7.18 We continue to monitor for signs that the increases in charges, despite being relatively modest, are deterring take up of necessary dental care 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.

### ***Explanations***

#### ***What did any law do before the changes to be made by this instrument?***

- 7.19 This law previously set the rate for NHS dental patient charges, which are now being amended.

#### ***Why is it being changed?***

- 7.20 The amendments are taking place in order to ensure spending review commitments are met, in addition to ensuring the NHS can meet the funding levels set out in its budgetary planning assumptions.

#### ***What will it do now?***

- 7.21 This amendment will uplift NHS dental patient charges by 8.5% across all of the NHS dental treatment bands.

## **8. European Union Withdrawal and Future Relationship**

- 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 these Regulations.

## **10. Consultation outcome**

- 10.1 There is no statutory duty to consult on changes to the 2005 Regulations and no consultation has taken place.

## **11. Guidance**

- 11.1 NHS Dental Contractors and NHS England will be advised of the new changes 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 arising from this routine uplift 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](https://www.legislation.gov.uk) website.
- 12.4 In relation to the proposed increase in patient charges, we have considered the impact of this instrument as part of 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 to retain the current exemptions, we expect there to be a limited impact and it 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. However, there is some evidence to suggest that children of adults put off accessing dentist care by the price increase are also less likely to attend the dentist.

## **13. Regulating small business**

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

## **14. Monitoring and review**

- 14.1 Dental charges 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 queries regarding the instrument by telephone 020 7972 2998 or email [laurence.bickerton@dhsc.gov.uk](mailto:laurence.bickerton@dhsc.gov.uk).
- 15.2 Sarah Norton, Deputy Director for Dentistry at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Neil O'Brien, Parliamentary Under Secretary of State at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.