

EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (PRIMARY DENTAL SERVICES AND DENTAL CHARGES) (AMENDMENT) REGULATIONS 2024

2024 No. 271

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. Declaration

- 2.1 The Rt Hon Andrea Leadsom MP, Parliamentary Under Secretary of State for Public Health, Start for Life and Primary Care at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Sarah Norton, Deputy Director for Dentistry, at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Eleanor Maw at the Department of Health and Social Care Telephone: 020 7210 2812 or email: dentistryteam.mailbox@dhsc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 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 4% to these patient charges on 1 April 2024. This amendment will uplift NHS dental patient charges by 4% across all four of the NHS dental treatment bands.
- 4.2 The National Health Service (Primary Dental Services) (Amendment) Regulations 2023 (S.I. 2023/554) (“the 2023 Regulations”) provide powers for NHS England via Integrated Care Boards (ICBs) to adjust the contracts (referred to as ‘rebasin’) of those contractors that do not meet their contracted Unit of Dental Activity (UDA) or Unit of Orthodontic Activity (UOA) thresholds. These regulations enable this where the under-delivery is greater than 4% each year for three consecutive financial years (ie those who do not deliver a minimum of 96% of their contracted activity for three consecutive financial years). This excludes years in which performance is most likely to have been affected by the COVID-19 pandemic. This instrument amends this provision to alter the year in which rebasing can be effected to ensure it is applied to

contracts in their next full year, i.e. that which follows the year in which a rebasing notice has been provided to the contractor.

Where does the legislation extend to, and apply?

- 4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. Policy Context

What is being done and why?

- 5.1 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 change to exempt groups.
- 5.2 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 2024/25

Band	Description of treatment	New patient charge for 2024/25
1	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).	£26.80
2	This band covers everything listed in band 1, plus any further treatment such as fillings, root canal work or extractions.	£73.50
3	This band covers everything in bands 1 and 2, plus course of treatment including crowns, dentures, bridges and other laboratory work.	£319.10
Urgent	This band covers urgent assessment and specified urgent treatments such as pain relief or a temporary filling.	£26.80

- 5.3 The amount raised through dental patient charges is defined as Patient Charge Revenue (PCR). PCR helps the NHS 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 based on non-COVID years.
- 5.4 Prior to 2016/17, these charges generally increased annually to take account of inflationary pressures. Any inflationary increase is usually in line with the

Departments' spending assumptions, which use the Government's preferred inflationary measure, the GDP deflator forecast.

- 5.5 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 that supported the commitment in the 2015 Spending Review (SR2015) settlement 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. To recover PCR to close-to previous levels and lessen the budgetary impact of this pause to uplifts, a large uplift would have been required in 2023/24. To lessen the impact on patients of a single uplift, the Department set out that it would split the necessary uplift over the 2023/24 and 2024/25 financial years. The 2023/24 uplift of 8.5% was put in place in April 2023. The 4% uplift effected by this Statutory Instrument represents the second year of the two-year proposal.
- 5.6 Under the current dental remuneration system there is intentionally no link at contract level between the remuneration to the dentist for the care provided and the 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.
- 5.7 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 that the charge represents will vary by reference to the band in which the treatment falls and the remuneration agreed for individual contracts, there is not full cost recovery in respect of NHS treatment provided, particularly in Bands 2 and 3, to any fee-paying patient. The proposed increase is not expected to change this.
- 5.8 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 allowance less any recoveries for under-delivered activity.
- 5.9 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.
- 5.10 The proposed 4% uplift is a proportionate increase to dental charges for those who are not in the lowest incomes and therefore exempt from paying. 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 legislations 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 (please see further information set out in the Equality Analysis in Annex A).
- 5.11 Overall, this policy will enable the NHS to generate revenue of approximately £1,037m in a year in which contracts operate at their typical pre-COVID-19 levels. 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	Additional revenue arising from a 4% uplift in a full non-COVID-19 year	
	Estimated Patient Charge Revenue	Change in PCR (compared to 22/23 revenue)
Band 1	£309	£12
Band 2	£381	£15
Band 3	£276	£11
Urgent	£71	£3
Total	£1,037	£40

5.12 The 4% 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 five uplifts, is set out in Table 3 below:

	2017/18	2018/19	2019/20	2020/21	2023/24 (current)	2024/25
Band 1	£20.60	£21.60	£22.70	£23.80	£25.80	£26.80
Band 2	£56.40	£59.10	£62.10	£65.20	£70.70	£73.50
Band 3	£244.30	£256.50	£269.30	£282.80	£306.80	£319.10
Urgent	£20.60	£21.60	£22.70	£23.80	£25.80	£26.80

5.13 In 2022/23, of the total number of NHS courses of treatment delivered, 52.5% were for paying adults. This means the remaining 47.5% of courses of treatment were delivered to non-paying adults and children, all of whom are exempt from paying 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.

5.14 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 who are most likely to experience financial hardship. 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 and care costs. We therefore consider that the proposed uplifts in charges are fair and proportionate and play an important role in continuing 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 and the Equality Analysis in Annex A.

5.15 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.

5.16 Regarding the rebasing contracts amendment in this SI, the NHS dental reforms implemented by the Department in 2022 and 2023 included a change to the National

Health Service (General Dental Services Contracts) Regulations 2005 and the National Health Service (Personal Dental Services Agreements) Regulations 2005 that enabled commissioners to unilaterally rebase the contracts of persistently underperforming NHS dental contractors when certain criteria are met. Prior to this amendment, due to end-of-year reconciliation of contracts taking place in the following year from which activity is under-delivered, the funding for undelivered activity cannot be spent elsewhere in that same year. The intention was to enable commissioners to distribute what would be un-delivered NHS dental activity to practices that have more capacity to deliver this care, improving access for patients to NHS dentistry.

- 5.17 The JCSI issued a memo after the instrument was laid stating that they saw the amendment made by the 2023 Regulations as having a retrospective effect, outside of the powers granted by the existing legislation. This is due to the previous amendment seeking to give commissioners the power to rebase a contract in the current year. This new amendment seeks to address the JCSI's concerns and adjusts the year in which rebasing can be affected so that it is done on a prospective only basis. This means that in cases where a contractor meets the requirements for rebasing, they will have underperformed for three years, receive a notice to rebase from their commissioner in the fourth year and have their contract rebased from the start of the fifth year.

What was the previous policy, how is this different?

- 5.18 Regarding dental patient charges, this instrument uplifts the dental patient charges across all treatment bands by 4% from 1 April 2024, with no change to those who are exempt from charges. The policy behind the current SI is in line with previous policy, with uplifts to NHS dental patient charges frequently made on an annual basis. For more detail on this, see paragraph 5.1 above.
- 5.19 Regarding the rebasing amendment, the amendment effected by the 2023 Regulations enables commissioners to rebase the contracts of underperforming NHS dental contractors, providing specific conditions are met (as set out above in 4.2). The 2023 Regulations sought to allow commissioners to rebase in the current contract year, with the view that contractual targets would be changed from the point in which the rebasing was carried out. This policy, which was negotiated and agreed with the British Dental Association, was designed to be as efficient as possible in freeing up funding for NHS dental activity elsewhere. However, this was viewed as seeking to make a retrospective contract change by the JCSI, as it would mean a change to a contract that had already started, regardless of prior performance being fixed – even if this was acknowledged in the rebased contract. The new policy position considers this judgement and addresses the concerns of the JCSI by more clearly ensuring that rebasing can only be prospective when carried out as part of this commissioner-led process.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Regarding dental patient charges, this amendment uplifts the values for NHS dental treatment by 4%. The new dental patient charges are shown in Table 1 above.
- 6.2 Regarding the rebasing amendment, the JCSI deemed that the 2023 amendment was retrospective and potentially outside of the powers afforded by the current legislation. The amendment addresses this concern and will adjust the year in which rebasing can be affected so that it is done on a prospective only basis.

Why was this approach taken to change the law?

- 6.3 NHS dental patient charges are set out through The National Health Service (Dental Charges) Regulations 2005. As such, it is necessary to amend them with an amending SI such as this.
- 6.4 Similarly to patient charges, the regulations surrounding NHS dental contracts are set out in The National Health Service (Personal Dental Services Agreements) Regulations 2005 and The National Health Service (General Dental Services Contracts) Regulations 2005. These were amended to introduce rebasing in 2023. As such, it is necessary to amend them with an amending SI such as this.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 No formal consultation has taken place for either element of this instrument.
- 7.2 For dental patient charges, there is no statutory duty to carry out consultation, nor an expectation to do so based upon precedence. The Department of Health and Social Care has undertaken analysis and assessment to ensure that access to NHS dental care will not be adversely affected by uplifting the dental patient charges.
- 7.3 For the amendment to rebasing, a consultation was not necessary as it amends a previously agreed Regulations change. There may be an expectation that the British Dental Association are aware of this amendment prior to laying and as such this engagement has taken place at official level.

8. Applicable Guidance

- 8.1 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.
- 8.2 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.
- 8.3 NHS dental contractors will be made aware of the changes to rebasing through the NHS Policy Book for dental services (<https://www.england.nhs.uk/publication/policy-book-for-primary-dental-services/>) and through email updates from the NHS Business Services Authority. These information sources are familiar to NHS dentists and are the standard routes of communication.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment covering the impact of the NHS dental patient charges amendment is submitted with this memorandum and published alongside it on the legislation.gov.uk website.
- 9.2 Due to the technical nature and basis in previously agreed policy, no new Impact Assessment will be carried out on the rebasing amendment. An Impact Assessment was carried out as part of the 2022 amendment to regulations and can be found here: https://www.legislation.gov.uk/ukia/2022/90/pdfs/ukia_20220090_en.pdf.

Impact on businesses, charities and voluntary bodies

- 9.3 There is no, or no significant, impact on business, charities or voluntary bodies as a result of the proposed patient charge uplifts as the uplift is proportional to inflationary increases and is not a departure from previous policy. There is no historical evidence of significant impacts on these organisations because of increases to NHS dental patient charges. For further information, please see the Impact Assessment.
- 9.4 There is no significant impact on businesses resulting from the rebasing amendment. NHS dental contract holders who under-deliver have these losses recovered once their annual performance for that year is reconciled. Permanently amending these contracts from the next year therefore does not significantly impact them, particularly as previous poor performance is a strong indicator of future under-delivery. Other businesses may stand to benefit when this recovered funding is used to commission NHS dental services from a new contract holder.
- 9.5 The legislation does not impact small or micro businesses.
- 9.6 The impact on the public sector is minimal. The redistribution of undelivered UDAs to practices with capacity to deliver more NHS care could increase access for patients.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring the dental patient charges aspect of this legislation is for the Department of Health and Social Care to continue to monitor and review annually.
- 10.2 For the rebasing element of this instrument, NHS England hold the contracts with dentists delivering NHS care and will review and monitor the impact of rebasing dental contracts.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 As the 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.
- 11.2 Combined with the uplift in 2023, the overall increase to patient charges since 2020 is below the rate of inflation. Patient charges were uplifted by 8.5% in April 2023 to accommodate there being no uplift from December 2020 and this was the first year of a two-year uplift proposal, with a 4% uplift proposed for 2024/25.
- 11.3 This instrument also amends a previous amendment in 2023 to the National Health Service (General Dental Services Contracts) Regulations 2005 and the National Health Service (Personal Dental Services Agreements) Regulations 2005 to act on concerns from the JCSI that they saw the Regulations having a retrospective effect that was being enforced on a contractor without any express power to do so. This instrument therefore adjusts the year in which rebasing can be effected to ensure it is carried out on a prospective only basis.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).