EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (DENTAL CHARGES) (AMENDMENT) REGULATIONS 2016

2016 No. 324

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 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. The National Health Service (Dental Charges) (Amendment) Regulations 2016 ("the Regulations") amend the 2005 Regulations to implement an above inflation uplift to dental charges from 1st April 2016 and to make amendments to the 2005 Regulations to reflect the termination of the Capitation and Quality Scheme 2 on 31st April 2016.

3. Matters of special interest to Parliament

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

3.1 None.

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 contracts. Uplifts to these charges are usually implemented annually, in line with inflation, by way of amendment of the 2005 Regulations.

4.2 Regulation 12A provides that a Band 1A charge is payable where an interim care course of treatment is provided under the Capitation and Quality Scheme 2 or a prototype agreement. The Regulations amend this regulation to remove references to the Capitation and Quality Scheme 2,in the light of the termination of that Scheme on 31st March 2016 and to increase the Band 1A charge from £18.80 to £19.70 in line with the Band 1 charge. The Regulations make minor amendments to the transitional

provision made in regulation 12B, also in the light of the termination of the Capitation and Quality Scheme 2.

5. Extent and Territorial Application

5.1 This instrument extends to England only.

5.2 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and is not subject to parliamentary procedure, no statement is required.

7. Policy background

What is being done and why

7.1 In April 2006, NHS dental treatments moved from a 'cost per treatment' payment system, to a system that incorporates Bands. Different treatments are incorporated into each Band, with a set national cost for each. This cost is paid to the dental practice who delivers the treatment, through a contribution from both the patient and the NHS.

7.2 The amount the patient pays for their treatment is defined as Patient Charge Revenue (PCR). PCR helps the NHS meet the cost of providing NHS Dental services. In 2014-15, PCR contributed between 65-72% of the gross cost of funding primary dental care services.

7.3 Dental charges are in four Bands. The applicable patient charge for each Band, unless the patient is exempt (see further information in the Impact Assessment published alongside this memorandum) is outlined below;

- Band 1 - courses of treatment involving diagnosis and prevention only – currently £18.80
- Urgent care delivered under Band 1 – courses of treatment involving diagnosis and specified treatment – currently £18.80
- Band 2 - courses of treatment which include dental treatment – such as fillings and extractions – currently £51.30
- Band 3 - courses of treatment which include advanced dental work including appliances – currently £222.50

7.4 Traditionally, these charges increase annually to take account of inflationary pressures. Any increase is generally in line with the Department's spending assumptions which use the Government's preferred inflationary measure, the GDP deflator forecast (which is 1.7% for 2016/17).

7.5 The 2015 Spending Review set out a long term economic plan to fix the public finances. The review committed to support the Five Year Forward View and the funding of frontline NHS services. To meet this commitment, efficiency savings need to be made throughout the NHS, including in Primary Care.

7.6 In light of this, a decision has been taken to implement an above inflation uplift of approximately 5% to patient dental charges across all of the Bands, with effect from 1st April 2016. This proposed uplift is inclusive of the traditional annual inflationary rates. Anticipated savings expected to be generated by this policy intention have been

accounted for within the 2015 Spending Review. The decision reflects the fact that dental charge levels are currently low when compared to overall cost of treatment provided, and given the need to support the Five Year Forward View, primary care dental services need to play their part. The uplifts to dental charges will affect adults who are not classed as exempt from dental charges, and are not considered to be on low enough income to come below the various thresholds set for income based help with dental charges. A proportionate increase to dental charges for this group of patients is therefore considered feasible. 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 exemption from dental charges, but who are on low incomes, may also be eligible to receive help with health costs (see further in the Equality Analysis). Overall, this policy will enable the NHS to make efficiency savings of up to £23m across the current financial year. For further information on predicted efficiency savings made by Band, please see Table 1 below;

Table 1: Predicted PCR by Band

	2016/17		
	Patient charge revenue	Increase in PCR (compared to 2015/16 charge levels)	Increase in PCR (when taking into account pre-existing inflationary uplift)
Band 1	£231,801,513	£10,589,917	£6,829,320
Band 2	£260,964,833	£12,588,285	£8,365,884
Band 3	£220,252,627	£10,555,539	£6,990,688
Urgent	£39,556,910	£1,807,168	£1,165,423
Total	£752,575,883	£35,540,909	**£23,351,315**

7.7 The 5% uplift is implemented consistently across all four Band of charges. The new applicable patient charge for each Band is set out in Table 2 below;

TABLE 2: PATIENT CHARGE REVENUE 2015-16 AND 2016-17

	2015/16 (current Patient Charge)	2016/17 (proposed Patient Charge)
Band 1	£18.80	**£19.70**
Band 2	£51.30	**£53.90**
Band 3	£222.50	**£233.70**
Urgent	£18.80	**£19.70**

7.8 In line with the proposed uplifts, there will be no changes in respect of those patients who are exempt from dental charges. Those who are not entitled to exemption but are

on low incomes may also be eligible to receive help with health costs (for further information on Low Income Schemes, please see the Equality Analysis, and the Impact Assessment published alongside this memorandum). Given the pressures on public finances, we consider that it is right that those who can contribute 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 in the light of our need to generate efficiency savings as part of our Spending Review settlement. 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 the Equality Analysis published alongside this Explanatory Memorandum.

7.9 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%.

7.10 The Regulations also make minor amendments to regulations 12A and 12B of the 2005 Regulations which relate to interim care courses of treatment which are provided to patients where contractors have elected to participate in the Capitation and Quality Scheme 2 or the Prototype Agreements Scheme. The amendments to regulation 12A remove references to the Capitation and Quality Scheme 2 to reflect the termination of that Scheme on 31st March 2016, following the implementation of the Prototype Agreements Scheme, and increase the Band 1A charge in line with the Band 1 charge. The amendment to regulation 12B which makes transitional provision relating to the provision of interim care courses of treatment, makes minor changes to the dates in that regulation, again to reflect the termination of the Capitation and Quality Scheme 2. For further information on the Capitation and Quality Scheme 2 and the Prototype Agreements Scheme, please see the EMs which are published alongside S.I. 2013/364 and S.I. 2015/1728 respectively, on the legislation.gov.uk website.

Consolidation

7.11 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.

7.12 However, the Department intends to review the policy relating to dental charges in 2018, in line with the proposed implementation of a new dental contract.

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.

9. Guidance

9.1 NHS Dental Contractors and NHS England will be advised of the new charges by way of a notification from the Department of Health.

9.2 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.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible. The uplifts implemented by the Regulations changes the balance between patient and NHS contribution, but this does not affect the amount contractors receive per treatment provided, which will remain consistent with previous years. To inform this view, we have considered a range of possible impacts in an impact assessment published alongside this memorandum on the legislation.gov.uk website. These are -

- Patients with straightforward care may, rather than pay the average Band charges, choose to have private dental treatment, if the resultant costs for such treatment is cheaper in private practices.
- Exempt patients could potentially be taken on in the place of such patients. Alternatively, uplifting dental charges at above inflation rates may impact on patient demand for treatment if such an increase affects affordability.
- Patient demand may remain stable, thereby providing the NHS with full efficiency savings
- Patients who are not exempt from charges, but who are unable to afford the increased charges, may look elsewhere for their dental treatment- i.e. hospitals.

However, our view is that the possibility of negative impacts on business as a result of these uplifts in dental charges is likely to be low. The proposed uplifts are not increasing to unprecedented percentage levels, and there is no historical evidence of significant impacts as a result of increases in patient charge. For further information relating to possible impact on business, please see the Impact Assessment published alongside this Explanatory Memorandum.

10.2 The impact on the public sector is negligible. The current exemptions from charges and low income schemes in place will remain, and the volume of qualifying patients is not expected to change as a result of this policy.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website. Copies may also be obtained from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS.

10.4 An Equality Analysis has been carried out in compliance with the public sector equality duty under s.149 of the Equality Act 2010, and published alongside the Explanatory Memorandum.

10.5 In considering policy changes, Ministers must comply with the equality legislation, including their duties under the Public Sector Equality Duty (PSED) and their general duties under the National Health Service Act 2006 (2006 Act).

10.6 Under Section 149 of the Equality Act 2010, Ministers must have due regard to the impact of decisions on those people with the protected characteristics, which are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In particular, they must have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

10.7 We do not believe that the three points highlighted above are relevant in implementing this policy. There is no impact on exemptions or qualifications to various low income schemes, and therefore we do not believe that this policy impacts on the above.

10.8 It is important that any policy decision made is consistent with the provisions of the 2006 Act and the Equality Act 2010, as well as the new duties as to reducing health inequalities set out in the Health and Social Care Act 2012 (2012 Act).

10.9 In considering the Secretary of State's general duties under the 2006 Act, the duties which are potentially impacted are sections 1(1)(Secretary of State's duty to promote comprehensive health services), which requires that the Secretary of State must continue the promotion in England of a comprehensive health service designed to secure improvement –

(a) in the physical and mental health of the people of England; and

(b) in the prevention, diagnosis and treatment of illness; and

Section 1B which relates to the duty to have regard to the NHS Constitution

10.10 The intention of this policy is to provide efficiency savings that can be better invested elsewhere in order to ensure continued levels of NHS services. Given the financial climate, it is right that money is invested in the correct services, which can lead to improvements across the service itself.

10.11 Amendments to the 2006 Act, made by the 2012 Act, placed a duty on the Secretary of State to have regard to the NHS Constitution. The duty on the Secretary of State ensures that the Secretary of State bears in mind the principles, values, rights and pledges in the Constitution when discharging his functions in relation to the health service.

10.12 Therefore the Secretary of State must ensure that:

The "NHS provides a comprehensive service to all"

and

''Access to services is based on clinical need, not an individual's ability to pay. NHS services are free of charge, except in limited circumstances sanctioned by Parliament".

10.13 The limited circumstances referred to above are where charges are expressly provided for in legislation, as they are for NHS primary dental services (see section 176 of the 2006 Act). We have made a conscious decision to maintain current exemptions to dental charges, to allow patients who are exempt to obtain treatment when they need

it. By maintaining current exemptions, and providing continued help with health costs for those on low incomes, we are protecting the poorest and most vulnerable groups for whom cost can be the greatest disincentive to seeking dental care. This is considered further in the Equality Analysis published alongside the Explanatory Memorandum.

10.14 The impact in relation to inequalities is considered within the Equalities Analysis referred to above. The obligation to provide, by or under an enactment, for any making and recovery of charges, is complied with through these Regulations.

10.15 By uplifting PCR by 5%, the uplifts which are implemented by the Regulations are expected to save the NHS £23m over the course of the financial year. For further information, please refer to the Impact Assessment published alongside this memorandum for these Regulations.

11. Regulating small business

11.1 The Regulations apply to small businesses employing up to 50 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.

12. Monitoring & review

12.1 These changes will be monitored by NHS England and the Department of Health. Dental charges are reviewed annually.

12.2 It is intended to review the arrangements for dental charges in the light of the proposed dental contract reform in 2018.

13. Contact

13.1 Hamid Butt or Gareth Owen at the Department of Health can answer any queries regarding the instrument.

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