EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (DENTAL CHARGES) (AMENDMENT) REGULATIONS 2018

2018 No. 336

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 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 2018 ("the Regulations") amend the 2005 Regulations to implement an above inflation uplift to dental charges from 1st April 2018.

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 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, in line with inflation, by way of amendment to the 2005 Regulations, though above inflation uplifts of 5% were implemented in 2016/17 and 2017/18.

5. Extent and Territorial Application

5.1 The extent of this instrument is England only.

5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Dental charges have existed in some shape or form since 1951, and are one of the small number of NHS services that can be charged for under the 2006 Act. The 5% uplift implemented in 2016/17 and 2017/18 continues for 2018/19 with the aim of finding an appropriate balance between the costs paid by patients and those met by the NHS through the contributions of taxpayers. If this uplift was not implemented resources from other parts of the NHS would need to be generated to make up the shortfall.

7.2 We will continue to ensure that those who are unable to pay, including children, nursing mothers, and those on certain benefits, remain totally exempt from charges.

7.3 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 nationally set patient charge for each. The patient charge is collected on behalf of the NHS by the dental practice delivering the treatment. The NHS recovers the patient charge from the dentist by deducting it from the payments it makes to the dentist for delivering dental care to NHS patients.

7.4 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 2016-17, PCR contributed between 62-74% of the gross cost of funding primary dental care services.

7.5 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 Explanatory Memorandum and the Equality Analysis) is outlined below:

- Band 1 - courses of treatment involving diagnosis and prevention only – currently £20.60
- Urgent care delivered under Band 1 – courses of treatment involving diagnosis and specified treatment – currently £20.60
- Band 2 - courses of treatment which include dental treatment – such as fillings and extractions – currently £56.30
- Band 3 - courses of treatment which include advanced dental work including appliances – currently £244.30

7.6 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 1.6% for 2017/18).

7.7 The 2015 spending review set out the Government's spending plans for five years, including plans to make savings and reduce the deficit. The review committed to support the Five Year Forward View and the funding of frontline NHS services.

7.8 In 2016 a decision was taken to implement an above inflation uplift of 5% to dental patient charges for 2016/17 and 2017/18. To further support front line NHS Services, a decision has been taken to continue this and implement a further 5% uplift for dental patient charges from 1 April 2018.

7.9 Dental charge levels will continue to be low when compared to overall cost of treatment provided. Since 2006, there has been no formal link between charges and fee levels. Although not directly comparable as the system has changed, in 2016/17 charges were between 62% and 74% of fees.

7.10 This proposed uplift is inclusive of the traditional annual inflationary rates. Revenue generated by this policy intention has been accounted for within the 2015 Spending Review. The 5% uplift continues with the aim of finding an appropriate balance between the costs paid by patients and those met by the NHS through the contributions of taxpayers. If this uplift was not implemented, resources from other parts of the NHS would need to be generated to make up the shortfall.

7.11 A proportionate increase to dental charges for those who aren't on the lowest incomes is therefore proposed. 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.

7.12 Those not entitled to exemption from dental charges, but who are on low incomes, may also be eligible to receive other help with health costs (see further information in the Equality Analysis published alongside this Explanatory Memorandum). Overall, this policy will enable the NHS to generate revenue of up to £72.4m across the current financial year. The revenue generated can be found in Table 1 below:

TABLE 1: PREDICTED PCR BY BAND FOR 2018/19

	2018/19		
	Estimated Patient Charge Revenue	Increase in PCR (compared to 2015/16 revenue)	Increase in PCR (compared to inflation only increases from 2015/16)
Band 1	£269,536,245	£49,563,540	£22,743,800
Band 2	£303,152,964	£32,681,500	£25,307,400
Band 3	£243,625,455	£29,146,540	£20,595,300
Urgent	£45,054,247	£6,133,660	£3,797,580
Total	£861,367,912	£117,525,230	£72,444,100

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

TABLE 2: PATIENT CHARGE REVENUE FROM 2015-16 TO 2018-19

	2015/16	2016/17	2017/18 (current)	2018/19
Band 1	£18.80	£19.70	£20.60	£21.60

Band 2	£51.30	£53.90	£56.30	£59.10
Band 3	£222.50	£233.70	£244.30	£256.50
Urgent	£18.80	£19.70	£20.60	£21.60

7.14 There will be no changes to those patients who are exempt from dental charges. Children, nursing and pregnant women and those in receipt of qualifying benefits will remain entirely exempt from charges and will not be impacted by these changes.

7.15 In 2016/17, of the total number of NHS courses of dental treatment delivered, 53% were for paying adults. This means that the remaining 47% of courses of treatment were delivered to patients who were fully or partially exempt from paying NHS dental charges. These safeguards are in place to ensure that cost should not be a barrier to accessing NHS dental care for those that are least able to afford it.

7.16 The charging framework for NHS treatment allows for multiple related treatments to be provided for with a single payment. This means a patient pays one charge for a whole course of treatment, depending on the level of treatment they require. The maximum band 3 charge applies to the small proportion of treatments that includes items such as crowns or bridges.

7.17 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. The impact of these changes will only affect those of working 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 help to support NHS front line services. 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 published alongside this Explanatory Memorandum and the Equality Analysis.

Consolidation

7.18 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.

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, as subsequently outlined in the 2015 Spending Review, 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 and Social Care.

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 change the balance between patient and NHS charge. However, this does not affect the amount contractors receive per treatment provided, which will remain consistent with previous years. We have considered a range of possible impacts in an impact assessment published alongside this Explanatory 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 replace fee paying patients who choose private treatment. Alternatively, uplifting dental charges at above inflation rates may impact on patient demand for treatment.
- Patient demand may remain stable, thereby providing the expected NHS revenue.
- 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.

10.2 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 on the legislation.gov.uk website.

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

10.4 An Impact Assessment is submitted with this Explanatory 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 and Social Care, Dental and Eye Care Team, 39 Victoria Street, London SW1H 0EU.

10.5 An Equality Analysis has been produced in compliance with the public sector equality duty under section 149 of the Equality Act 2010, and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

10.6 In considering policy changes, Ministers must comply with the equality legislation, including their duties under section 149 of the Equality Act 2010 (the Public Sector Equality Duty) ("PSED"), their duties under sections 1 to 1G of the 2006 Act, and the Family Test.

10.7 Under the PSED, 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.

10.8 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 people with protected characteristics. Indeed the framework for exemptions and other supports specifically seeks to help with each of the above, where those who share certain protected characteristics are disproportionately represented in the groups to whom such exemptions and support are available.

10.9 In considering the Secretary of State's general duties under the 2006 Act (as amended by the Health and Social Care Act 2012), the following duties are potentially impacted:

- Section 1(1) – the Secretary of State's duty to promote a 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;
- Section 1B – the Secretary of State's duty to have regard to the NHS Constitution; and
- Section 1C – the Secretary of State's duty to reduce health inequalities.

10.10 The intention of this policy is to generate revenue to help support the NHS to ensure that it continues to provide a comprehensive health service. Given the financial climate, it is right that money is invested in services, to support NHS frontline services.

10.11 The duty to have regard to the NHS Constitution 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 that

''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 which is published alongside this Explanatory Memorandum.

10.14 The impact of this policy in relation to health inequalities is considered within the Equality Analysis published alongside this Explanatory Memorandum.

10.15 By uplifting PCR by 5%, the uplifts which are implemented by the Regulations are expected to generate additional revenue for the NHS of £72.4m over the course of the financial year. For further information, please refer to the Impact Assessment published alongside this Explanatory Memorandum.

10.16 We do not consider that this matter affects the Secretary of State's other duties under the 2006 Act in any significant way (improving the quality of health service (section 1A), promoting autonomy (section 1D), research (section 1E), education and training (section 1F), reporting on and reviewing treatment of providers (section 1G).

10.17 In considering this matter, Ministers also need to take account of the Government's 'Family Test' policy. This requires decision makers to consider whether any given policy impacts on families and, if it does, to consider those impacts more carefully. However, if a particular policy is not considered to have any impact on families or if the impact is small and indirect, it may not be proportionate or sensible to apply the test.

10.18 As the intention is to make no changes to current exemption arrangements we do not consider that proposal will have any direct impact on families other than creating an additional cost to the family where they are not exempt from charges or eligible for help under the NHS Low Income scheme and will relate only to the adults in the family (see the Equality Analysis published alongside this Explanatory Memorandum).

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 standards 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 and Social Care. Dental charges are reviewed annually.

13. Contact

13.1 Hamid Butt at the Department of Health and Social Care can answer any queries regarding the instrument.

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