

EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CHARGES FOR DRUGS AND APPLIANCES), (DENTAL CHARGES) AND (TRAVEL EXPENSES AND REMISSION OF CHARGES) (AMENDMENT) REGULATIONS 2013.

2013 No. 475

1. This explanatory memorandum has been prepared by Department of Health and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 These Regulations amend:

- (i) the National Health Service (Charges for Drugs and Appliances) Regulations 2000 (“the Charges Regulations”) (SI 2000/620) to increase prescription and other charges payable under them, and to make amendments to reflect changes to the structure of the NHS made by the Health and Social Care Act 2012 (the 2012 Act);
- (ii) The National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 (SI 2003/2382)(“the TERC Regulations”) to make amendments to reflect changes to the structure of the NHS made by the 2012 Act, and to give exemption from NHS charges and assistance with NHS travel costs to people enrolled in universal credit “pathfinder” arrangements set up from 29 April to 31 October 2013 under the Welfare Reform Act 2012;
- (iii) The National Health Service (Dental Charges) Regulations 2005 (SI 2005/3477) to increase NHS dental charges payable under them. The Dental Charges 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 service.

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

3.1 None

4. **Legislative Context**

4.1 The Charges Regulations are amended so that the current prescription charging arrangements can continue to be applied to supplies of drugs and appliances made across the National Health Service following implementation of the changes made to the structure of the commissioning and provider landscape of the NHS in the 2012 Act. Strategic Health Authorities and Primary Care Trusts are to be abolished on 1st April 2013, with clinical

commissioning groups and the NHS Commissioning Board (“the Board”) taking on functions relating to the commissioning of NHS services (the latter being the main commissioner of primary care services), and the Secretary of State and local authorities taking on functions relating to public health under the NHS Act 2006. There is also likely to be an increase in the number of independent sector providers providing NHS services under the 2006 Act, and so the Charges Regulations are amended to ensure that supplies of drugs and appliances made by such independent sector providers providing NHS services are chargeable just as they would be if supplied by an NHS body directly.

The Charges Regulations are also amended to provide a routine uprating from 1 April 2013 of the amounts that are to be charged in relation to the supply of drugs and certain appliances under those Regulations.

The TERC Regulations are amended to reflect changes to the NHS structure made in the 2012 Act (as explained above), specifically making changes as to which bodies will pay and re-pay NHS travel expenses, NHS foreign travel expenses and re-pay certain NHS charges to persons entitled under TERC to income based exemption from charges and assistance with NHS travel costs.

The TERC Regulations are also amended to provide exemption from NHS charges and assistance with NHS travel costs to people enrolled in universal credit “pathfinder” arrangements set up from 29 April to 31 October 2013 under the Welfare Reform Act;

The Dental Charges regulations are amended to provide a routine uprating of dental charges from 1 April 2013 to increase the applicable charge for a banded course of treatment by an overall average increase of 2.5%.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

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

7. Policy background

Charges Regulations: NHS Reforms

7.1 The Charges Regulations are amended to reflect changes to the NHS structure made in the 2012 Act, described briefly in paragraph 4.1, so that the arrangements for charges to be made for the supply of drugs and appliances under the NHS Act 2006 can continue to apply to all routes via which drugs

and appliances are supplied to patients under the NHS Act 2006. Prescription charging policy has not changed as such but amendments are made so that the arrangements for making and recovering charges under the Charges Regulations and arrangements in relation to exemptions from charges and repayment of charges therein work in the new NHS structure. For example, in many places in the Charges Regulations, the term “Primary Care Trust” is removed and replaced with a reference to the NHS Commissioning Board.

7.2 There are a number of other amendments connected to the NHS reforms made by the 2012 Act:

- (i) The regulations reflect the position that, as part of the Board’s responsibilities for the provision of primary care services, the Board (previously Primary Care Trusts) will now be responsible for the supply of various forms to prescribers in England.
- (ii) Exemption from NHS charges will be extended to all persons held in secure accommodation where the responsibility for arranging the provision of NHS services has been conferred on the Board. Secure accommodation is defined as a court, a secure training centre and a secure children’s home. The provisions replicate the existing provisions for persons detained in prisons and young offender institutions.
- (iii) As set out in paragraph 4.1, an addition to the Charges Regulations reflects the likely increase in the number of independent sector providers who will be commissioned to provide services under the NHS Act 2006 under the commissioning arrangements made by the Board, Clinical Commissioning Groups, NHS Trusts, NHS Foundation Trusts, and Local Authorities and the Secretary of State exercising their public health functions. It provides that persons or bodies commissioned by these organisations to provide services under the NHS Act 2006 must make charges for prescriptions, wigs and fabric supports supplied unless one of the exemptions provided for in the Charges Regulations applies. This ensures equity in the approach to levying charges for the supply of drugs and appliances made in the course of providing NHS services under the 2006 Act, irrespective of the route of supply or type of provider of the service.
- (iv) The Charges Regulations are also amended so that the new bodies required to make a charge are also required to recover a charge from a person who has claimed exemption from charges, where the claim is not substantiated.
- (v) The Charges Regulations are also amended to recognise that there have been additions to the categories of independent prescribers. Chiropodists/podiatrists and physiotherapists may prescribe independently where they are included in the register maintained under the Health and Social Work Professions Order 2001 and that register includes an annotation that they are qualified to order drugs and appliances as an independent prescriber.

Charges Regulations: Charges

7.3 (i) Prescription Charges: The amount of the charge for an NHS prescription item and certain other appliances supplied by the NHS, the circumstances in which a charge shall, or shall not, be made and the patients who are exempt from prescription charges are set out in the Charges Regulations. The amendments made in this instrument to the Charges Regulations increase the current single prescription charge in respect of drugs and appliances by 20p to £7.85, an increase of 2.61%. This increase combined with the freezing of the fee payable for both the three month and twelve month prescription prepayment certificates (as to which see paragraph (ii) below) produces an overall increase in prescription charge revenue of 2.0%, which will help maintain the contribution charges make to NHS funding. The Department has balanced the need to protect NHS funding against the impact of charges on personal incomes and has been able to constrain the increase below the observed levels of inflation (Consumer Prices Index and the Retail Prices Index).

(ii) Prescription pre-payment certificates: The cost of the three and twelve month prescription prepayment certificates will not change. These are available to everyone and can be purchased directly from some pharmacists. Three and twelve month certificates can be purchased from the NHS Business Services Authority by phone, online or by post. A twelve month prescription payment certificate can be purchased by ten direct debit instalments. They will save people money if they need four prescription items or more in a three month period, or more than 13 items in a year. Prescription prepayment certificate holders pay no further charge at the point of dispensing. There is no limit to the number of items the holder may obtain using the certificate.

(iii) Wigs and fabric supports: Charges for these items will be increased by around 2.5% overall in line with spending assumptions. The current and new charges are in paragraph 10 below.

Travel Expenses and Remission of Charges Regulations (TERC)

TERC: NHS Reforms

7.4 The TERC Regulations are amended to reflect changes to the NHS structure made by the 2012 Act (described briefly in paragraph 4.1).

7.5 Amendments are made to ensure the arrangements for income based remission of charges and assistance with NHS travel costs work in the new NHS structure, bearing in mind the transfer of functions to the new bodies in the NHS structure. Changes are made to the provisions as to which bodies will pay and repay NHS travel expenses and also make repayments in respect of NHS charges for wigs and fabric supports. As local authorities have no powers to make payments of travel expenses under the NHS Act 2006, where they are the body commissioning services under the 2006 Act, payments or re-

payments of travel expenses to receive services commissioned by them will generally be made by an appropriate clinical commissioning group (unless the provider of those services is an NHS trust or NHS foundation trust).

TERC: Universal Credit

7.6 The TERC Regulations are amended to extend income based remission of charges and assistance with NHS travel costs to those involved in the Universal Credit pathfinder. The Welfare Reform Act 2012 provides for the introduction of Universal Credit. This new benefit will incorporate all current working age benefits (in work and out of work) into a single payment system, Universal Credit. Universal Credit will initially be introduced in four “pathfinder” areas: Oldham, Tameside, Warrington and Wigan. For these pathfinders only, all recipients of Universal Credit (and their partners and the children for whom they are responsible) anytime between 29th April and 31st October 2013 will be entitled to:

- Free NHS prescriptions
- Free NHS dental treatment
- Free wigs and fabric supports
- Assistance with the costs of travel to an NHS appointment on referral by a primary care practitioner (eg doctor, dentist or optician).

(In addition, separate amending regulations will give access to free sight tests and optical vouchers for this group.)

7.7 Further amendments to the TERC Regulations are made to recognise personal independence payments and the armed forces independence payments in the calculation of entitlement to help through the NHS low income scheme. This scheme provides help with the above costs to those who are not automatically entitled through receipt of a relevant means tested benefit (including Universal Credit from April).

Dental Charges

7.8 Amendments are made to the Dental Charges Regulations to increase the applicable charge payable for courses of treatment by an overall average of 2.5%, spread across the bands to maintain sensible round figures. This is required to keep charges in line with observed levels of inflation (Consumer Prices Index and the Retail Prices Index inflation). Dental charges are in three bands:

- Band 1 - courses involving diagnosis and prevention only – currently £17.50.
- Band 2 - courses which include dental treatment – such as fillings and extractions – currently £48.00.

- Band 3 - courses which include advanced dental work including appliances – currently £209.00.

These charges are increased by around of 2.5% in line with spending assumptions, spread across the bands to maintain sensible round figures. The actual increase is 2.43% to add 50p to the cost of a band 1 course of treatment (increasing the charge rate to £18.00), £1 to a band 2 course (taking the charge to £49.00), and a £5 to a band 3 course (taking the charge to £214).

The Band 1A charge, which will only apply to patients receiving additional interim treatment from contractors participating in the Capitation and Quality Scheme 2 pilots (about 95 contractors nationally), will be introduced from 1 April 2013 with charges that match those for Band 1, £17.50. (The Band 1A charge is introduced in the National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013. The Explanatory Memorandum for this instrument contains further information about the new charge in paragraphs 7.6 to 7.8). This charge will also be increased by 2.9% to add 50p to the cost of a Band 1A course of treatment (taking the charge to £18.00) in line with the Band 1 charge.

Consolidation

In introducing the current set of amending Regulations, the Department of Health considered the possibility of consolidating the Charges Regulations and TERC Regulations. However, through necessity, resources have had to concentrate on the implementation of changes consequential on the 2012 Act and on the annual uprating of NHS Charges.

Further amendments are likely to be needed to the TERC Regulations as Universal Credit is extended and to the Charges Regulations if any changes are made to any regulations related to the NHS reforms.

The Department therefore proposes to review the position for consolidation once the impact of the changes flowing from the 2012 Act and the Welfare Reform Act 2012 have settled and been evaluated.

The Dental Charges 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 therefore no plans to consolidate the Dental Charges Regulations.

8. Consultation outcome

8.1 The Secretary of State is not required to consult on these regulations.

9. Guidance

9.1 Relevant healthcare professionals will be notified of the increase to charges for dental treatment, prescriptions, wigs and fabric supports. Guidance will be revised for the Healthcare Travel Costs Scheme. The Board, the public and NHS dental contractors will be advised of the new charges by way of a patient information leaflet, waiting room notices, and through the Department of Health website.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument. No impact on charities or voluntary bodies is foreseen. The majority of amendments are being made as a consequence of the 2012 Act for which a full impact assessment was undertaken.

10.2 There is minimal cost to the public sector. Dispensers of drugs and appliances under the Charges Regulations will need to be aware of the increase in charges and collect the increased amount. The National Health Service Business Services Authority will need to amend their systems to reflect the increased level of the prescription charge and other charges provided for in the Charges Regulations. The cost of a prescription charge to the public is an additional 20p per prescribed medicine or appliance dispensed to those who are not entitled to free prescriptions. There is no increase in the cost of a three or twelve month prepayment certificate. The new charges are as set out in the table below.

NHS Charges - England

	Charge 1 April 2012 (£)	New Charge April 2013 (£)
Prescription charges		
Single item	7.65	7.85
3 month PPC	29.10	29.10
12 month PPC	104.00	104.00
Dental Charges		
Band 1 course of treatment	17.50	18.00
Band 2 course of treatment	48.00	49.00
Band 3 course of treatment	209.00	214.00
Wigs and Fabrics		
Surgical brassiere	25.70	26.35
Abdominal or spinal support	38.80	39.75
Stock modacrylic wig	63.35	64.95
Partial human hair wig	167.85	172.00
Full bespoke human hair wig	245.40	251.55

10.3 Consideration has been given to whether any further impact assessment was required but this was not considered to be necessary.

11. Regulating small business

11.1 There is no additional burden to business. The pharmacists, dispensing GPs, and bodies who currently collect charges under the Charges Regulations will continue to do so in the same way. NHS dental practices are exempt from the Small Firm Impact Test as they are considered as part of the public sector due to their provision of primary dental services for the NHS. Public sector organisations are exempt under this test.

12. Monitoring & review

12.1 The charges imposed by the Charges Regulations are reviewed annually, to consider what, if any, change in the amounts of such charges should be made.

13. Contact

Eleanor Shenton at the Department of Health Tel: 02079722923 or email: eleanor.shenton@dh.gsi.gov.uk can answer any queries regarding the instrument.