

**2011 No. 1182**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (Primary Dental Services)  
(Miscellaneous Amendments) Regulations 2011**

<i>Made</i> - - - -	<i>27th April 2011</i>
<i>Laid before Parliament</i>	<i>4th May 2011</i>
<i>Coming into force</i> - -	<i>1st June 2011</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 104, 109 and 272(7) and (8) of the National Health Service Act 2006(a).

**PART 1**

**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the National Health Service (Primary Dental Services) (Miscellaneous Amendments) Regulations 2011 and come into force on 1st June 2011.

**PART 2**

**AMENDMENT OF THE NATIONAL HEALTH SERVICE (GENERAL DENTAL  
SERVICES CONTRACTS) REGULATIONS 2005**

**Amendment of the National Health Service (General Dental Services Contracts) Regulations  
2005**

2. The National Health Service (General Dental Services Contracts) Regulations 2005(b) are amended in accordance with this Part.

**Amendment of regulation 2**

3. In regulation 2 (interpretation), after the definition of “bridge” insert—

““Capitation and Quality Scheme Agreement” means an agreement containing such terms and conditions relating to the provision of primary dental services as are required

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(a) 2006 c.41. See section 275(1) for the definitions of “prescribed” and “regulations”, which are relevant to the powers being exercised.

(b) S.I. 2005/3361. The relevant amending instruments are S.I. 2006/563, 2008/1700 and 2010/22.

by, and which is made in accordance with, directions given by the Secretary of State under section 8 of the National Health Service Act 2006(a);”.

#### **Amendment of regulation 17**

4. In regulation 17 (units of dental activity), at the beginning of paragraphs (1) and (2), insert “Subject to regulation 24A,”.

#### **Amendment of regulation 21**

5. In regulation 21 (finance), at the beginning of paragraphs (1) and (3), insert “Subject to regulation 24A,”.

#### **Amendment of regulation 24**

6. In regulation 24 (other contractual terms), at the beginning of paragraph (1), insert “Subject to regulation 24A,”.

#### **New regulation 24A**

7. After regulation 24 (other contractual terms), insert—

##### **“Variation of contractual terms in respect of election to enter into a Capitation and Quality Scheme Agreement**

**24A.**—(1) This regulation applies where the contractor and the Primary Care Trust elect to enter into a Capitation and Quality Scheme Agreement.

(2) Where paragraph (1) applies, the terms of the contract which have the same effect as the provisions specified in paragraph (3) must be varied in accordance with paragraphs (4) and (5) with effect from the start of the day on which the Capitation and Quality Scheme Agreement commences and for the period ending at the end of the day which is the date of the termination of the Capitation and Quality Scheme Agreement, which must be no later than 31st March 2013.

(3) The provisions specified in this paragraph are—

- (a) regulation 17(units of dental activity);
- (b) regulation 21(finance); and
- (c) in Schedule 3—
  - (i) paragraph 32(2)(patient records), which is a contractor’s discretion to keep patient records in electronic form,
  - (ii) paragraph 58 (mid-year reviews), in so far as it relates to units of dental activity,
  - (iii) paragraph 59 (action the Primary Care Trust can take following a mid-year review), in so far as it relates to units of dental activity, and
  - (iv) paragraph 61(1)(a) and (3)(a) (variation of a contract: activity under the contract), which relate to units of dental activity.

(4) The contract must include terms that have the effect of temporarily releasing the contractor and the Primary Care Trust from all of the obligations, conditions, payments, rights and liabilities relating to those terms (and only those terms) which have the same effect as the provisions specified in paragraph (3), including any right to enforce those terms.

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(a) See the National Health Service (Dental Services) (Capitation and Quality Scheme Agreements) Directions 2011 published on the Department of Health website [www.dh.gov.uk](http://www.dh.gov.uk).

(5) The contract must also include terms to have the effect of providing that immediately after the date of the termination of the Capitation and Quality Scheme Agreement—

- (a) the terms of the contract that subsisted between the parties immediately before the Capitation and Quality Scheme Agreement commenced and from which the parties were temporarily released in accordance with paragraph (4) must apply from the day after the date of termination; and
- (b) all obligations, conditions, payments, rights and liabilities relating to those terms are to be enforceable from that day.”.

### **Amendments to Schedule 3**

**8.**—(1) Schedule 3 (other contractual terms) is amended as follows.

(2) In paragraph 1 (persons to whom mandatory services or additional services are to be provided), for sub-paragraph (4)(a) substitute—

“(a) a person’s age, sex (reassigned or otherwise), religion or belief, sexual orientation, race, cultural and linguistic background, any disability they may have, or medical or dental condition; or”.

(3) In paragraph 65 (termination on the death of an individual dental practitioner), in sub-paragraph (1)—

- (a) at each place “seven days” occurs, substitute “28 days”; and
- (b) in paragraph (a), substitute “not exceeding three months” with “not exceeding 6 months”.

## **PART 3**

### **AMENDMENT OF THE NATIONAL HEALTH SERVICE (PERSONAL DENTAL SERVICES AGREEMENTS) REGULATIONS 2005**

#### **Amendment of the National Health Service (Personal Dental Services Agreements) Regulations 2005**

**9.** The National Health Service (Personal Dental Services Agreements) Regulations 2005(a) are amended in accordance with this Part.

#### **Amendment of regulation 2**

**10.** In regulation 2 (interpretation), after the definition of “bridge” insert—

““Capitation and Quality Scheme Agreement” means an agreement containing such terms and conditions relating to the provision of primary dental services as are required by, and which is made in accordance with, directions given by the Secretary of State under section 8 of the National Health Service Act 2006;”.

#### **Amendment of regulation 13**

**11.** In regulation 13 (units of dental activity), at the beginning of paragraphs (1) and (2), insert “Subject to regulation 20A,”.

#### **Amendment of regulation 17**

**12.** In regulation 17 (finance), at the beginning of paragraphs (1) and (3), insert “Subject to regulation 20A,”.

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(a) S.I. 2005/3373. The relevant amending instruments are S.I. 2006/563 and 2010/22.

### **Amendment of regulation 20**

13. In regulation 20 (other contractual terms), at the beginning of paragraph (1), insert “Subject to regulation 20A,”.

### **New regulation 20A**

14. After regulation 20 (other contractual terms), insert—

#### **“Variation of contractual terms in respect of election to enter into a Capitation and Quality Scheme Agreement**

**20A.**—(1) This regulation applies where the contractor and the Primary Care Trust elect to enter into a Capitation and Quality Scheme Agreement.

(2) Where paragraph (1) applies, the terms of the agreement which have the same effect as the provisions specified in paragraph (3) must be varied in accordance with paragraphs (4) and (5) with effect from the start of the day on which the Capitation and Quality Scheme Agreement commences and for the period ending at the end of the day which is the date of the termination of the Capitation and Quality Scheme Agreement, which must be no later than 31st March 2013.

(3) The provisions specified in this paragraph are—

- (a) regulation 13 (units of dental activity);
- (b) regulation 17 (finance); and
- (c) in Schedule 3—
  - (i) paragraph 33(2) (patient records), which is a contractor’s discretion to keep patient records in electronic form,
  - (ii) paragraph 58 (mid-year reviews), in so far as it relates to units of dental activity,
  - (iii) paragraph 59 (action the Relevant Body can take following a mid-year review), in so far as it relates to units of dental activity, and
  - (iv) paragraph 61(1)(a) and (3)(a) (variation of an agreement: activity under the agreement), which relate to units of dental activity.

(4) The agreement must include terms that have the effect of temporarily releasing the contractor and the Primary Care Trust from all of the obligations, conditions, payments, rights and liabilities relating to those terms (and only those terms) which have the same effect as the provisions specified in paragraph (3), including any right to enforce those terms.

(5) The agreement must also include terms to have the effect of providing that immediately after the date of the termination of the Capitation and Quality Scheme Agreement—

- (a) the terms of the agreement that subsisted between the parties immediately before the Capitation and Quality Scheme Agreement commenced and from which the parties were temporarily released in accordance with paragraph (4) must apply from the day after the date of termination; and
- (b) all obligations, conditions, payments, rights and liabilities relating to those terms are to be enforceable from that day.”.

### **Amendments to Schedule 3**

15.—(1) Schedule 3 (other contractual terms) is amended as follows.

(2) In paragraph 1 (persons to whom mandatory or additional services are to be provided), for sub-paragraph (4)(a) substitute—

“(a) a person’s age, sex (reassigned or otherwise), religion or belief, sexual orientation, race, cultural and linguistic background, any disability they may have, or medical or dental condition; or”.

(3) In paragraph 63 (termination on the death of an individual), in sub-paragraph (1)—

(a) at each place “seven days” occurs, substitute “28 days”; and

(b) in paragraph (a), substitute “not exceeding three months” with “not exceeding 6 months”.

Signed by authority of the Secretary of State for Health.

*Earl Howe*  
Parliamentary Under-Secretary of State,  
Department of Health

27th April 2011

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service (General Dental Services Contracts) Regulations 2005 (“the GDS Contracts Regulations”) and the National Health Service (Personal Dental Services Agreements) Regulations 2005 (“the PDS Agreements Regulations”).

Regulations 3 and 10 respectively amend regulations 2 of the GDS Contracts Regulations and the PDS Agreements Regulations to insert new definitions.

Part 2 amends the GDS Contracts Regulations. In particular regulation 7 inserts a new regulation 24A to require the terms of a GDS contract to be varied in a case where the contractor and the Primary Care Trust elect to enter into a Capitation and Quality Scheme Agreement. A Capitation and Quality Scheme Agreement is an agreement made in accordance with the National Health Service (Dental Services) (Capitation and Quality Scheme Agreements) Directions 2011 made by the Secretary of State under section 8 of the National Health Service Act 2006, which set the framework for piloting new arrangements for the provision of primary dental services. The piloted arrangements must come to an end on 31st March 2013.

Regulation 8 amends Schedule 3 in relation to other contractual terms which a GDS contract must contain, namely—

- (i) paragraph (1)(4)(a) which provides that a contractor may not refuse to provide treatment on the grounds specified; and
- (ii) paragraph 65(1) in respect of termination of a contract on the death of a contractor.

Part 3 makes amendments to the PDS Agreements Regulations which mirror those made to the GDS Contracts Regulations.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.

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STATUTORY INSTRUMENTS

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£4.00