

### SCHEDULE 3

#### OTHER CONTRACTUAL TERMS

## PART 8

### MID-YEAR REVIEW OF ACTIVITY UNDER CONTRACTS

#### Mid-year reviews

**58.**—(1) This paragraph and paragraph 59 apply where services are to be provided under the contract from 1st April in any financial year.

(2) In this paragraph and paragraph 59, references to requirements to provide units of dental activity or orthodontic activity are to such requirements under the terms of the contract giving effect to regulation 17 (units of dental activity) or 18 (units of orthodontic activity).

(3) [F1NHS England] shall, by 31st October in each financial year, determine the number of—

- (a) units of dental activity; or
- (b) units of orthodontic activity,

that the contractor has provided between 1st April and 30th September of that financial year based on the data provided to it by virtue of paragraph 38.

(4) Where [F1NHS England] determines under sub-paragraph (3) that the contractor has, between 1st April and 30th September, provided less than 30 per cent of the total number of—

- (a) units of dental activity; or
- (b) units of orthodontic activity,

that it is required to provide in that financial year, subparagraph (5) shall apply.

(5) Where this sub-paragraph applies, [F1NHS England] may—

- (a) notify the contractor that it is concerned about the level of activity provided under the contract in the first half of the financial year, setting out—
  - (i) the number of units of dental activity or units of orthodontic activity (as the case may be) that it has determined that the contractor has provided; and
  - (ii) the percentage of the total number of units of dental activity or units of orthodontic activity (as the case may be) required to be provided during the financial year that the number in sub-paragraph (i) represents; and
- (b) require in that notification that the contractor participate in a mid-year review of its performance in relation to the contract with [F1NHS England].

(6) Where a mid-year review is required by [F1NHS England] pursuant to sub-paragraph (5), [F1NHS England] and the contractor shall discuss at that review—

- (a) any written evidence the contractor puts forward to demonstrate that it has performed a greater number of units of dental activity or units of orthodontic activity during the first half of the financial year than those notified to it under sub-paragraph (5)(a)(i); and
- (b) any reasons that the contractor puts forward for the level of activity in the first half of the financial year.

(7) [F1NHS England] shall prepare a draft record of the mid-year review for comment by the contractor and, having regard to such comments, shall produce a final written record of the review.

(8) A copy of the final record of the mid-year review shall be sent to the contractor.

**Textual Amendments**

**F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

**Action [F1NHS England] can take following a mid-year review**

**59.**—(1) Where, following the mid-year review and the sending of the final record of that review to the contractor, [F1NHS England], having taken account of any evidence or reasons put forward by the contractor at that review, nevertheless has serious concerns that the contractor is unlikely to provide the number of—

- (a) units of dental activity; or
- (b) units of orthodontic activity,

that it is required to provide by the end of the financial year, [F1NHS England] shall be entitled to take either or both of the steps specified in sub-paragraph (2).

(2) [F1NHS England] may—

- (a) require the contractor to comply with a written plan drawn up by [F1NHS England] to ensure that the level of activity during the remainder of the financial year is such that the contractor will provide the number of units of dental activity or units of orthodontic activity it is required to provide; or
- (b) withhold monies payable under the contract.

(3) The maximum amount that may be withheld pursuant to sub-paragraph (2)(b) is—

- (a) the amount that is payable under the contract in respect of the number of units of dental activity or units of orthodontic activity required to be provided in a financial year, less
- (b) the amount that would be payable under the contract as a relevant proportion of that amount if the contractor provided in the whole of the financial year only twice the number of units of dental activity or orthodontic activity that he provided between 1st April and 30th September.

(4) Nothing in this paragraph shall prevent [F1NHS England] and the contractor agreeing to vary the contract in accordance with paragraph 61 to adjust—

- (a) the level of activity to be provided under the contract; or
- (b) the monies to be paid by [F1NHS England] to the contractor under the contract.

(5) Where [F1NHS England] withholds monies under to paragraph (2), it shall ensure that it pays the withheld monies to the contractor as soon as possible following the end of the financial year where the contractor has—

- (a) provided the number of units of dental activity or units of orthodontic activity required to be provided; or
- (b) failed to provide that number of units of dental activity or units of orthodontic activity, but that failure amounts to 4 per cent or less of the total number of units of dental activity or units of orthodontic activity that ought to have been provided during that financial year (and therefore regulation 19 applies).

**Changes to legislation:** There are currently no known outstanding effects for the The National Health Service (General Dental Services Contracts) Regulations 2005, PART 8. (See end of Document for details)

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**Textual Amendments**

- F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

**Changes to legislation:**

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