

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE (PRIMARY DENTAL SERVICES)**  
**(MISCELLANEOUS AMENDMENTS ) REGULATIONS 2012**

**2012 No. 502**

**1.** This explanatory memorandum has been prepared by the Department of Health and is laid before the House of Commons by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument (“the Amendment Regulations”) amends;

(i) The National Health Service (General Dental Services Contracts) Regulations 2005 (S.I. 2005/3361) (“the GDS Regulations”),

(ii) The National Health Service (Personal Dental Services Agreements) Regulations 2005 (S.I. 2005/3373) (“the PDS Regulations”),

(iii) The National Health Service (Dental Charges) Regulations (S.I. 2005/3477) (“the Dental Charges Regulations”), and

(iv) The Functions of Primary Care Trusts and Strategic Health Authorities and the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)(Primary Dental Services) (England) Regulations 2006 (S.I. 2006/596)(“the BSA Functions Regulations”).

2.2 These amendments correct a drafting error, update various Regulations to reflect policy developments and associated legislative changes since the Regulations were last made or last amended.

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

3.1 None

**4. Legislative Context**

4.1 The Amendment Regulations amend the statutory instruments, as detailed above, that control the way in which primary dental services are delivered pursuant to the provisions of Part 5 of the National Health Service Act 2006.

4.2 The Amendment Regulations –

(i) amend the GDS Regulations to reflect the policy developments introduced by the Care Quality Commission in respect of suspension from registration of a provider of primary dental services (regulation 2.3);

(ii) amend the GDS and PDS Regulations to correct a drafting error and to reflect policy development in respect of the death of a contractor (regulations 2(4) and 3);  
(iii) amend the Dental Charges Regulations which implements the annual increase in dental patient charges by an average of 2.5% (regulation 4); and  
(iv) amends and updates the BSA Functions Regulations to reflect the policy developments and amendments made in the 1995 and 2008 National Health Service Pension Schemes (regulation 5).

## **5. Territorial Extent and Application**

5.1 This instrument applies to England.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

- What is being done and why

### **7.1 Background**

Each PCT is required under section 99 of the National Health Service Act 2006 (“the Act”) to provide primary dental services within its area, or to secure their provision within its area to the extent that it considers necessary. PCTs provide NHS dental services by entering into either a general dental services contract (GDS contract) made under section 100 of the Act, or a personal dental services agreement (PDS agreement) made under section 107 of the Act, with a contractor, which must contain the mandatory terms required under the GDS or PDS Regulations.

### **7.2 The Health and Social Care Act 2008 (Regulated Activities) Regulations (S.I. 2010/781)**

Under the above Regulations, dentists are required to be registered with the CQC in relation to dentistry becoming a regulated activity from 1 April 2011. The CQC may, under section 18 of the Health and Social Care Act 2008, suspend a person’s registration as a service provider (e.g. a primary care service dental contractor providing services under a GDS contract or a PDS agreement). Regulation 14 of the GDS Regulations requires contractors to provide specific mandatory services described in that regulation. Failure to do so is breach of contract. This has created a tension between regulation 14 of the GDS Regulations and the CQC provisions. Regulation 2(3) amends regulation 14 to provide that for the period of such a suspension, it should not be a contractual term of the contract to provide mandatory services whilst suspended by the CQC. This means that a contractor would not be in breach of its contractual terms during such a period of

suspension. There is no requirement to provide mandatory services under a PDS agreement, and therefore the PDS Regulations are not amended.

### **7.3 Death of a contractor**

Paragraph 65 of Schedule 3 to the GDS Regulations (and the mirror provision in paragraph 63 of Schedule 3 to the PDS Regulations), as amended by The National Health Service (Primary Dental Services)(Miscellaneous Amendments) Regulations 2011(2011/1182) provide that following the death of a contractor the contract must terminate after a period of 28 days, and that subject to agreement between the PCT and the contractor's representatives, this period may be extended for a further period not exceeding six months. Due to an error made in these Regulations paragraph 65(2) of Schedule 3 to the GDS Regulations (and the mirror provision in paragraph 63(2) of Schedule 3 to the PDS Regulations) refer to "the three month period" in sub-paragraphs 65(1)(a) and 63(1)(a) of Schedule 3 to both sets of Regulations. Regulation 2(4) and 3 of the Amendment Regulations corrects this error and amends the three month period provided for in both these provisions to correctly cross-refer to the six month period of extension provided for in paragraph 65(1)(a) and the mirror provision in paragraph 63(1)(a) of Schedule 3 to both sets of Regulations. This clarifies the policy and means that a contract may now be extended for a period of 12 months and 28 days in total following the death of a contractor. As the instrument corrects an error and clarifies the policy the free issue procedure has been applied.

### **7.4 The Dental Charges Regulations**

The changes to the Dental Charges Regulations implement increases to dental charges which are usually done annually. Dental charges represent an important contribution to the overall cost of dental services. Dental charges have existed in some shape or form since 1951. Longstanding exemption arrangements mean that patients aged under 18, aged 18 and in full time education, pregnant and nursing mothers, and adults on low incomes do not have to pay charges. Regulation 4(2) increases the current dental charge bands by an average close to but not exactly 2.5% spread across the bands to maintain sensible round figures. This would add 50p to the cost of a Band 1 course of treatment (increasing the charge rate to £17.50), £1 to a Band 2 course of treatment (taking the charge to £48.00), and a £5 to a Band 3 course of treatment (taking the charge to £209). This produces an overall increase which will help maintain the contribution charges make to NHS funding. The Department has balanced the need to protect NHS funding and the impact of charges on personal incomes and has been able to constrain the increase to 2.5% overall, which is below the observed levels of inflation (Consumer Prices Index and the Retail Prices Index).

### **7.5 BSA Functions Regulations**

The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005 gives the Business Services Authority functions in relation to the pension schemes made under section 10 of the Superannuation

Act 1972. Under the BSA Functions Regulations, PCTs' functions in relation to the National Health Service Pension Scheme 1995 are to be exercised by the NHS Business Services Authority. Regulation 5(2)(a) of the Amendment Regulations amends these Regulations to take account of changes made to the National Health Service Pension Scheme 1995 to reflect the provisions of the National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2011 (S.I.2011/1182). Regulation 5(2)(b) inserts a new provision to update the BSA Functions Regulations to direct the Business Services Authority to carry out PCTs functions in relation to the National Health Service Pension Scheme 2008 and to reflect the changes made to the 2008 Pension Scheme by the National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2011 (S.I. 2011/1182).

- Consolidation

7.6 The GDS and PDS Regulations are used to stipulate the mandatory elements of primary dental services contracts and agreements entered into by service providers and PCTs. The primary reference documents used by service providers and PCTs are the standard GDS and PDS template contract and agreement. It is the Department's intention to issue electronically a consolidated standard template and standard variation notices for use by PCTs on the Department's website [www.dh.gov.uk](http://www.dh.gov.uk).

7.7 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 these Regulations.

## **8. Consultation outcome**

8.1 The Department has consulted the Dental Profession (represented by the British Dental Association) and the NHS Business Service Authority (regarding the proposed amendments to the BSA Functions Regulations) and both organisations are content with the changes set out in this instrument.

8.2 On Dental charges, the instrument implements the regular increase in dental charges, usually made annually. As the provisions provide for below inflationary increases to the cost of a course of NHS dental treatment they have not been the subject of further consultation.

## **9. Guidance**

9.1 It is not considered necessary to issue guidance in relation to the changes to the GDS and PDS Regulations. PCTs will issue a notice of variation to contractors varying the terms of GDS contracts and PDS agreements in accordance with the amendments made by this instrument. Contractors and PCTs will be advised of the changes to the BSA Functions Regulations by the NHS Business Services Authority. In addition see above regarding standard contracts and standard notices of variation.

9.2 PCTs, the public and NHS dental contractors will be advised of the new dental charges by way of an annual patient information leaflet. An NHS Dental Charges Poster will be published on the Department of Health website [www.dh.gov.uk](http://www.dh.gov.uk) Publications Policy and Guidance section setting out the new charges. PCTs request that this notice is displayed in dental practices waiting rooms or receptions.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible. In relation to the increases in dental charges, GDS and PDS contractors will need to be aware of the changes and ensure they are charging the applicable charge. The NHS Business Services Authority will need to amend their systems to reflect the increased level of the dental charges which are set off against payments due to contractors. The cost to the public is an additional 50p to the cost of a Band 1 course of treatment, £1 to the cost of a Band 2 course of treatment and £5 to the cost of a Band 3 course of treatment.

10.3 An Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sector is foreseen.

## **11. Regulating small business**

11.1 Dentists providing dental services under GDS contracts and PDS agreements are outside the scope of the micro business exemption as such services are regarded as the delivery of public services and are governed by a statutory framework under which NHS dental services are delivered.

## **12. Monitoring & review**

12.1 The implementation of the GDS and PDS Regulations is the responsibility of PCTs. The Department has regular discussions with PCTs and other interested parties including contractors' representatives (the BDA) to ensure provisions are implemented and to consider any problems identified in their operation. The options to increase dental charges will be reviewed annually.

## **13. Contact**

**David Roberts** at the Department of Health, Telephone: 020 797 25316 or email: [David.P.Roberts@dh.gsi.gov.uk](mailto:David.P.Roberts@dh.gsi.gov.uk), can answer any queries regarding the instrument.