
STATUTORY INSTRUMENTS

2013 No. 364

The National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013

PART 2

Miscellaneous amendments of the GDS Contracts Regulations relating to the Health and Social Care Act 2012 and other miscellaneous amendments

Amendment of Schedule 3

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

(2) In paragraph 3 (violent patients)—

(a) in sub-paragraphs (1) and (4), for “the Primary Care Trust”, in each place, substitute “the Board;

(b) in sub-paragraph (2), after paragraph (c) insert—

“(ca) in the case of a contract with a limited liability partnership, a member of that partnership;”;

(c) in sub-paragraph (5), for “The Primary Care Trust” substitute “The Board”.

(3) In paragraph 5 (irrevocable breakdown in relationship between contractor and patient), for “the Primary Care Trust” substitute “the Board”.

(4) In paragraph 6 (course of treatment), in sub-paragraphs (5)(a)(i) and (iii) and (6), for “the Primary Care Trust” substitute “the Board”.

(5) In paragraph 7 (treatment plans), in sub-paragraphs (1) and (7), in each place, for “the Primary Care Trust”, substitute “the Board”.

(6) In paragraph 8 (completion of courses of treatment), in sub-paragraphs (1) and (2), for “the Primary Care Trust” substitute “the Board”.

(7) In paragraph 9 (referral to another contractor, a hospital or other relevant service provider for advanced mandatory, domiciliary or sedation services), in sub-paragraph (2)(a), for “the Primary Care Trust” substitute “the Board”.

(8) In paragraph 19 (issue of prescription forms), in sub-paragraph (3), for “the Primary Care Trust” substitute “the Board”.

(9) For sub-paragraph 21 (dental practitioners), substitute—

“Dental Practitioners

21. A dental practitioner may perform dental services under the contract provided—

(a) that dental practitioner is included in the dental performers list held by the Board; and

(b) that dental practitioner’s inclusion in that list is not subject to a suspension.”.

(10) In paragraph 23 (performers: further requirements), in sub-paragraph (2)(b), for “in a dental performers list” substitute “in the dental performers list held by the Board”.

(11) In paragraph 24 (conditions for employment and engagement: dental practitioners performing dental services), for sub-paragraph (1) substitute—

“(1) A contractor must not employ or engage a dental practitioner to perform dental services under the contract unless the contractor has checked that the practitioner meets the requirements in paragraph 21.”.

(12) For paragraph 30 (appraisal and assessment), substitute—

“Appraisal and assessment

30. The contractor shall ensure that any dental practitioner performing services under the agreement—

- (a) participates in the appraisal system (if any) provided by the Board; and
- (b) co-operates with the Board in relation to patient safety.”.

(13) In paragraph 31 (sub-contracting of clinical matters), in sub-paragraph (2), in each place, for “the Primary Care Trust” substitute “the Board”.

(14) In paragraph 32 (patient records), in sub-paragraph (3)(d)—

- (a) for “the Primary Care Trust” substitute “the Board”; and
- (b) in paragraph (i) after “accordance” insert “with”.

(15) In paragraph 34 (patient information), in sub-paragraph (1)(b), for “the Primary Care Trust” substitute “the Board”.

(16) In paragraph 35 and its heading (provision of and access to information: Primary Care Trust)

- (a) in sub-paragraphs (1) and (2)(a), in each place, for “the Primary Care Trust”, substitute “the Board”; and
- (b) in sub-paragraph (2)(b) for “the Primary Care Trust’s” substitute “the Board’s”; and
- (c) in the heading for “the Primary Care Trust” substitute “the Board”.

(17) In paragraph 37 (inquiries about prescriptions and referrals), in sub-paragraphs (1), (2) and (3), in each place, for “the Primary Care Trust”, substitute “the Board”.

(18) In paragraph 38 (notification of a course of treatment, orthodontic course of treatment etc), in sub-paragraph (1), for “send to the Primary Care Trust, on a form supplied by that Trust” substitute “send to the Board, on a form supplied by it”.

(19) In paragraph 39 (annual report and review)—

- (a) in sub-paragraph (1)—
 - (i) for “the Primary Care Trust” substitute “the Board”, and
 - (ii) for “with that Trust” substitute “with the Board”; and
- (b) in sub-paragraphs (2), and (3), in each place, for “the Primary Care Trust, substitute “the Board”.

(20) In paragraph 40 and its heading (notification to the Primary Care Trust)—

- (a) in sub-paragraphs (1) to (3), in each place, for “the Primary Care Trust”, substitute “the Board”;
- (b) in sub-paragraph (1)(b) for “the Primary Care Trust’s”, substitute “the Board’s”; and
- (c) in the heading, for “the Primary Care Trust” substitute “the Board”.

(21) In paragraph 41 (notice provisions specific to a contract with a dental corporation), for “the Primary Care Trust” substitute “the Board”.

(22) In paragraph 42 (notice provisions specific to a contract with two or more individuals practising in partnership), in sub-paragraph (1), for “the Primary Care Trust” substitute “the Board”.

(23) After paragraph (42), insert—

“Notice provisions specific to a contract with a limited liability partnership

42B.—(1) Where a limited liability partnership is a party to a contract it shall give notice to the Board forthwith when—

- (a) it passes a resolution or a court of competent jurisdiction makes an order that the contractor be wound up;
- (b) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the contractor;
- (c) circumstances arise which would enable the court to make a winding up order in respect of the contractor;
- (d) the contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (definition of inability to pay debts); and
- (e) any membership changes are notified in accordance with section 9 of the Limited Liability Partnership Act 2000(1) (registration of membership changes) to the registrar (within the meaning of that Act) in relation to a person who becomes or ceases to be a member or designated member (within the meaning of that Act) and the notice must specify the date on which that person becomes or ceases to be a member or designated member (as the case may be).

(2) A notice under sub-paragraph (e) must confirm—

- (a) that any new member joining the partnership meets the conditions imposed by regulation 4 (general prescribed conditions relating to all contracts); and
- (b) following the membership changes, the partnership continues to satisfy the conditions in section 102(2A) of the 2006 Act.”.

(24) In paragraph 44 and in the heading (entry and inspection by the Primary Care Trust)—

- (a) in sub-paragraphs (1) and (3)(a), for “the Primary Care Trust” substitute “the Board”; and
- (b) in the heading, for “the Primary Care Trust” substitute “the Board”.

(25) For the paragraph 46A (entry and viewing by local involvement network representatives) inserted by the [Local Involvement Networks \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1514\)](#)(2) substitute—

“Entry and viewing by Local Healthwatch organisations

46A. The contractor must comply with the requirement to allow an authorised representative to enter and view premises and observe the carrying-on of activities on those premises in accordance with regulations made under section 225 (duties of services- providers to allow entry by Local Healthwatch organisations or contractors) of the Local Government and Public Involvement Health Act 2007(3).”

(1) [2000 c.12.](#)

(2) Another paragraph 46A is inserted into Schedule 3 to the GDS Contracts Regulations by [S.I. 2009/309](#), but has since been renumbered 46B by a correction slip.

(3) [2007 c.28.](#) Section 225 is amended by section 186(6) to (11) of, and paragraphs 148 and 151 of Schedule 5 and paragraphs 103 and 106 of Schedule 14 to, the 2012 Act.

- (26) Omit paragraphs 47 (complaints procedure), 48 (making of complaints), 49 (period for making complaints) and 50 (further requirements for complaints procedures).
- (27) In paragraph 51 (co-operation with investigations)—
- (a) in sub-paragraphs (1)(a)(i) and (3)(a) and (b), for “the Primary Care Trust” substitute “the Board”; and
 - (b) in sub-paragraph (2), in the definition of “NHS Body”—
 - (i) for “a Primary Care Trust” substitute “the Board”; and
 - (ii) omit “a Strategic Health Authority.”
- (28) In paragraph 52 (provision of information)—
- (a) in each place, for “the Primary Care Trust” substitute “the Board”; and
 - (b) for “this Part” substitute “the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009”.
- (29) In paragraph 53 (local resolution of contract disputes), for “the Primary Care Trust” substitute “the Board”.
- (30) In paragraph 54 (dispute resolution: non-NHS contracts), in sub-paragraph (1)(a) and (b), for “the Primary Care Trust” substitute “the Board”.
- (31) In paragraph 58 (mid-year reviews), in sub-paragraphs (3) to (7), in each place, for “the Primary Care Trust”, substitute “the Board”.
- (32) In paragraph 59 and its heading (action the Primary Care Trust can take following a mid-year review)—
- (a) in sub-paragraphs (1), (2), (4) and (5), in each place, for “the Primary Care Trust”, substitute “the Board”; and
 - (b) in the heading, for “the Primary Care Trust” substitute “the Board”.
- (33) In paragraph 60 (variation of a contract: general), in each place, for “the Primary Care Trust”, substitute “the Board”.
- (34) In paragraph 61 (variation of a contract: activity under the contract), in sub-paragraphs (1) and (2), for “the Primary Care Trust” substitute “the Board”.
- (35) In paragraph 62 (variation provisions specific to a contract with an individual dental practitioner), in sub-paragraphs (1), (4), (5) and (6), in each place, for “the Primary Care Trust” substitute “the Board”.
- (36) In paragraph 63 (variation provisions specific to a contract with two or more individuals practising in partnership)—
- (a) in sub-paragraphs (2), (4)(b), (6) and (7), in each place, for “the Primary Care Trust”, substitute “the Board”; and
 - (b) in sub-paragraph (5)—
 - (i) for “the Primary Care Trust” substitute “the Board”, and
 - (ii) for “the Trust” substitute “the Board”.
- (37) In paragraph 64 (termination by agreement), for “The Primary Care Trust” substitute “The Board”.
- (38) In paragraph 65 (termination on the death of an individual dental practitioner), in sub-paragraphs (1) to (3), in each place, for “the Primary Care Trust” substitute “the Board”.
- (39) In paragraph 66 (termination by the contractor), in sub-paragraph (1), for “the Primary Care Trust” substitute “the Board”.
- (40) In paragraph 67 (late payment notices)—

- (a) in sub-paragraph (1)—
 - (i) for “the Primary Care Trust” substitute “the Board”; and
 - (ii) for “the Trust”, in each place, substitute “the Board”; and
 - (b) in sub-paragraphs (2) and (3), in each place, for “the Primary Care Trust” substitute “the Board”.
- (41) In paragraph 68 and its heading (termination by the Primary Care Trust: general), in each place, for “the Primary Care Trust”, substitute “the Board”.
- (42) In paragraph 69 and its heading (termination by the Primary Care Trust: no longer eligible to enter into and breach of conditions of the contract)—
- (a) in sub-paragraphs (1) to (5), in each place, for “the Primary Care Trust” substitute “the Board”;
 - (b) after sub-paragraph (5) insert—
 - “(5A) Where the contract was entered into pursuant to section 102(1)(d) of the 2006 Act, and the contractor ceases to—
 - (a) be a limited liability partnership; or
 - (b) satisfy the conditions in section 102(2A) of that Act;the Board shall serve notice in writing on the contractor terminating the contract forthwith.”;
- and
- (c) in the heading, for “the Primary Care Trust” substitute “the Board”.
- (43) In paragraph 70 and the heading (termination by the Primary Care Trust for the provision of untrue etc. information), for “the Primary Care Trust”, in each place, substitute “the Board”.
- (44) In paragraph 71 and its heading (termination by the Primary Care Trust on grounds of suitability, etc)—
- (a) in sub-paragraphs (1), (2)(c) and (m) and (3) to (5), in each place, for “the Primary Care Trust”, substitute “the Board”;
 - (b) in sub-paragraphs (3) to (5), for “a Primary Care Trust” substitute “the Board”;
 - (c) in sub-paragraph (1)(b), omit “and”;
 - (d) in sub-paragraph (1)(c)(ii), for “the secretary of the corporation,” substitute “the secretary of the corporation; and”
 - (e) after sub-paragraph (1)(c), insert—
 - “(d) in the case of a contract with a limited liability partnership—
 - (i) the limited liability partnership; or
 - (ii) any member of the limited liability partnership,”
 - (f) in sub-paragraph (2)(k)(ii) after “(powers of the Court of Session to deal with management of charities)” insert “or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session)”;
 - (g) in sub-paragraph (2)(m) for “or with a dental corporation,” substitute “, with a dental corporation or a limited liability partnership”;
 - (h) in sub-paragraph (3)—
 - (i) in sub-paragraph (3)(b), omit “or”;
 - (ii) in sub-paragraph (3)(c), after “the corporation” insert “; or”;
 - (iii) after sub-paragraph (3)(c), insert—

- “(d) in the case of a contract with a limited liability partnership, a member of that limited liability partnership.”;
- (i) in sub-paragraph (5)—
- (i) in sub-paragraph (5)(b), after “partnership” omit “or”;
- (ii) in sub-paragraph (5)(c), after “corporation” insert “; or”; and
- (iii) after sub-paragraph (5)(c), insert—
- “(d) in the case of a contract with a limited liability partnership, a member of that limited liability partnership.”; and
- (j) in the heading, for “the Primary Care Trust” substitute “the Board”.
- (45) In paragraph 72 and its heading (termination by the Primary Care Trust: patient safety and material financial loss), for “the Primary Care Trust”, in each place, substitute “the Board”.
- (46) In paragraph 73 and its heading (termination by the Primary Care Trust: remedial notices and breach notices)—
- (a) in sub-paragraphs (1), (2)(b) and (3) to (8), in each place, for “the Primary Care Trust”, substitute “the Board”;
- (b) in sub-paragraph (4) for “a Primary Care Trust”, substitute “the Board”; and
- (c) in the heading, for “the Primary Care Trust” substitute “the Board”.
- (47) In paragraph 74 and its heading (termination by the Primary Care Trust: additional provisions specific to contracts with two or more individuals practising in partnership and dental corporations) —
- (a) in sub-paragraphs (1) to (3), in each place, for “the Primary Care Trust” substitute “the Board”;
- (b) in sub-paragraph (4)—
- (i) for “the Primary Care Trust’s” substitute “the Board’s”; and
- (ii) after sub-paragraph (4) add—
- “(5) Where the contractor is a limited liability partnership, the Board shall be entitled to terminate the contract by notice in writing on such date as may be specified in that notice where one or more members have left the practice during the existence of the contract if, in its reasonable opinion, the Board considers that the change in membership of the limited liability partnership is likely to have a serious adverse impact on the ability of the contractor or the Board to perform its obligations under the contract.
- (6) A notice given to the contractor pursuant to sub-paragraph (5) shall specify—
- (a) the date upon which the contract is to be terminated; and
- (b) the Board’s reasons for considering that the change in the membership of the limited liability partnership is likely to have a serious adverse impact on the ability of the contractor or the Board to perform its obligations under the contract.”; and
- (c) for the heading substitute “Termination by the Board: additional provisions specific to contracts with two or more individuals practising in partnership, dental corporations, or limited liability partnerships.”
- (48) In paragraph 75 (contract sanctions)—
- (a) in sub-paragraphs (2) to (6), in each place, for “the Primary Care Trust” substitute “the Board”;

(b) in sub-paragraph (2), for “the Primary Care Trust’s” substitute “the Board’s”.

(49) In paragraph 76 (contract sanctions and the NHS dispute resolution procedure), in sub-paragraphs (1) to (4), in each place, for “the Primary Care Trust” substitute “the Board”.

(50) In paragraph 77 (termination and the NHS dispute resolution procedure), in sub-paragraphs (1) to (4) and (5), in each place, for “the Primary Care Trust”, substitute “the Board”.

(51) In paragraph 79 (clinical governance arrangements), in sub-paragraph (1), for “the Primary Care Trust” substitute “the Board”.

(52) After paragraph 79 (clinical governance arrangements) insert—

“Duty as to education and training

79A. The contractor must co-operate with the Secretary of State in the discharge of the Secretary of State’s duty under section 1F of the 2006 Act (duty as to education and training), or, co-operate with Health Education England where Health Education England is discharging that duty by virtue of a direction under section 7 of that Act.”

(53) In paragraph 83 (gifts)—

(a) after sub-paragraph (2)(b), insert—

“(ba) where the contract is with a limited liability partnership, a member of that limited liability partnership;” and

(b) in sub-paragraph (6), for “the Primary Care Trust” substitute “the Board”.

(54) In paragraph 84 (compliance with legislation and guidance), for sub-paragraph (b) substitute—

“(b) have regard to all relevant guidance issued by the Board and the Secretary of State”.

Commencement Information

II Reg. 19 in force at 1.4.2013, see **reg. 1(1)**

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013, Section 19.