

2015 No. 416

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Primary Dental Services and
General Ophthalmic Services) (Miscellaneous Amendments and
Transitional Provision) Regulations 2015**

Made - - - - *27th February 2015*

Laid before Parliament *5th March 2015*

Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 104, 109, 121(1) and (2)(h) and 272(7) and (8) of the National Health Service Act 2006(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Primary Dental Services and General Ophthalmic Services) (Miscellaneous Amendments and Transitional Provision) Regulations 2015.

(2) This regulation and regulations 3, 4, 7 and 8 come into force on 1st April 2015.

(3) Regulations 2, 5, 6 and 9 to 12 come into force on 1st July 2015.

(4) In these Regulations—

“the GDS Regulations” means the National Health Service (General Dental Services Contracts) Regulations 2005(b);

“the GOS Regulations” means the General Ophthalmic Services Contracts Regulations 2008(c); and

“the PDS Regulations” means the National Health Service (Personal Dental Services Agreements) Regulations 2005(d).

Amendment of regulation 9 of the GDS Regulations

2. In regulation 9(7) of the GDS Regulations(e) (health service body status), for sub-paragraph (b) substitute the following sub-paragraph—

(a) 2006 c.41. Section 104 has been amended by paragraph 46 of Schedule 4 to the Health and Social Care Act 2012 (c.7) (“the 2012 Act”). Section 109 has been amended by paragraph 50 of Schedule 4 to the 2012 Act. Section 121 has been amended by paragraph 59 of Schedule 4 to the 2012 Act. By virtue of section 271(1) of the National Health Service Act 2006 (“the 2006 Act”), the powers conferred by these sections are exercisable by the Secretary of State only in relation to England. *See also* section 275(1) of the 2006 Act for the definitions of “prescribed” and “regulations” which are relevant to the powers being exercised.

(b) S.I. 2005/3361.

(c) S.I. 2008/1185.

(d) S.I. 2005/3373.

(e) Regulation 9 has been amended by S.I. 2013/364.

“(b) paragraph (5), where it or the Board—

- (i) has referred any matter to the NHS dispute resolution procedure before it ceases to be a health service body, or
- (ii) refers any matter to the NHS dispute resolution procedure, in accordance with paragraph 54(1)(a) of Schedule 3, after it ceases to be a health service body, the contractor is to continue to be treated as a health service body (and accordingly the contract is to continue to be regarded as an NHS contract) for the purposes of the consideration and determination of the dispute; or”.

Amendment of regulation 24B of the GDS Regulations

3. In regulation 24B(2) of the GDS Regulations(a) (variation of contractual terms in respect of election to enter into a Capitation and Quality Scheme 2 Agreement), for “31st March 2015” substitute “31st March 2016”.

New paragraph 5A of Schedule 3 to the GDS Regulations

4. After paragraph 5 of Schedule 3 to the GDS Regulations (other contractual terms – irrevocable breakdown in relationship between contractor and patient) insert—

“Friends and Family Test

5A.—(1) The contractor must give all patients who use the contractor’s practice the opportunity to provide feedback about the service received from the practice through the Friends and Family Test(b).

(2) The contractor must—

- (a) report the results of completed Friends and Family Tests to the Board; and
- (b) publish the results of such completed tests(c),

in the manner approved by the Board.

(3) In this paragraph, “Friends and Family Test” means the arrangements that the contractor is required by the Board to implement to enable its patients to provide anonymous feedback about the patient experience at the contractor’s practice.”.

Amendment of paragraph 54 of Schedule 3 to the GDS Regulations

5. In paragraph 54 of Schedule 3 to the GDS Regulations(d) (other contractual terms – dispute resolution: non-NHS contracts), for sub-paragraph (1) substitute the following sub-paragraph—

“(1) In the case of a contract that is not an NHS contract, any dispute arising out of or in connection with the contract, except matters dealt with under the complaints procedure pursuant to Part 6, may be referred for consideration and determination to the Secretary of State—

- (a) if it relates to a period when the contractor was a health service body, by the contractor or by the Board; or

(a) Regulation 24B was inserted by S.I. 2013/364.

(b) See “Friends and family test in NHS dental services – summary of the guidance”, published on 15th September 2014. This guidance is available at <http://www.england.nhs.uk/wp-content/uploads/2014/09/nhs-dent-serv-guid.pdf>. Hard copies of this guidance are available from the NHS England Insight Team, Room 7E56, Quarry House, Quarry Hill, Leeds, LS2 7UE.

(c) See paragraphs 3.2 and 3.3 of “Friends and family test in NHS dental services – summary of the guidance”, published on 15th September 2014, in respect of the requirement on dental practices to submit monthly reports to the Board and to publish the results of completed tests. This guidance is available at <http://www.england.nhs.uk/wp-content/uploads/2014/09/nhs-dent-serv-guid.pdf>. Hard copies of this guidance are available from the NHS England Insight Team, Room 7E56, Quarry House, Quarry Hill, Leeds, LS2 7UE.

(d) Paragraph 54 has been amended by S.I. 2013/364.

- (b) in any other case, by the contractor or, if the contractor agrees in writing, by the Board.”.

Amendment of regulation 9 of the PDS Regulations

6. In regulation 9(7) of the PDS Regulations(a) (health service body status), for sub-paragraph (b) substitute the following sub-paragraph—

- “(b) paragraph (5), where it or the Board—
- (i) has referred any matter to the NHS dispute resolution procedure before it ceases to be a health service body, or
 - (ii) refers any matter to the NHS dispute resolution procedure, in accordance with paragraph 54(1)(a) of Schedule 3, after it ceases to be a health service body,
- the contractor is to continue to be treated as a health service body (and accordingly the agreement is to continue to be regarded as an NHS contract) for the purposes of the consideration and determination of the dispute; or”.

Amendment of regulation 20B of the PDS Regulations

7. In regulation 20B(2) of the PDS Regulations(b) (variation of contractual terms in respect of election to enter into a Capitation and Quality Scheme 2 Agreement), for “31st March 2015” substitute “31st March 2016”.

New paragraph 5A of Schedule 3 to the PDS Regulations

8. After paragraph 5 of Schedule 3 to the PDS Regulations (other contractual terms – irrevocable breakdown in relationship between contractor and patient) insert—

“Friends and Family Test

5A.—(1) The contractor must give all patients who use the contractor’s practice the opportunity to provide feedback about the service received from the practice through the Friends and Family Test(c).

(2) The contractor must—

- (a) report the results of completed Friends and Family Tests to the Board; and
- (b) publish the results of such completed tests(d),

in the manner approved by the Board.

(3) In this paragraph, “Friends and Family Test” means the arrangements that the contractor is required by the Board to implement to enable its patients to provide anonymous feedback about the patient experience at the contractor’s practice.”.

Amendment of paragraph 54 of Schedule 3 to the PDS Regulations

9. In paragraph 54 of Schedule 3 to the PDS Regulations(e) (other contractual terms – dispute resolution: non-NHS contracts), for sub-paragraph (1) substitute the following sub-paragraph—

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- (a) Regulation 9 has been amended by S.I. 2013/364.
 - (b) Regulation 20B was inserted by S.I. 2013/364.
 - (c) See “Friends and family test in NHS dental services – summary of the guidance”, published on 15th September 2014. This guidance is available at <http://www.england.nhs.uk/wp-content/uploads/2014/09/nhs-dent-serv-guid.pdf>. Hard copies of this guidance are available from the NHS England Insight Team, Room 7E56, Quarry House, Quarry Hill, Leeds, LS2 7UE.
 - (d) See paragraphs 3.2 and 3.3 of “Friends and family test in NHS dental services – summary of the guidance”, published on 15th September 2014, in respect of the requirement on dental practices to submit monthly reports to the Board and to publish the results of completed tests. This guidance is available at <http://www.england.nhs.uk/wp-content/uploads/2014/09/nhs-dent-serv-guid.pdf>. Hard copies of this guidance are available from the NHS England Insight Team, Room 7E56, Quarry House, Quarry Hill, Leeds, LS2 7UE.
 - (e) Paragraph 54 has been amended by S.I. 2013/364.

“(1) In the case of an agreement that is not an NHS contract, any dispute arising out of or in connection with the agreement, except matters dealt with under the complaints procedure pursuant to Part 6, may be referred for consideration and determination to the Secretary of State—

- (a) if it relates to a period when the contractor was a health service body, by the contractor or by the Board; or
- (b) in any other case, by the contractor or, if the contractor agrees in writing, by the Board.”.

Amendment of regulation 8 of the GOS Regulations

10. In regulation 8(7) of the GOS Regulations(a) (health service body status), for sub-paragraph (b) substitute the following sub-paragraph—

“(b) paragraph (5), where it or the Board—

- (i) has referred any matter to the NHS dispute resolution procedure before it ceases to be a health service body, or
- (ii) refers any matter to the NHS dispute resolution procedure, in accordance with paragraph 29(1)(a) of Schedule 1, after it ceases to be a health service body, the contractor is to continue to be treated as a health service body (and accordingly the contract is to continue to be regarded as an NHS contract) for the purposes of the consideration and determination of the dispute; or”.

Amendment of paragraph 29 of Schedule 1 to the GOS Regulations

11. In paragraph 29 of Schedule 1 to the GOS Regulations(b) (other contractual terms – dispute resolution: non-NHS contracts), for sub-paragraph (1) substitute the following sub-paragraph—

“(1) In the case of a contract that is not an NHS contract, any dispute arising out of or in connection with the contract, except matters dealt with under the complaints procedure pursuant to Part 5, may be referred for consideration and determination to the Secretary of State—

- (a) if it relates to a period when the contractor was a health service body, by the contractor or by the Board; or
- (b) in any other case, by the contractor or, if the contractor agrees in writing, by the Board.”.

Transitional provision relating to disputes in respect of which legal proceedings have commenced before 1st July 2015

12.—(1) Paragraph (2) applies as regards any dispute which relates to matters arising before 1st July 2015 under—

- (a) a general dental services contract;
- (b) section 107 arrangements(c); or
- (c) a general ophthalmic services contract,

which is or are not an NHS contract.

(2) If legal proceedings relating to the dispute have commenced before 1st July 2015, the provisions amended by—

- (a) regulations 2 and 5 (in the case of a dispute relating to a general dental services contract);
- (b) regulations 6 and 9 (in the case of a dispute relating to section 107 arrangements); or

(a) Regulation 8 has been amended by S.I. 2013/365.

(b) Paragraph 29 has been amended by S.I. 2013/365.

(c) “Section 107 arrangements” is defined in section 107(8) of the National Health Service Act 2006 (c. 41).

(c) regulations 10 and 11 (in the case of a dispute relating to a general ophthalmic services contract),
are to have effect in relation to that dispute as if those provisions had not come into force.

Signed by authority of the Secretary of State for Health.

27th February 2015

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

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 Regulations”), the National Health Service (Personal Dental Services Agreements) Regulations 2005 (“the PDS Regulations”) and the General Ophthalmic Services Contracts Regulations 2008 (“the GOS Regulations”), which together provide the framework legislation for the contracts governing the provision, as part of the National Health Service in England, of primary dental services and general ophthalmic services.

Providers of services under the contracts in respect of which provision is made by the GDS, PDS and GOS Regulations may choose to be a “health service body” and so for their contract to be an NHS contract – and if they do, they may also choose to cease to be such a body and so for their contract to cease to be an NHS contract. Where a contractor does choose to cease to be a health service body, the amendments made by these Regulations have the effect of providing that all disputes relating to the period when their contract was an NHS contract are to be dealt with via the NHS dispute resolution procedure (regulations 2, 5, 6, 9, 10 and 11). An exception is made in a transitional provision which provides, in effect, that if a dispute was already the subject of legal proceedings before these Regulations came into force, that dispute is to be determined in accordance with the relevant legislation as it applied at that time (regulation 12). Before these Regulations came into force, disputes under a contract in respect of which provision is made by the GDS, PDS and GOS Regulations that was not an NHS contract, but which related to a time when the contract was an NHS contract, could only be dealt with via the NHS dispute resolution procedure (if they had not been referred to that procedure when the contract was an NHS contract) with the contractor’s consent.

Regulations 3 and 7 respectively amend the GDS Regulations and the PDS Regulations to extend the end date for Capitation and Quality Scheme 2 Agreements to 31st March 2016.

Regulation 4 inserts a new contract term into the GDS Regulations which introduces a requirement on contractors to give their patients the opportunity to complete the Friends and Family Test by which patients are able to provide anonymous feedback about the service received at the contractor’s practice. Regulation 8 makes a similar amendment to the PDS Regulations.

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£4.25

UK201502279 03/2015 19585

<http://www.legislation.gov.uk/id/uksi/2015/416>

ISBN 978-0-11-113109-1



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