

EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (PRIMARY DENTAL SERVICES AND GENERAL OPHTHALMIC SERVICES) (AMENDMENT) REGULATIONS 2017

2017 No. 1056

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These regulations amend:

- a) The National Health Service (General Dental Services Contracts) Regulations 2005 (the GDS Regulations), which set out the framework for General Dental Services Contracts;
- b) The National Health Service (Personal Dental Services Agreements) Regulations 2005 (the PDS Regulations), which set out the framework for Personal Dental Services Agreements;
- c) The General Ophthalmic Services Contracts Regulations 2008 (the General Ophthalmic Services Regulations), which set the framework for General Ophthalmic Services Contracts;
- d) The Primary Ophthalmic Services Regulations 2008 (the Primary Ophthalmic Services Regulations), which provide for eligibility for NHS sight tests; and
- e) The National Health Service (Optical Charges and Payments) Regulations 2013 (the Optical Charges and Payments Regulations), which provide for optical vouchers to be given to eligible members of the public to help with the cost of glasses or contact lenses and set the level of that help.

- 2.2 The purpose of this instrument is to:

- i) mandate the electronic submission of FP17 (dental treatment activity forms) by dental providers to the NHS Business Services Authority and to provide a discretionary power to allow paper forms in exceptional circumstances;
- ii) extend the date of termination of the prototype agreement scheme to 31st March 2020;
- iii) allow the electronic submission of General Ophthalmic Services voucher forms; and
- iv) clarify the meaning of a notice of entitlement in respect of entitlements to free NHS sight tests.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Primary dental services are provided under Part 5 of the National Health Service Act 2006 ('the 2006 Act). Under this Part, NHS England must, to the extent that it considers necessary to meet all reasonable requirements, secure the provision of primary dental services throughout England by entering into general dental services contracts (GDS contracts) or personal dental services agreements (PDS agreements) with NHS dental contractors.

Mandating the electronic submission of FP17 dental activity forms

- 4.2 This instrument amends both the GDS and PDS regulations. These Regulations govern the way in which NHS dental services are delivered, and contain the mandatory contractual terms and conditions that must be contained in primary dental services contracts made between NHS England and primary dental contractors.
- 4.3 FP17 dental treatment forms are completed by primary dental contractors for every NHS course of treatment provided. Under current provisions, contractors providing NHS primary dental services through GDA contracts, or PDS agreements, are required to submit their FP17 forms to the NHS Business Services Authority within 2 months of completing a course of treatment. They are currently permitted to submit the FP17 electronically or on paper forms.
- 4.4 Part 2 and Part 3 of this instrument amends the GDS and PDS Regulations respectively to require FP17 forms to be submitted electronically from 1 May 2019. The instrument also provides for exceptional circumstances where primary dental contractors may not be able to submit forms electronically, in such cases NHS England will have discretion to continue to allow the submission of paper forms.

Extending the date of termination of Prototype Agreements Scheme

- 4.5 The GDS and PDS Regulations implement the Prototype; a scheme to test a new remuneration system for NHS primary care dental services, by providing for a temporary variation of specific mandatory terms for contractors who have elected to enter into Prototype Agreements.
- 4.6 The terms of service that apply to Prototype Agreements are set out in The National Health Service (Dental Services) (Prototype Agreements) Directions 2015, available here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/463520/Prototype_Directions_2015.pdf
- 4.7 This instrument implements an extension of this Scheme until 31st March 2020 to enable further testing of the proposed financial approach by enabling existing dental prototype contractors to continue, and for additional contractors to join the scheme to widen the scope of the test.
- 4.8 For further information on the legislative context for the Prototypes Agreement Scheme and its predecessor schemes please see paragraphs 4.1 to 4.7 of the Explanatory Memorandum to The National Health Service (Primary Dental Services)

(Miscellaneous Amendments) (No2) Regulations 2015 (SI 2015 No 1728) that set up the prototype scheme, available here:

https://www.legislation.gov.uk/uksi/2015/1728/pdfs/uksiem_20151728_en.pdf

Electronic submission of General Ophthalmic Services voucher forms

- 4.9 This instrument amends the Optical Charges and Payments Regulations to allow, but not require, voucher claims by General Ophthalmic Services contractors to be submitted by electronic submission. The Optical Charges and Payments Regulations and the Primary Ophthalmic Services Regulations are also amended to allow for electronic signatures on claim forms.

Notice of entitlements

- 4.10 This instrument amends the Primary Ophthalmic Services Regulations to define what is meant by a notice of entitlement in respect of those entitled to free NHS sight tests.

5. Extent and Territorial Application

5.1 The instrument extends to England only.

5.2 The instrument applies to England only.

6. European Convention on Human Rights

6.1 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

Mandating the electronic submission of FP17 dental treatment activity forms

7.1 FP17 forms are documents that are completed by dentists for every NHS dental course of treatment provided. They must be sent electronically, or on paper, to the NHS Business Services Authority within two months of the course of treatment ending.

7.2 NHS dental service providers hold contracts with local Regional offices of NHS England to provide an agreed number of Units of Dental Activity annually. The NHS Business Services Authority act as paymaster for NHS dental contracts and FP17 forms provide the basis on which the BSA calculate units of dental activity delivered and corresponding payments due to primary NHS dental contractors.

7.3 Since the introduction of electronic submission in 2006 take up by NHS providers has been extensive. In 2016/17 a total of 39 million forms were submitted to the NHS Business Services Authority, of these, only 4.5% or 1.7 million were received on paper from only 10% of NHS dental practices.

7.4 The move to mandate electronic submission for dental providers is in order to improve both the quality and efficiency of primary care dentistry. In 2016/17 just 3.61% of FP17 forms submitted electronically were rejected due to errors in completion, compared to 12.42% of paper forms.

7.5 Mandating electronic submission will also provide improved quality data for performance management, audit and public health data.

- 7.6 The move to electronic FP17 forms aligns with the Department's wider agenda to increase digitisation in providers to the health and social care system. The Department is seeking to increase levels of digital maturity with the direct aim of improving quality and consistency of care, reducing the funding and efficiency gap and improving the health and wellbeing of citizens.
- 7.7 The NHS does not directly fund dental practice IT. This is financed by the contractor from within their overall NHS dental contract value. IT can vary significantly from basic data management systems to full clinical systems which provide chair side (in the surgery) clinical support to the dentist. The advantage to the contractor of clinical systems is the data they provide to support quality improvement and efficiency at practice level. Around 90% of practices now have systems that allow electronic submission and varying degrees of clinical support.
- 7.8 There will be a financial impact on the 10% of NHS dental practices who do not currently submit forms electronically as a result of this change.
- 7.9 The NHS BSA is developing a low cost online form which can be accessed with a broadband connection and laptop. This could be used by dental practices not wishing to make a substantial investment in clinical systems. This will reduce significantly the financial impact on those practices.
- 7.10 A transition period of 17 months is proposed between the regulation change coming into force and the point at which electronic submission would be mandated. This will allow sufficient time for the online based form to be designed and for NHS England to work with those contractors still submitting paper forms in order to prepare them for the change.
- 7.11 For contractors who are unable to submit forms electronically, this instrument gives NHS England the discretion to continue to allow paper claims.
- Extending the date of termination of the prototype agreements*
- 7.12 The Government proposes to extend the date of termination of the prototype agreement scheme to 31 March 2020 from its existing end date of 31 March 2018. The Government has had a long standing commitment to reform dental contracts which was set out again in the 2017 manifesto. The prototype agreement scheme is testing a new way of delivering and paying for NHS primary care dentistry in England which, if successful, will be rolled out more widely.
- 7.13 The scheme followed a pilot scheme first set up in 2011 which first tested a new preventative approach to care along with key elements needed to design a new remuneration system. The existing remuneration system does not include any payment for continuing care (capitation). The aim was to gather information needed to design a system that introduced capitation. Following the evaluation of the learning from the pilot scheme, the then Government set out proposals for a possible new remuneration system and these started to be tested in the Prototype Agreement scheme from April 2016.
- 7.14 The Prototype Scheme continues to test the preventative approach to care established in the pilot scheme. Patients follow a pathway determined by their oral health status. Care begins with a comprehensive oral health assessment and patients return for further oral health reviews at intervals based on their risk of future disease.
- 7.15 Patients receive focussed, preventative interventions between full check-ups; either for advice only or advice and preventative treatment such as periodontal care or a

fluoride varnish. Where preventative treatment is given, patients who are not exempt from NHS charges pay a Band 1 patient charges (so called Band 1A).

- 7.16 The prototype scheme is testing this established clinical approach together with a new remuneration scheme. Under the existing contract dentists are remunerated through units of dental activity (UDAs). This full activity system does not support dentists to focus on prevention as well as treatment, as dentists perceive there to be little financial reward for doing so. The prototype remuneration scheme has introduced a majority capitation system.
- 7.17 Dentists are remunerated through capitation for taking on patients and for delivering prevention and through activity payments (UDAs) for treating active disease. To maximise learning, around half of the sites also have simple treatments (fillings) included in the capitation element of their remuneration. For this group (Blend B) remuneration is 83% capitation and for the remainder (Blend A) remuneration is around 55% capitation.
- 7.18 For further information on the policy background to the Prototype Agreement Scheme and its predecessor schemes please see paragraphs 7.1 – 7.30 of the Explanatory Memorandum to The National Health Service (Primary Dental Services) (Miscellaneous Amendments) (No2) Regulations 2015 (SI 2015 No 1728). Available via the link at Para 4.8.
- 7.19 The new remuneration scheme was developed for the Prototype agreement Scheme and has only been in place for 18 months. The extension will provide time to ensure the new remuneration system and clinical approach work together to enable dentists to deliver high quality care for patients, value for money for the NHS and a sustainable business model for dental practices. Currently there are 75 high street dental practices and 3 Community Dental Services (CDS) engaged in the prototypes. The extension will allow more practices to join the scheme if needed to increase the strength of the learning before national roll-out is considered.
- 7.20 The first full evaluation of the prototype agreement scheme is due by the end of this calendar year and will set out the detailed findings from the first full year of testing this new prototype system. A single year, however, is too short a period to make final decisions on whether the new remuneration system combined with the clinical approach is viable for wider adoption as a new NHS dental contract. The prototypes will continue to be subject to evaluation to determine if they can maintain access and improve oral health in a way that is sustainable for practices, patients and NHS commissioners.

Electronic submission of General Ophthalmic Services voucher forms

- 7.21 The Optical Charges and Payments Regulations provide eligible persons with optical vouchers to help with the cost of glasses, help with the cost of repairing or replacing glasses that have been lost or broken due to illness or disability, and help with the cost of private sight tests for HC3 partial help certificate holders.
- 7.22 Ophthalmic contractors or suppliers are able to redeem vouchers in full or part payment in exchange for supplying, repairing or replacing an optical appliance, or towards the cost of supplying a private sight test to HC3 holders. They claim reimbursement from NHS England (Capita). The existing regulations require claims to be made on a paper claim form.

- 7.23 In 2014 the General Ophthalmic Services Contracts regulations 2008 were amended to allow the electronic submission, by ophthalmic contractors, of NHS sight test claim forms. NHS England now plan to allow all contractors with compatible practice IT to submit the full range of General Ophthalmic claim forms electronically, in a new ophthalmic payment system due to be piloted early in 2018.
- 7.24 This instrument will allow, but not mandate, ophthalmic contractors to submit the remaining General Ophthalmic claims forms electronically, including providing for electronic signatures of practitioners and patients. This will allow ophthalmic contractors to participate in the pilot being run by NHS England and any electronic payment system rolled out as a result.

Notice of entitlement

- 7.25 The Primary Ophthalmic Services regulations provide for free NHS sight tests to be provided to certain eligible groups. The current regulations provide for an NHS sight test to be provided to an individual who holds a notice of entitlement. This instrument amends the definition of notice to entitlement to clarify that a 'notice of entitlement' is a notice of entitlement to full remission of charges issued under Regulation 8 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003.

Consolidation

- 7.26 Consolidation of the GDS and PDS regulations will be considered as part of any further work to develop a new NHS dental contractual system.
- 7.27 The Optical Charges and Payments regulations were consolidated in 2013. The consolidation of the Primary Ophthalmic Regulations 2008 and General Ophthalmic Contracts regulations 2008 will be considered in future.

8. Consultation outcome

- 8.1 The BDA has been consulted on the dental aspects of these regulations.
- 8.2 The BDA confirmed they were content for the prototype agreement scheme to be extended until 31 March 2020 to allow a further period of testing.
- 8.3 They did, however, raise two points in relation to the proposed regulation and Departmental officials discussed their comments with them. The concerns raised were about the additional costs that will be necessary for the 10% of practices currently not submitting forms electronically and a request for funds to be made available to reimburse contractors for investing in IT. The BDA also requested that the instrument reflect current contractual arrangements that permit the submission of FP17 activity paper claim forms up to 2 months after the end of a course of treatment.
- 8.4 Following discussion with the BDA, agreement was reached to amend regulations to reflect a new implementation date of 1 May 2019 for the electronic submission of FP17 claim forms and to provide a transitional provision which will allow FP17s for courses of treatment ending on or before 30 April 2019 to be submitted on paper forms up to and including 30th June 2019. The Department also considered that providing a free of charge web-based form would be manageable even for practices with no current internet connection or internet enabled device.
- 8.5 The Ophthalmic Fees Negotiating Committee were consulted on the elements of this instrument that relate to the electronic claims of General Ophthalmic Service

voucher forms. They confirmed they were content with the amendments which will allow, but do not mandate, the electronic submission of GOS voucher claim forms and provide for electronic signatures.

- 8.6 NHS England were also consulted on the plans to extend the prototype agreement scheme, mandate the electronic submission of FP17 forms, allow the electronic submission of GOS claim forms and the plans to amend the definition of notice of entitlement to clarify that a notice of entitlement is for full remission of charges. NHS England confirmed they were content with the policy intention and draft instrument.

9. Guidance

- 9.1 The Business Services Authority will produce guidance for dental providers as part of their work to produce the online FP17 forms.
- 9.2 NHS England will also work with ophthalmic contractors who choose to pilot the new ophthalmic electronic payment system.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 These regulations will have a financial impact on those practices which do not currently have the ability to transmit FP17 forms electronically. Ninety per cent of practices and their dentists are therefore unaffected as they are known to already electronically submit all or some returns.
- 10.3 An Impact Assessment has not been prepared for this instrument

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses, including firms employing up to 20 people. As these regulations concern the provision of NHS dental services in England on the basis of nationally determined terms of service, it is not possible to differentiate between contractors according to their operational turnover or size. This is to ensure the application of agreed nation-wide standards and practices in the provision of such services as part of the nationally determined contractual framework.

12. Monitoring & review

- 12.1 The monitoring and review of NHS primary dental contracts and General Ophthalmic Services is the responsibility of NHS England.

13. Contact

- 13.1 Claire Osborne at the Department of Health Telephone: 0207 210 4856 or email: claire.osborne@dh.gsi.gov.uk can answer any queries regarding the instrument.