

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE (GENERAL DENTAL SERVICES**  
**CONTRACTS AND PERSONAL DENTAL SERVICES AGREEMENTS)**  
**(AMENDMENT) REGULATIONS 2019**

**2019 No. 1445**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care 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; and

b) The National Health Service (Personal Dental Services Agreements) Regulations 2005 (the PDS Regulations), which set out the framework for Personal Dental Services Agreements.

2.2 The purpose of this instrument is to extend the date of termination of the prototype agreement scheme to 31<sup>st</sup> March 2022.

**3. Matters of special interest to Parliament**

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

3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

3.2 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is England only.

4.2 The territorial application of this instrument is England only.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

6.1 Primary dental services are provided under Part 5 of the National Health Service Act 2006 (the 2006 Act). Under this Part, the National Health Service Commissioning Board (also known as 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.

#### *Extending the date of termination of Prototype Agreements Scheme*

- 6.2 The GDS and PDS Regulations implement the Prototypes Agreement Scheme which is 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 the Prototype Agreement.
- 6.3 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://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/715686/Prototype\\_Directions\\_2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715686/Prototype_Directions_2015.pdf)
- 6.4 This instrument extends the scheme until 31st March 2022 to enable further testing and decisions to be taken by the Department and NHS England on whether we now have a contract model that is financially sustainable and ready for wider roll out.
- 6.5 For further information on the legislative context to 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) which set up the prototype scheme, available here:  
[https://www.legislation.gov.uk/ukxi/2015/1728/pdfs/ukxiem\\_20151728\\_en.pdf](https://www.legislation.gov.uk/ukxi/2015/1728/pdfs/ukxiem_20151728_en.pdf)

## **7. Policy background**

### *What is being done and why?*

#### *Extending the date of termination of the prototype agreements*

- 7.1 The Government proposes to extend the date of termination of the prototype agreement scheme to 31 March 2022 from its existing end date of 31 March 2020. Successive Governments have had a long-standing commitment to reform NHS dental contracts which was set out again in the conservative 2017 manifesto. The prototype agreement scheme is testing a new preventative approach to delivering NHS dental services in England, supported by a new remuneration system, which is being considered for wider national roll out.
- 7.2 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. Following the evaluation of the learning from the pilot scheme, the then Government set out proposals for a possible new remuneration system and this started to be tested, alongside the preventative clinical approach, in the prototype agreement scheme from April 2016.
- 7.3 The prototype agreement 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.

- 7.4 Patients receive focussed preventative interventions between full check-ups. These can be either 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 charge (so called Band 1A).
- 7.5 The prototype agreement scheme is testing this established clinical approach together with a remuneration system that incentivises prevention as well as the provision of clinically necessary treatment. 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 agreement scheme introduced a majority capitation remuneration system.
- 7.6 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.
- 7.7 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 6.5.
- 7.8 The prototype agreement scheme was extended in 2017 to allow additional time to test the remuneration system and clinical approach together, to be sure that they enabled dentists to deliver high quality care for patients, value for money for the NHS and a sustainable business model for dental practices. The National Health Service (Primary Dental Services and General Ophthalmic Services) (Amendments) Regulations 2017 (SI 2017 No 1056) which implemented the extension can be found here: <http://www.legislation.gov.uk/ukxi/2017/1056/contents/made>
- 7.9 The evaluation of the dental prototype scheme is continuous and led the Deputy Chief Dental Officer for England, Professor Eric Rooney. The first full year evaluation was published in 2018 and can be found here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/709555/evaluation-report-2016-2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/709555/evaluation-report-2016-2017.pdf)
- 7.10 The findings from the second year of prototyping are currently being finalised ready for publication.
- 7.11 There are currently 98 high street dental practices and 3 Community Dental Services (CDS) with prototype agreements. The extension will allow the continued testing of the prototype scheme ahead of decisions being taken on whether we now have a contract model that is financially sustainable and ready for wider national roll out.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 Consolidation of the GDS and PDS regulations will be considered as part of any further work to develop a new NHS dental contractual system.

## **10. Consultation outcome**

- 10.1 The BDA have been consulted on the proposed extension to the prototype agreement scheme.
- 10.2 The BDA confirmed they were content for the prototype agreement scheme to be extended until 31 March 2022 to allow the scheme to continue testing until wider decisions on national roll-out are taken.
- 10.3 NHS England were also consulted on the plans to extend the prototype agreement scheme. NHS England confirmed they were content with the policy intention and draft instrument.

## **11. Guidance**

- 11.1 In relation to the amendments made to the GDS and PDS regulations, the Department does not propose to issue guidance on the impact of these regulations.
- 11.2 Dental contractors holding prototype agreements will be issued with contract variations which will take into account the amendment made by this statutory instrument.

## **12. Impact**

- 12.1 There is no impact on charities or voluntary bodies.
- 12.2 There is no impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because NHS dental contracts are exempt from the Small and Micro Business Assessment as they are considered part of the public sector due to their provision of primary dental services for the NHS. Public sector organisations are exempt under this test.
- 12.4 The General Public Sector Equality Duty is not simply limited to eliminating, discrimination, harassment and victimisation but also includes positive obligations to promote equality of opportunity and to foster good relations between those who are likely to suffer discrimination and those who are not. When making legislation, Ministers are obliged to have due regard to all aspects of this duty. We have not identified any specific equalities issues. We have also considered the impact of the Secretary of State's general duties under the NHS Act 2006, for example in relation to promoting autonomy and the duty in regard to improvement in the quality of services. Again, we do not consider there are specific issues in respect of these duties.

## **13. Regulating small business**

- 13.1 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 nationwide standards and practices in the provision of such services as part of the nationally determined contractual framework.

#### **14. Monitoring & review**

- 14.1 The monitoring and review of NHS primary dental contracts is the responsibility of NHS England.

#### **15. Contact**

- 15.1 Claire Osborne at the Department of Health and Social Care Telephone: 0207 210 4856 or email: [claire.osborne@dhsc.gov.uk](mailto:claire.osborne@dhsc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Edward Scully, Deputy Director for Primary Care, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Jo Churchill at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.