
STATUTORY INSTRUMENTS

2023 No. 554

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Primary Dental Services) (Amendment) Regulations 2023

<i>Made</i>	- - - -	<i>at 11.45 a.m. on 18th May 2023</i>
<i>Laid before Parliament</i>		<i>at 3.30 p.m. on 18th May 2023</i>
<i>Coming into force</i>	- -	<i>12th June 2023</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 104(1), (2)(d) and (3), 109(1) and (3)(f) and 272(7) and (8) of the National Health Service Act 2006(1).

PART 1

General

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Primary Dental Services) (Amendment) Regulations 2023 and come into force on 12th June 2023.

(2) These Regulations extend to England and Wales.

(3) In these Regulations—

“the GDS Contracts Regulations” means the National Health Service (General Dental Services Contracts) Regulations 2005(2);

“the PDS Agreements Regulations” means the National Health Service (Personal Dental Services Agreements) Regulations 2005(3).

(1) 2006 c. 41. Section 109(3) has been amended but those amendments are not relevant to this instrument. See Section 275(1) of the National Health Service Act 2006 for the meaning given to “prescribed” and “regulations”. The powers conferred by these sections are exercisable by the Secretary of State only in relation to England, by virtue of section 272(1) of the National Health Service Act 2006.

(2) S.I. 2005/3361, amended by S.I. 2013/364; there are other amending instruments but none is relevant.

(3) S.I. 2005/3373, amended by S.I. 2013/364; there are other amending instruments but none is relevant.

PART 2

Amendment of the GDS Contracts Regulations

Amendments relating to unilateral variation of contract

2.—(1) The GDS Contracts Regulations are amended as follows.

(2) In Schedule 3 (other contractual terms), in Part 9 (variation and termination of contracts)—

- (a) in paragraph 60, in sub-paragraph (2), after “in paragraphs” insert “61A,”, and
- (b) after paragraph 61 insert—

“Variation of a contract: rebasing for persistent under performance

61A.—(1) In this paragraph—

“contracted activity” means the number of units of dental activity or units of orthodontic activity the contractor is required to provide under the contract,

“Covid years” means the financial years ending on 31st March 2021 and 31st March 2022,

“rebasing” means a permanent variation of the contract pursuant to sub-paragraph (2) and “rebase” is to be read accordingly,

“rebasing date” means the date, notified by NHS England under a rebasing notice, from which the rebasing takes effect,

“rebasing notice” means a notice in writing sent by NHS England to the contractor, notifying the contractor of the wording of a proposed rebasing and the rebasing date,

“relevant financial years” means any three consecutive financial years, save for the Covid years, which—

- (a) are not before the financial year ending on 31st March 2020, and
- (b) immediately precede the financial year in which the rebasing notice is served on the contractor.

(2) If all the conditions in sub-paragraph (3) are met, NHS England may rebase the contract to—

- (a) reduce the contracted activity, and
- (b) carry out any related variations of the contract, including in relation to the monies to be paid to the contractor under the contract,

but the rebasing must not result in the contracted activity being reduced to less than the highest number of units of dental or orthodontic activity provided by the contractor in any one of the relevant financial years.

(3) The conditions referred to in sub-paragraph (2) are—

- (a) in respect of each relevant financial year—
 - (i) NHS England invited the contractor to participate in a mid-year review of its performance under the contract, pursuant to paragraph 58(5)(b), whether the contractor has engaged with this procedure or not,
 - (ii) the contractor provided less than 96% of contracted activity,
 - (iii) there have not been force majeure circumstances under the contract, which have caused the under delivery pursuant to sub-paragraph (ii),

- (iv) NHS England issued a breach notice to the contractor by reason of under delivery pursuant to sub-paragraph (ii), which has not been set aside, and no formal dispute is pending in respect of the circumstances that have given rise to the breach notice, and
- (b) NHS England has not been able to agree with the contractor a permanent variation of the contract under paragraph 61(3).
- (4) If NHS England decides to rebase a contract—
 - (a) it must serve a rebasing notice on the contractor and allow a minimum of 28 days, starting with the day the rebasing notice is served on the contractor, before taking any action pursuant to that notice, and
 - (b) it must specify in the rebasing notice a rebasing date it considers appropriate, which may be any date from 1st April in the financial year in which the rebasing notice is served on the contractor.”.

PART 3

Amendment of the PDS Agreements Regulations

Amendments relating to unilateral variation of contract

- 3.—**(1) The PDS Agreements Regulations are amended as follows.
- (2) In Schedule 3 (other contractual terms), in Part 9 (variation and termination of agreements)—
- (a) in paragraph 60, in sub-paragraph (2), for “in paragraph” substitute “in paragraphs 61A and”, and
 - (b) after paragraph 61 insert—

“Variation of an agreement: rebasing for persistent under performance

61A.—(1) In this paragraph—

“contracted activity” means the number of units of dental activity or units of orthodontic activity the contractor is required to provide under the agreement,

“Covid years” means the financial years ending on 31st March 2021 and 31st March 2022,

“rebasing” means a permanent variation of the agreement pursuant to sub-paragraph (2) and “rebase” is to be read accordingly,

“rebasing date” means the date, notified by NHS England under a rebasing notice, from which the rebasing takes effect,

“rebasing notice” means a notice in writing sent by NHS England to the contractor, notifying the contractor of the wording of a proposed rebasing and the rebasing date,

“relevant financial years” means any three consecutive financial years, save for the Covid years, which—

- (a) are not before the financial year ending on 31st March 2020, and
- (b) immediately precede the financial year in which the rebasing notice is served on the contractor.

- (2) If all the conditions in sub-paragraph (3) are met, NHS England may rebase the agreement to—

- (a) reduce the contracted activity, and
- (b) carry out any related variations of the agreement, including in relation to the monies to be paid to the contractor under the agreement,

but the rebasing must not result in the contracted activity being reduced to less than the highest number of units of dental or orthodontic activity provided by the contractor in any one of the relevant financial years.

- (3) The conditions referred to in sub-paragraph (2) are—
 - (a) in respect of each relevant financial year—
 - (i) NHS England invited the contractor to participate in a mid-year review of its performance under the agreement, pursuant to paragraph 58(5)(b), whether the contractor has engaged with this procedure or not,
 - (ii) the contractor provided less than 96% of contracted activity,
 - (iii) there have not been force majeure circumstances under the agreement, which have caused the under delivery pursuant to sub-paragraph (ii),
 - (iv) NHS England issued a breach notice to the contractor by reason of under delivery pursuant to sub-paragraph (ii), which has not been set aside, and no formal dispute is pending in respect of the circumstances that have given rise to the breach notice, and
 - (b) NHS England has not been able to agree with the contractor a permanent variation of the agreement under paragraph 61(3).
- (4) If NHS England decides to rebase a contract—
 - (a) it must serve a rebasing notice on the contractor and allow a minimum of 28 days, starting with the day the rebasing notice is served on the contractor, before taking any action pursuant to that notice, and
 - (b) it must specify in the rebasing notice a rebasing date it considers appropriate, which may be any date from 1st April in the financial year in which the rebasing notice is served on the contractor.”.

Signed by authority of the Secretary of State for Health and Social Care

At 11.45 a.m. on 18th May 2023

Neil O'Brien
Parliamentary Under Secretary of State,
Department of Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the National Health Service (General Dental Services Contracts) Regulations 2005 ([S.I 2005/3361](#)) (“the GDS Contracts Regulations”) and the National Health Service (Personal Dental Services Agreements) Regulations 2005 ([S.I 2005/3373](#)) (“the PDS Agreements Regulations”).

Regulation 2(2)(a) for GDS contracts, and regulation 3(2)(a) for PDS agreements, permit a unilateral variation (or rebasing) of the contract or agreement by NHS England, where paragraph 61A (variation of the contract: rebasing for persistent under performance) of Schedule 3 to the GDS Contracts Regulations and PDS Agreements Regulations applies.

Regulation 2(2)(b) for GDS contracts, and regulation 3(2)(b) for PDS agreements, insert paragraph 61A of Schedule 3 to the GDS Contracts Regulations and PDS Agreements Regulations, which gives discretion to NHS England to rebase the contract or agreement if certain conditions are met, including if the contractor has delivered less than 96% of contracted activity for three consecutive financial years (save for the financial years ending on 31st March 2021 and 31st March 2022, termed as the ‘Covid years’).

An Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk.

This instrument is covered by the impact assessment for dental system contract reform dated 27th October 2022, available from www.legislation.gov.uk/ukia/2022/90. Copies may also be obtained from the Department of Health and Social Care, 39 Victoria Street, London SW1H 0EU.