
STATUTORY INSTRUMENTS

2023 No. 554

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

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.”.