

**2015 No. 1728**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (Primary Dental Services)  
(Miscellaneous Amendments) (No. 2) Regulations 2015**

|                               |                            |
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| <i>Made</i> - - - -           | <i>28th September 2015</i> |
| <i>Laid before Parliament</i> | <i>5th October 2015</i>    |
| <i>Coming into force</i> - -  | <i>1st November 2015</i>   |

The Secretary of State for Health makes these Regulations in exercise of the powers conferred by sections 7(1), 104, 109, 176, 272(7) and (8) and 273(4) of the National Health Service Act 2006(a).

**PART 1**

**Introductory**

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the National Health Service (Primary Dental Services) (Miscellaneous Amendments) (No. 2) Regulations 2015 and come into force on 1st November 2015.

(2) In these Regulations—

“the BSA Functions Regulations” means the Functions of the National Health Service Commissioning Board and the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Primary Dental Services) (England) Regulations 2013(b);

“the Dental Charges Regulations” means the National Health Service (Dental Charges) Regulations 2005(c);

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

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- (a) 2006 c.41. Section 7(1) was substituted by section 21(2) of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”). Section 104 has been amended by paragraph 46 of Schedule 4 to the 2012 Act. Section 109 has been amended by paragraph 50 of Schedule 4 to the 2012 Act. Section 176 has been amended by paragraph 94 of Schedule 4 to the 2012 Act. See section 275(1) of the National Health Service Act 2006 for the definitions of “prescribed” and “regulations” which are relevant to the powers being exercised. By virtue of section 271(1) of the National Health Service Act 2006, the functions of the Secretary of State being exercised in the making of these Regulations are exercisable only in relation to England.
- (b) S.I. 2013/469.
- (c) S.I. 2005/3477; as amended by S.I. 2006/1837, 2007/544, 2008/547, 2009/407, 2011/519, 2013/364 and 711, 2014/443 and 545 and 2015/417.
- (d) S.I. 2005/3361; as amended by S.I. 2006/563, 2007/544, 2008/528, 1514 and 1700, 2009/309 and 462, 2010/22 and 1181, 2011/1182, 2012/502, 2273 and 2404, 2013/364, 2014/443 and 1887 and 2015/137 and 416.

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

## PART 2

### Amendment of the GDS Regulations

#### Amendment of the GDS Regulations

2. The GDS Regulations are amended in accordance with this Part.

#### Amendment of regulation 2 of the GDS Regulations

3. In regulation 2(1) (interpretation)—

(a) in the definition of “banded course of treatment”, after “means” insert “, subject to regulation 18C.”;

(b) after the definition of “bridge” insert—

““capitated patient” has the meaning given in regulation 18C.”;

(c) in the definition of “course of treatment” for “where the course of treatment is an interim care course of treatment provided under a Capitation and Quality Scheme 2 Agreement in the context of regulation 13A of the NHS Charges Regulations (charges in respect of primary dental services provided under a Capitation and Quality Scheme 2 Agreement)” substitute—

“where the course of treatment is an interim care course of treatment provided under a prototype agreement(b) or a Capitation and Quality Scheme 2 Agreement in the context of regulation 12A of the NHS Charges Regulations (charges in respect of primary dental services provided under a prototype agreement or under a Capitation and Quality Scheme 2 Agreement)”;

(d) after the definition of “professional registration number” insert the following definitions—

““prototype agreement” means a contract temporarily varied as part of the Prototype Agreements Scheme(c) which contains—

(a) the terms and conditions required under the Prototype Directions(d); and

(b) the terms and conditions required under these Regulations.”;

“the Prototype Directions” means the National Health Service (Dental Services) (Prototype Agreements) Directions 2015;

“the Prototype SFE” means the Prototype Agreements Scheme Statement of Financial Entitlements(e).”.

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(a) S.I. 2005/3373; as amended by S.I. 2006/563, 2007/544, 2008/528 and 1514, 2009/309 and 462, 2010/22 and 1181, 2011/1182, 2012/502, 2273 and 2404, 2013/364, 2014/443 and 1887 and 2015/137 and 416.

(b) For further information on prototype agreements see <https://www.gov.uk/government/publications/dental-reform-next-step>. A hard copy of this document can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.

(c) The Prototype Agreements Scheme is the Scheme of that name, introduced by the Secretary of State on 1st November 2015, that the Secretary of State has developed to assist in continuing to promote and secure improvement in the provision of dental services in accordance with the National Health Service Act 2006 (c.41).

(d) The National Health Service (Dental Services) (Prototype Agreements) Directions 2015, signed on 23rd September 2015, are available on the [www.gov.uk](http://www.gov.uk) website. A hard copy of these Directions can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.

(e) The Prototype Agreements Scheme Statement of Financial Entitlements signed on 23rd September 2015 is available on the [www.gov.uk](http://www.gov.uk) website. A hard copy of these Directions can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.

## **Amendment of regulation 17 of the GDS Regulations**

4. In regulation 17 (units of dental activity), in paragraphs (1) and (2), for “regulation 24B” substitute “regulations 24B and 24C”.

## **Insertion of new regulations 18A, 18B and 18C into the GDS Regulations**

5. After regulation 18 (units of orthodontic activity), insert—

### **“Units of dental activity for contractors who elect to enter into a prototype agreement**

**18A.**—(1) Where a contractor has elected to enter into a prototype agreement, the prototype agreement must specify the number of units of dental activity to be provided by the contractor—

- (a) where the prototype agreement begins on 1st April, in each financial year; or
- (b) where the prototype agreement begins on a date other than 1st April, in the remainder of the financial year in which the prototype agreement begins, and in each financial year thereafter.

(2) A prototype agreement must contain terms which have the effect of those specified in Schedule 2A in relation to the calculation of the number of units of dental activity to be provided by the contractor under the prototype agreement.

### **Capitated patient figures for contractors who elect to enter into a prototype agreement**

**18B.** Where a contractor has elected to enter into a prototype agreement, the prototype agreement must specify the number of capitated patients to whom the contractor is expected to have provided primary dental services (known as the capitated patient figure) by the end of each financial year.

### **Capitated patients**

**18C.**—(1) Where a contractor has elected to enter into a prototype agreement, on any day (“the relevant day”) a patient is a capitated patient if that patient has been provided with a banded course of treatment by the contractor (C1) within a period of three years immediately preceding that day, provided that—

- (a) the banded course of treatment has not been provided by a foundation trainee;
- (b) the patient has not been referred to C1 for the banded course of treatment by another primary dental services contractor; and
- (c) the patient was not subsequently provided with a banded course of treatment before the relevant day by another primary dental services contractor (C2), unless the patient was referred to C2 by C1 for that banded course of treatment.

(2) For the purposes of this regulation—

- (a) a banded course of treatment does not include the provision of an urgent course of treatment; and
- (b) “foundation trainee” has the meaning given in Section 12 of the General Dental Services Statement of Financial Entitlements 2013(a) (glossary of terms).”.

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(a) The General Dental Services Statement of Financial Entitlements 2013, signed on 28th March 2013, was amended by: the Primary Dental Services Statements of Financial Entitlements (Amendment) Directions 2014, signed on 16th April 2014; and the Primary Dental Services Statement of Financial Entitlements (Amendment) Directions 2015 signed on 30th July 2015. All of the aforementioned sets of Directions are available on [www.gov.uk](http://www.gov.uk). Hard copies of these Directions can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.

## **Amendment of regulation 21 of the GDS Regulations**

6. In regulation 21 (finance), in paragraphs (1) and (3), for “Subject to regulation 24B,” substitute “Subject to regulations 24B and 24C,”.

## **Insertion of new regulation 24C into the GDS Regulations**

7. After regulation 24B (variation of contractual terms in respect of election to enter into a Capitation and Quality Scheme 2 Agreement), insert—

### **“Variation of contractual terms in respect of election to enter into a prototype agreement**

**24C.**—(1) This regulation applies where the contractor and the Board elect to enter into a prototype agreement.

(2) Where this regulation applies, the terms of the contract which have the same effect as the provisions specified in paragraph (3) must be varied in accordance with paragraphs (4) and (5) with effect from the day on which the prototype agreement commences and for the period ending at the end of the day which is the date of termination of the prototype agreement, which must be no later than 31st March 2018.

(3) The provisions specified in this paragraph are—

- (a) regulation 17 (units of dental activity);
- (b) regulation 19 (under provision of units of dental activity or units of orthodontic activity), in relation to units of dental activity only;
- (c) regulation 21 (finance);
- (d) Part 1 of Schedule 2 (units of dental activity); and
- (e) in Schedule 3 (other contractual terms)—
  - (i) paragraph 32(2) (patient records), which is a contractor’s discretion to keep patient records in electronic form,
  - (ii) paragraph 58 (mid-year reviews), and
  - (iii) paragraph 61(1)(a) and (3)(a) (variation of a contract: activity under the contract), which relate to units of dental activity.

(4) The contract must include terms that have the effect of temporarily releasing the contractor and the Board from all of the obligations, conditions, payments, rights and liabilities relating to those terms (and only those terms) which have the same effect as the provisions specified in paragraph (3), including any right to enforce those terms.

(5) The contract must also include terms that have the effect of providing that, immediately after the date of the termination of the prototype agreement, the terms of the contract that subsisted between the parties immediately before—

- (a) in the case of a contractor who held both a Capitation and Quality Scheme Agreement and a Capitation and Quality Scheme 2 Agreement, the Capitation and Quality Scheme Agreement commenced;
- (b) in the case of a contractor who held a Capitation and Quality Scheme 2 Agreement but not a Capitation and Quality Scheme Agreement, the Capitation and Quality Scheme 2 Agreement commenced; or
- (c) if neither sub-paragraph (a) nor (b) applies, the prototype agreement commenced,

and from which the parties were temporarily released in accordance with paragraph (4), must apply from the day after the date of termination, and all obligations, conditions, payments, rights and liabilities relating to those terms are to be enforceable from that day.”.

## Insertion of new Schedule 2A into the GDS Regulations

8. After Schedule 2 (provision of services: units of dental activity and units of orthodontic activity), insert—

### “SCHEDULE 2A

Regulation 18A

#### Provision of services: units of dental activity where a contractor has elected to enter into a prototype agreement

1.—(1) Where a contractor holding a Blend A prototype agreement provides a banded course of treatment, for the purposes of the agreement the contractor is to be regarded as providing the number of units of dental activity specified in the appropriate row of Table A.

(2) Where a contractor holding a Blend B prototype agreement provides a banded course of treatment, for the purposes of the agreement the contractor is to be regarded as providing the number of units of dental activity specified in the appropriate row of Table B.

(3) Where a banded course of treatment is commenced under a prototype agreement but not completed for whatever reason, the appropriate number of units of dental activity provided is to be calculated on the basis of the components of the course of the treatment which have been—

- (a) completed; and
- (b) commenced but not completed.

(4) Where a patient is referred by the contractor for advanced mandatory services to another provider of primary dental services, the appropriate number of units of dental activity provided by—

- (a) that contractor; and
- (b) the other provider of primary dental services, if that provider is also a contractor,

must be calculated on the basis of the components of the course of treatment which each contractor actually provides, notwithstanding that the treatment constitutes a single banded course of treatment for charging purposes.

(5) Where the contractor provides a charge exempt course of treatment, for the purposes of the prototype agreement the contractor provides the number of units of dental activity specified in the appropriate row of Table C.

(6) For the purposes of this paragraph, “Blend A prototype agreement” and “Blend B prototype agreement” have the same meaning as in the Prototype SFE.

#### Table A

##### Units of dental activity provided under a Blend A prototype agreement in respect of banded courses of treatment

| Type of course of treatment  | Units of dental activity provided |
|--|-----------------------------------|
| Band 1 course of treatment (excluding urgent treatment)  | 0.0                               |
| Band 1 course of treatment (urgent treatment) where the patient is a capitated patient of the practice     | 0.0                               |
| Band 1 course of treatment (urgent treatment) where the patient is not a capitated patient of the practice | 1.2                               |
| Band 2 course of treatment   | 2.0                               |
| Band 2 course of treatment where a patient is  | 3.0                               |

|  |      |
|--|------|
| referred for advanced mandatory services by another provider   |      |
| Band 3 course of treatment   | 11.0 |
| Band 3 course of treatment where a patient is referred for advanced mandatory services by another provider | 12.0 |

**Table B**

**Units of dental activity provided under a Blend B prototype agreement in respect of banded courses of treatment**

| Type of course of treatment  | Units of dental activity provided |
|--|-----------------------------------|
| Band 1 course of treatment (excluding urgent treatment)  | 0.0                               |
| Band 1 course of treatment (urgent treatment) where the patient is a capitated patient of the practice     | 0.0                               |
| Band 1 course of treatment (urgent treatment) where the patient is not a capitated patient of the practice | 1.2                               |
| Band 2 course of treatment   | 0.0                               |
| Band 2 course of treatment where a patient is referred for advanced mandatory services by another provider | 3.0                               |
| Band 3 course of treatment   | 9.0                               |
| Band 3 course of treatment where a patient is referred for advanced mandatory services by another provider | 12.0                              |

**Table C**

**Units of dental activity provided under the prototype agreement in respect of charge exempt courses of treatment**

| Type of charge exempt course of treatment   | Units of dental activity provided |
|---|-----------------------------------|
| Issue of a prescription   | 0.0                               |
| Repair of a dental appliance (denture) where the patient is a capitated patient of the practice     | 0.0                               |
| Repair of a dental appliance (denture) where the patient is not a capitated patient of the practice | 1.0                               |
| Repair of a dental appliance (bridge) where the patient is a capitated patient of the practice      | 0.0                               |
| Repair of a dental appliance (bridge) where the patient is not a capitated patient of the practice  | 1.2                               |
| Removal of sutures where a patient is a capitated patient of the practice                           | 0.0                               |
| Removal of sutures where a patient is not a capitated patient of the practice                       | 1.0                               |
| Arrest of bleeding where the patient is a capitated patient of the practice                         | 0.0                               |
| Arrest of bleeding where the patient is not a capitated patient of the practice                     | 1.2"                              |

## Insertion of new paragraph 43A into Schedule 3 to the GDS Regulations

9. After paragraph 43 of Schedule 3 (other contractual terms – notification to patients following a variation of the contract), insert—

### “Notification provisions specific to prototype agreements

43A. The contractor shall—

- (a) send to the Board details of any private treatment provided to a capitated patient attending the practice, in electronic form, whether or not this treatment is associated with services that are provided under the prototype agreement; and
- (b) provide all patients attending for treatment at its practice with a privacy notice in a form approved by the Board notifying them of the obligation referred to in subparagraph (a).”.

## PART 3

### Amendment of the PDS Regulations

#### Amendment of the PDS Regulations

10. The PDS Regulations are amended in accordance with this Part.

#### Amendment of regulation 2 of the PDS Regulations

11. In regulation 2(1) (interpretation)—

- (a) in the definition of “banded course of treatment”, after “means” insert “, subject to regulation 14C.”;
- (b) after the definition of “bridge” insert—

““capitated patient” has the meaning given in regulation 14C.”;
- (c) in the definition of “course of treatment” for “where the course of treatment is an interim care course of treatment provided under a Capitation and Quality Scheme 2 Agreement in the context of regulation 13A of the NHS Charges Regulations (charges in respect of primary dental services provided under a Capitation and Quality Scheme 2 Agreement)” substitute—

“where the course of treatment is an interim care course of treatment provided under a prototype agreement(a) or a Capitation and Quality Scheme 2 Agreement in the context of regulation 12A of the NHS Charges Regulations (charges in respect of primary dental services provided under a prototype agreement or under a Capitation and Quality Scheme 2 Agreement)”;

and
- (d) after the definition of “professional registration number” insert the following definitions—

““prototype agreement” means an agreement temporarily varied as part of the Prototype Agreements Scheme(b) which contains—

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(a) For further information on prototype agreements see <https://www.gov.uk/government/publications/dental-reform-next-step>. A hard copy of this document can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.

(b) The Prototype Agreements Scheme is the Scheme of that name, introduced by the Secretary of State on 1st November 2015 that the Secretary of State has developed to assist in continuing to promote and secure improvement in the provision of dental services in accordance with the National Health Service Act 2006 (c.41).

- (a) the terms and conditions required under the Prototype Directions(a); and
  - (b) the terms and conditions required under these Regulations;
- “the Prototype Directions” means the National Health Service (Dental Services) (Prototype Agreements) Directions 2015;
- “the Prototype SFE” means the Prototype Agreements Scheme Statement of Financial Entitlements(b);”.

### **Amendment of regulation 13 of the PDS Regulations**

**12.** In regulation 13 (units of dental activity), in paragraphs (1) and (2), for “regulation 20B” substitute “regulations 20B and 20C”.

### **Insertion of new regulations 14A, 14B and 14C into the PDS Regulations**

**13.** After regulation 14 (units of orthodontic activity), insert—

#### **“Units of dental activity for contractors who elect to enter into a prototype agreement**

**14A.**—(1) Where a contractor has elected to enter into a prototype agreement, the prototype agreement must specify the number of units of dental activity to be provided by the contractor—

- (a) where the prototype agreement begins on 1st April, in each financial year; or
- (b) where the prototype agreement begins on a date other than 1st April, in the remainder of the financial year in which the prototype agreement begins, and in each financial year thereafter.

(2) A prototype agreement must contain terms which have the effect of those specified in Schedule 2A in relation to the calculation of the number of units of dental activity to be provided by the contractor under the prototype agreement.

#### **Capitated patient figures for contractors who elect to enter into a prototype agreement**

**14B.** Where a contractor has elected to enter into a prototype agreement, the prototype agreement must specify the number of patients to whom the contractor is expected to have provided primary dental services (known as the capitated patient figure) by the end of each financial year.

#### **Capitated patients**

**14C.**—(1) Where a contractor has elected to enter into a prototype agreement, on any day (“the relevant day”) a patient is a capitated patient if that patient has been provided with a banded course of treatment by the contractor (C1) within a period of three years immediately preceding that day, provided that—

- (a) the banded course of treatment has not been provided by a foundation trainee;
- (b) the patient has not been referred to C1 for the banded course of treatment by another primary dental services contractor; and

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(a) The National Health Service (Dental Services) (Prototype Agreements) Directions 2015, signed on 23rd September 2015, are available on the [www.gov.uk](http://www.gov.uk) website. A hard copy of these Directions can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.

(b) The Prototype Agreements Scheme Statement of Financial Entitlements signed on 23rd September 2015, is available on the [www.gov.uk](http://www.gov.uk) website. A hard copy of these Directions can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.

- (c) the patient was not subsequently provided with a banded course of treatment before the relevant day by another primary dental services contractor (C2), unless the patient was referred to C2 by C1 for that banded course of treatment.
- (2) For the purposes of this regulation—
  - (a) a banded course of treatment does not include the provision of an urgent course of treatment; and
  - (b) “foundation trainee” has the meaning given in Section 12 of the General Dental Services Statement of Financial Entitlements 2013(a) (glossary of terms).”.

#### **Amendment of regulation 17 of the PDS Regulations**

**14.** In regulation 17 (finance), in paragraphs (1) and (3), for “Subject to regulation 20B,” substitute “Subject to regulations 20B and 20C,”.

#### **Insertion of new regulation 20C into the PDS Regulations**

**15.** After regulation 20B (variation of contractual terms in respect of election to enter into a Capitation and Quality Scheme 2 Agreement), insert—

##### **“Variation of contractual terms in respect of election to enter into a prototype agreement**

**20C.**—(1) This regulation applies where the contractor and the Board elect to enter into a prototype agreement.

(2) Where this regulation applies, the terms of the agreement which have the same effect as the provisions specified in paragraph (3) must be varied in accordance with paragraphs (4) and (5) with effect from the day on which the prototype agreement commences and for the period ending at the end of the day which is the date of termination of the prototype agreement, which must be no later than 31st March 2018.

(3) The provisions specified in this paragraph are—

- (a) regulation 13 (units of dental activity);
- (b) regulation 15 (under provision of units of dental activity or units of orthodontic activity), in relation to units of dental activity only;
- (c) regulation 17 (finance);
- (d) Part 1 of Schedule 2 (units of dental activity); and
- (e) in Schedule 3 (other contractual terms)—
  - (i) paragraph 33(2) (patient records), which is a contractor’s discretion to keep patient records in electronic form,
  - (ii) paragraph 58 (mid-year reviews), and
  - (iii) paragraph 61(1)(a) and (3)(a) (variation of an agreement: activity under the agreement), which relate to units of dental activity.

(4) The agreement must include terms that have the effect of temporarily releasing the contractor and the Board from all of the obligations, conditions, payments, rights and liabilities relating to those terms (and only those terms) which have the same effect as the provisions specified in paragraph (3), including any right to enforce those terms.

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(a) The General Dental Services Statement of Financial Entitlements 2013, signed on 28th March 2013, was amended by: the Primary Dental Services Statements of Financial Entitlements (Amendment) Directions 2014, signed on 16th April 2014; and the Primary Dental Services Statement of Financial Entitlements (Amendment) Directions 2015, signed on 30th July 2015. All of the aforementioned sets of Directions are available on [www.gov.uk](http://www.gov.uk). A hard copy of these Directions can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.

(5) The agreement must also include terms that have the effect of providing that, immediately after the date of the termination of the prototype agreement, the terms of the agreement that subsisted between the parties immediately before—

- (a) in the case of a contractor who held both a Capitation and Quality Scheme Agreement and a Capitation and Quality Scheme 2 Agreement, the Capitation and Quality Scheme Agreement commenced;
  - (b) in the case of a contractor who held a Capitation and Quality Scheme 2 Agreement but not a Capitation and Quality Scheme Agreement, the Capitation and Quality Scheme 2 Agreement commenced; or
  - (c) if neither sub-paragraph (a) nor (b) applies, the prototype agreement commenced,
- and from which the parties were temporarily released in accordance with paragraph (4), must apply from the day after the date of termination, and all obligations, conditions, payments, rights and liabilities relating to those terms are to be enforceable from that day.”.

### **Insertion of new Schedule 2A to the PDS Regulations**

**16.** After Schedule 2 (provision of services: units of dental activity and units of orthodontic activity) insert—

## **“SCHEDULE 2A**

Regulation 14A

### **Provision of services: units of dental activity where a contractor has elected to enter into a prototype agreement**

**1.—**(1) Where a contractor holding a Blend A prototype agreement provides a banded course of treatment, for the purposes of the agreement the contractor is to be regarded as providing the number of units of dental activity specified in the appropriate row of Table A.

(2) Where a contractor holding a Blend B prototype agreement provides a banded course of treatment, for the purposes of the agreement the contractor is to be regarded as providing the number of units of dental activity specified in the appropriate row of Table B.

(3) Where a banded course of treatment is commenced under a prototype agreement but not completed for whatever reason, the appropriate number of units of dental activity provided is to be calculated on the basis of the components of the course of the treatment which have been —

- (a) completed; and
- (b) commenced but not completed.

(4) Where a patient is referred by the contractor for advanced mandatory services to another provider of primary dental services, the appropriate number of units of dental activity provided by—

- (a) that contractor; and
- (b) the other provider of primary dental services, if that provider is also a contractor,

must be calculated on the basis of the components of the course of treatment which each contractor actually provides, notwithstanding that the treatment constitutes a single banded course of treatment for charging purposes.

(5) Where the contractor provides a charge exempt course of treatment, for the purposes of the prototype agreement the contractor provides the number of units of dental activity specified in the appropriate row of Table C.

(6) For the purposes of this paragraph, “Blend A prototype agreement” and “Blend B prototype agreement” have the same meaning as in the Prototype SFE.

### **Table A**

**Units of dental activity provided under a Blend A prototype agreement in respect of banded courses of treatment**

| Type of course of treatment  | Units of dental activity provided |
|--|-----------------------------------|
| Band 1 course of treatment (excluding urgent treatment)  | 0.0                               |
| Band 1 course of treatment (urgent treatment) where the patient is a capitated patient of the practice     | 0.0                               |
| Band 1 course of treatment (urgent treatment) where the patient is not a capitated patient of the practice | 1.2                               |
| Band 2 course of treatment   | 2.0                               |
| Band 2 course of treatment where a patient is referred for advanced mandatory services by another provider | 3.0                               |
| Band 3 course of treatment   | 11.0                              |
| Band 3 course of treatment where a patient is referred for advanced mandatory services by another provider | 12.0                              |

**Table B**

**Units of dental activity provided under a Blend B prototype agreement in respect of banded courses of treatment**

| Type of course of treatment  | Units of dental activity provided |
|--|-----------------------------------|
| Band 1 course of treatment (excluding urgent treatment)  | 0.0                               |
| Band 1 course of treatment (urgent treatment) where the patient is a capitated patient of the practice     | 0.0                               |
| Band 1 course of treatment (urgent treatment) where the patient is not a capitated patient of the practice | 1.2                               |
| Band 2 course of treatment   | 0.0                               |
| Band 2 course of treatment where a patient is referred for advanced mandatory services by another provider | 3.0                               |
| Band 3 course of treatment   | 9.0                               |
| Band 3 course of treatment where a patient is referred for advanced mandatory services by another provider | 12.0                              |

**Table C**

**Units of dental activity provided under the prototype agreement in respect of charge exempt courses of treatment**

| Type of charge exempt course of treatment   | Units of dental activity provided |
|---|-----------------------------------|
| Issue of a prescription   | 0.0                               |
| Repair of a dental appliance (denture) where the patient is a capitated patient of the practice     | 0.0                               |
| Repair of a dental appliance (denture) where the patient is not a capitated patient of the practice | 1.0                               |

|  |      |
|--|------|
| Repair of a dental appliance (bridge) where the patient is a capitated patient of the practice     | 0.0  |
| Repair of a dental appliance (bridge) where the patient is not a capitated patient of the practice | 1.2  |
| Removal of sutures where a patient is a capitated patient of the practice                          | 0.0  |
| Removal of sutures where a patient is not a capitated patient of the practice                      | 1.0  |
| Arrest of bleeding where the patient is a capitated patient of the practice                        | 0.0  |
| Arrest of bleeding where the patient is not a capitated patient of the practice                    | 1.2” |

### **Insertion of new paragraph 43A into Schedule 3 to the PDS Regulations**

17. After paragraph 43 of Schedule 3 (other contractual terms – notifications to patients following a variation of the agreement), insert—

#### **“Notification provisions specific to prototype agreements**

**43A.** The contractor shall—

- (a) send to the Board details of any private treatment provided to a capitated patient attending the practice, in electronic form, whether or not this treatment is associated with services that are provided under the prototype agreement; and
- (b) provide to all patients attending for treatment at its practice a privacy notice in a form approved by the Board notifying them about the obligation referred to in subparagraph (a).”.

## **PART 4**

### **Amendment of the Dental Charges Regulations**

#### **Amendments of the Dental Charges Regulations**

18. The Dental Charges Regulations are amended in accordance with this Part.

#### **Amendment of regulation 2 of the Dental Charges Regulations**

19. In regulation 2(1) (interpretation)—

- (a) in the definition of “course of treatment” for “provided under a Capitation and Quality Scheme 2 Agreement in the context of regulation 13A,” substitute “provided under a prototype agreement(a) or a Capitation and Quality Scheme 2 Agreement in the context of regulation 12A,”; and
- (b) after the definition of “prisoner” insert—

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(a) For further information on prototype agreements *see* <https://www.gov.uk/government/publications/dental-reform-next-step>. A hard copy of this document can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.

““prototype agreement” means a GDS contract or PDS agreement temporarily varied as part of the Prototype Agreements Scheme(a) which contains—

- (a) the terms and conditions required under the National Health Service (Dental Services) (Prototype Agreements) Directions 2015(b); and
- (b) the terms and conditions required under the National Health Service (General Dental Services Contracts) Regulations 2005(c) or the National Health Service (Personal Dental Services Agreements) Regulations 2005(d);”.

### **Amendment of regulation 3 of the Dental Charges Regulations**

**20.** In regulation 3 (charges for the provision of dental services), in paragraph (1), for “regulations 4 or 13A(2)” substitute “regulation 4 or 12A(2)”.

### **Amendment of regulation 5 of the Dental Charges Regulations**

**21.** In regulation 5 (effect of referral to another provider of dental services on the calculation of charges), for “regulation 4 or 13A(2)” substitute “regulation 4 or 12A(2)”.

### **Amendment of regulation 6 of the Dental Charges Regulations**

**22.** In regulation 6 (circumstances in which charges cannot be made for treatment that occurs after a course of treatment is completed), in paragraph (4), for “or regulation 13A(2)” substitute “or regulation 12A(2)”.

### **Amendment of regulation 8 of the Dental Charges Regulations**

**23.** In regulation 8 (making and recovery of charges)—

- (a) in paragraph (2), for “or 13A(2)” substitute “or 12A(2)”; and
- (b) in paragraph (3), for “or 13A(2)” substitute “or 12A(2)”.

### **Insertion of new regulations 12A and 12B into the Dental Charges Regulations**

**24.** After regulation 12 (reduction of remuneration and accounting for charges in relation to providers of relevant primary dental services), insert—

#### **“Charges in respect of primary dental services provided under a prototype agreement or under a Capitation and Quality Scheme 2 Agreement**

**12A.—**(1) This regulation applies in relation to primary dental services provided under a prototype agreement or under a Capitation and Quality Scheme 2 Agreement.

(2) An additional charge to be known as a Band 1A charge of £18.80 may be made and recovered for the provision of any interim care course of treatment the entirety of the components of which are set out in Schedule 1A, irrespective of whether any of the components of the course of treatment are also set out in Schedule 1, where—

- 
- (a) The Prototype Agreements Scheme is the Scheme of that name, introduced by the Secretary of State on 1st November 2015 that the Secretary of State has developed to assist in continuing to promote and secure improvement in the provision of dental services in accordance with the National Health Service Act 2006 (c.41).
  - (b) The National Health Service (Dental Services) (Prototype Agreements) Directions 2015, signed on 23rd September 2015, are available on the [www.gov.uk](http://www.gov.uk) website. A hard copy of these Directions can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.
  - (c) S.I. 2005/3361; as amended by S.I. 2006/563, 2007/544, 2008/528, 1514 and 1700, 2009/309 and 462, 2010/22 and 1181, 2011/1182, 2012/502, 2273 and 2404, 2013/364, 2014/443 and 1887 and 2015/137 and 416.
  - (d) S.I. 2005/3373; as amended by S.I. 2006/563, 2007/544, 2008/528 and 1514, 2009/309 and 462, 2010/22 and 1181, 2011/1182, 2012/502, 2273 and 2404, 2013/364, 2014/443 and 1887 and 2015/137 and 416.

- (a) subject to paragraph (3), all of the components of an interim care course of treatment proposed for a person at the initial examination have been provided (notwithstanding that they may have been provided at different times); and
- (b) those components include at least one of the treatments set out at paragraphs (e) to (g) of Schedule 1A.

(3) If—

- (a) during an interim care course of treatment a patient voluntarily withdraws from, or is withdrawn by the provider from treatment; and
- (b) at least one of the treatments set out at paragraphs (e) to (g) of Schedule 1A has been provided,

a Band 1A charge may be made and recovered for the course of treatment (notwithstanding that the requirements of paragraph (2)(a) are not fully met).

**Transitional provision relating to interim care provided under a Capitation and Quality Scheme 2 Agreement**

**12B.** Where—

- (a) an initial examination occurred on or before 31st October 2015;
- (b) a course of treatment was planned that would constitute an interim care course of treatment for the purposes of regulation 12A had it been planned on or after 1st November 2015; and
- (c) all of that treatment is provided on or after 1st November 2015,

the planned treatment must be treated as provided in accordance with the prototype agreement.”.

**Revocation of regulations 13A and 13B of the Dental Charges Regulations**

**25.** Regulations 13A (charges in respect of primary dental services provided under a Capitation and Quality Scheme 2 Agreement) and 13B (transitional provision relating to interim care) are revoked.

**Amendment of Schedule 1A to the Dental Charges Regulations**

**26.** In the heading of Schedule 1A (Band 1A Charges-Interim Care), for the reference “Regulation 13A” substitute “Regulation 12A”.

**PART 5**

**Amendment of the BSA Functions Regulations**

**Amendment of the BSA Functions Regulations**

**27.** The BSA Functions Regulations are amended in accordance with the Part.

**Amendment of regulation 1 of the BSA Functions Regulations**

**28.** In regulation 1 (citation, commencement and interpretation)—

- (a) in paragraph (2)—
  - (i) after the definition of “contractor” insert—

““Capitation and Quality Scheme 2 Agreement” has the meaning given in regulation 2 of the GDS Contracts Regulations(a) (interpretation);

“dental practitioner” has the meaning given in paragraph 7 of Schedule 5 to the National Health Service Pension Scheme Regulations 2015(b) (membership gateways – medical practitioners and dental practitioners);”,

(ii) after the definition of “Primary Care Trust” insert—

““prototype agreement” has the meaning given in regulation 2 of the GDS Contracts Regulations(c) (interpretation);”, and

(iii) after the definition of “Relevant Body” insert—

““scheme manager” has the meaning given in Schedule 15 to the National Health Service Pension Scheme Regulations 2015 (definitions);”; and

(b) after paragraph (2), insert the following paragraph—

“(3) In these Regulations, any reference to a GDS Contract or a PDS Agreement includes a reference to such a contract or agreement that has been varied to be a Capitation and Quality Scheme 2 Agreement or a prototype agreement.”.

### **Insertion of new entries into the Schedule to the BSA Functions Regulations**

**29.** In the Schedule (functions of the Board exercisable by the Authority), after entry 30, insert the following heading and thereafter the following entries—

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#### **“The National Health Service Pension Scheme Regulations 2015**

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|--|---|--|
| 31. Part 4 (contributions)<br>Chapter 1 (determination and<br>payment) | (a) The making of deductions<br>of members’ contributions of<br>dental practitioners from<br>payments made under a GDS<br>Contract or a PDS Agreement.<br><br>(b) The paying of those<br>members’ contributions that<br>the employing authority has<br>deducted to the scheme<br>manager.<br>(c) The making of the<br>contributions (including<br>additional contributions) to the<br>scheme manager that the | (a) Providing timely reports to<br>the scheme manager, or where<br>appropriate, the employing<br>authority, in respect of any<br>information which it discovers<br>in the course of, or as a<br>consequence of, performing<br>functions under the<br>Regulations, including<br>regulation 37 (members’<br>contributions: records and<br>estimates), and which it<br>considers might be evidence of<br>a breach of contract, an<br>unlawful activity or an<br>irregularity, or which is<br>otherwise unusual. |
|--|---|--|

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(a) The definition was inserted by S.I. 2013/364.

(b) S.I. 2015/94.

(c) For further information on prototype agreements *see* <https://www.gov.uk/government/publications/dental-reform-next-step>.  
A hard copy of this document can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.

employing authority must make, which relate to those members' contributions of dental practitioners, and the paying of those employing authority contributions to the scheme manager.

(d) The keeping of records in respect of contributions deducted and made and the provision of the statements and details relating to contributions referred to in regulation 37 (members contributions: records and estimates), including any revised statements as required, to the scheme manager.

33 Schedule 12 (practitioner contribution payments) Part 1 (accounts)

(a) Giving and receiving notices referred to in paragraph 3 of Schedule 12 (practitioner contribution payments – dentists) including agreeing such other period for the reception of such notices as permitted, accepting replacement notices where a material particular has changed and estimating and recording pensionable earnings in respect of invalid reconciliation notices.

(b) The provision to the scheme manager of the statements referred to in paragraph 4 of Schedule 12 (information to be provided to the scheme manager) that the employing authority is required to provide.

(c) The recovery of the amount of any unpaid contributions where an employing authority has ceased to exist in accordance with paragraph 10 of Schedule 12 (recovery of unpaid contributions).”

(a) The making of a determination of whether or not a notice under paragraph 3 of Schedule 12 is invalid.

(b) The determination of such other period as may be permitted in accordance with paragraph 3(7) of Schedule 12 for the issue and return of the notices referred to in paragraph 3(1) to (6) of that Schedule.

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Signed by authority of the Secretary of State for Health

28th September 2015

*Jane Ellison*  
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), the National Health Service (Dental Charges) Regulations 2015 (the Dental Charges Regulations) and the Functions of the National Health Service Commissioning Board and the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Primary Dental Services) (England) Regulations 2013 (the BSA Functions Regulations).

Regulations 3 and 11 respectively amend regulations 2 of the GDS Regulations and the PDS Regulations to insert new definitions.

Part 2 amends the GDS Regulations. In particular, regulation 7 inserts a new regulation 24C to require the terms of a GDS contract to be varied in a case where the contractor and the Board elect to enter into a prototype agreement. A prototype agreement is an agreement made in accordance with the National Health Service (Dental Services) (Prototype Agreements) Directions 2015 and the GDS and PDS Regulations, which set out the framework for piloting new remuneration arrangements for contractors providing primary dental services. The piloted arrangements must come to an end on 31st March 2018.

Regulation 8 inserts the new Schedule 2A, which sets out the number of units of dental activity to be provided by a contractor providing primary dental services under a prototype agreement. Regulation 9 inserts new paragraph 43A into Schedule 3 to the GDS Regulations to impose new contractual terms on dental contractors who elect to enter into a prototype agreement. These terms require the contractors to collect data relating to private treatment provided to capitated patients, and to provide a privacy notice to all patients attending their practices informing them of this obligation.

Part 3 makes amendments to the PDS Regulations which mirror those made to the GDS Regulations.

Part 4 amends the Dental Charges Regulations and makes transitional provision relating to charges made under those Regulations. Regulation 19 inserts new definitions. Regulation 24 inserts new regulation 12A to provide that the additional charge known as a Band 1A charge of £18.80 will apply where an interim care course of treatment is provided to persons who received primary dental services either under a prototype agreement or a Capitation and Quality Scheme 2 Agreement. Regulation 25 revokes regulation 13A and 13B of those Regulations.

Part 5 amends the BSA Functions Regulations to reflect the introduction of the NHS Pension Scheme 2015.

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