

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (PRIMARY DENTAL SERVICES)
(AMENDMENT) REGULATIONS 2022

2022 No. 1132

1. Introduction

1.1 This explanatory memorandum has been prepared by Department of Health and Social Care (DHSC) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument amends-

- a) the National Health Service (General Dental Services Contracts) Regulations 2005 (“the GDS Contracts Regulations”); and
- b) The National Health Service (Personal Dental Services Agreements) Regulations 2005 (“the PDS Agreements Regulations”).

2.2 The purpose of this instrument is to make changes to the standard terms of general dental services contracts (“GDS contracts”) and personal dental services agreements (“PDS agreements”) held by contractors providing primary dental services in England. The changes to both the GDS Contracts Regulations and PDS Agreements Regulations are as follows:

- a) the introduction of three sub-bands for treatments within the ‘Band 2 course of treatment’, with a new allocation of Units of Dental Activity (‘UDAs’) for each sub band.
- b) the introduction of a requirement for NHS dental contractors to provide information in respect of their practice for the purpose of publication on NHS.uk and to update this information at least every 90 days.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 NHS England commission contracts with dentists to deliver NHS primary dental services. Service delivery of these NHS dental contracts is measured in UDAs. Dental treatments are arranged into four bands (Bands 1, 2, 3 and ‘Urgent’), as set out in The National Health Service (Dental Charges) Regulation 2005. In the GDS Contracts Regulations and PDS Agreements Regulations, each banded course of treatment is assigned UDAs to reflect complexity and cost of delivering them.
- 6.2 Band 2 covers a wide range of treatments of varying cost and complexity. To reflect the range of treatments available and the delivery cost, this instrument will provide a further breakdown within this band, with each sub-band associated with a new UDA tariff. This instrument does not amend The National Health Service (Dental Charges) Regulation 2005, as this change does not affect patient charges for band 2 treatments.
- 6.3 The NHS website is an important source of information for patients, for which it provides a directory of available services. Responsibility for updating this information lies with contractors, who may vary in their approach, leading to the risk that this information is not kept up to date. This instrument will require contractors to update their practice information at least every 90 days to ensure information is correct and up to date.

7. Policy background

What is being done and why?

- 7.1 The GDS Contract Regulations and PDS Agreements Regulations were introduced to set out the approach to provision of NHS dental services.
- 7.2 Access to NHS dental services has become an increasingly challenging issue following the impacts of the COVID-19 pandemic on the sector. To improve upon the dental system for patients, NHS dental contractors and their teams, the Department of Health and Social Care have worked with NHS England and the British Dental Association. A set of reforms to the NHS dental system were negotiated with the BDA and consulted on with stakeholders across the dental sector. This instrument implements two of the changes agreed upon which require a legislative basis.
- 7.3 The primary intended policy outcome is that patient access to NHS dentistry will be improved, particularly amongst patients with higher or more complex oral health needs. The instrument will also make the NHS contract more attractive to dentists and their teams, who will be more fairly remunerated for delivering complex care.
- 7.4 Additionally, through the requirement for practices to update their information on the NHS England website, patients will find it easier to locate and contact dental practices providing NHS care.
- 7.5 There is significant media and parliamentary interest in this policy area, with concerns primarily focused on patients being unable to find or access NHS dental care.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.6 Prior to this instrument, NHS dental treatments were arranged into four bands, with no further sub-bandings, each associated with a specified UDA tariff to reflect the complexity of treatment.

- 7.7 Additionally, prior to this instrument standard contract terms in GDS Contracts and PDS Agreements did not require dental contractors to maintain and update their practice profile information on the NHS website within a specified timeframe.

Why is it being changed?

- 7.8 Stakeholders, supported by data collected by NHS England, indicate that the variation in complexity within band 2 dental treatments is not reflected by the remuneration provided in UDAs.
- 7.9 Patient representative groups, including Healthwatch UK, have reported that patients find accessing up to date information on where they can access NHS dental services challenging.
- 7.10 Both policies are being implemented through this instrument to improve access to NHS dentistry.

What will it now do?

- 7.11 Treatments within band 2 will now be further stratified into three sub-bands (2a, 2b and 2c) based on the complexity of the treatment, with correspondingly increasing UDA values that reflect the cost of delivering these treatments.
- 7.12 Standard contract terms in GDS Contracts and PDS Agreements will now require dental contractors to maintain and update their practice profile information on the NHS website, in accordance with this instrument.

8. European Union Withdrawal and Future Relationship

- 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 The Department does not have any plans for consolidation.

10. Consultation outcome

- 10.1 Negotiations have been carried out with the British Dental Association (BDA), who have agreed to these changes. A wider group of dental sector and patient stakeholders were also consulted on these changes and agree that they are positive.

11. Guidance

- 11.1 The NHS Business Services Authority will publish guidance for NHS dental contractors on dental profiles on <https://www.nhsbsa.nhs.uk/nhs-dental-services-news> by 25 November 2022, which is aligned with the commencement date of this instrument.

12. Impact

- 12.1 The impact of this instrument will be positive for businesses that hold a contract to deliver NHS primary dental services. There is no significant negative impact for other businesses.
- 12.2 There is no impact on charities or voluntary bodies.

12.3 The instrument will have a positive impact upon the public sector, as aims to improve NHS dental service delivery.

12.4 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses – dentists undertaking NHS dental work hold contracts with local commissioners and operate as small businesses in many cases. This instrument will not place small or large businesses at an advantage over the other.

14. Monitoring & review

14.1 NHS England (on behalf of the Secretary of State for Health and Social Care) are responsible for monitoring the implementation of, and compliance with this legislation; however the Secretary of State is ultimately responsible for these regulations and the policies they implement.

14.2 This instrument does not include a statutory review clause.

15. Contact

15.1 Laurence Bickerton at the Department of Health and Social Care Telephone: 020 7972 2998 or email: Laurence.bickerton@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Alette Addison, Deputy Director for Pharmacy, Dentistry and Eyecare, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Neil O'Brien, Parliamentary Under Secretary of State for Primary Care and Public Health, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.