WELSH STATUTORY INSTRUMENTS

2006 No. 941 (W.90)

NATIONAL HEALTH SERVICE, WALES

The Functions of Local Health Boards and the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Primary Dental Services) (Wales) Regulations 2006

Made - - - -	*28 March 2006*
Coming into force - -	*1 April 2006*

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred by sections 16BB, 16BC, 18(3) and 126(4) of the National Health Service Act 1977(**1**).

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Functions of Local Health Boards and the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Primary Dental Services) (Wales) Regulations 2006 which come into force on 1 April 2006.

(2) In these Regulations—

"the 1977 Act" means the National Health Service Act 1977;

"the Authority" means the NHS Business Services Authority established by the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005(**2**);

"GDS Contract" means a contract under section 28K of the 1977 Act (general dental services contracts)(**3**);

"GDS Contracts Regulations" means the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006(**4**);

"PDS Agreement" means an agreement for primary dental services under section 28C of the 1977 Act (personal medical or dental services)(**5**); and

(**1**) 1977 c. 49.
(**2**) S.I.2005/2414.
(**3**) Section 28K was inserted into the 1977 Act by section 172(1) of the 2003 Act.
(**4**) S.I. 2006/ 490 (W.59).
(**5**) Section 28C was inserted into the 1977 Act by section 21(1) of the National Health Service (Primary Care) Act 1997 (c. 46) and has been amended by the 2002 Act, Schedule 3, Part 1, and the 2003 Act, Schedule 11, paragraphs 7 and 14 and Schedule 14, Part 4.

"PDS Agreements Regulations" means the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006(**6**).

(3) In relation to a PDS Agreement, unless the context otherwise requires, any reference to a Relevant Body or contractor will have the same meaning as in regulation 2 of the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006(**7**).

Functions of Local Health Boards exercisable by the Authority

2.—(1) The functions of a Local Health Board (as a Relevant Body) relating to primary dental services in Wales under the provisions specified in column 1 of the Schedule in respect of the matters indicated in column 2 of that Schedule are to be exercised by the Authority.

(2) The Authority will exercise the functions set out in column 3 of the Schedule which are ancillary, related or supplemental to the functions set out in column 2 of that Schedule.

(3) In the case of the function of a Local Health Board of making payments under Directions under—

(a) section 28N of the 1977 Act, as regards GDS Contracts, referred to in entry 1(a) of column 2 of the Schedule; and

(b) section 28E(3A) and (3B), as regards PDS Agreements, referred to in entry 2(a) of column 2 of the Schedule,

the Local Health Board may only itself exercise the function where the Authority is unable to do so for reasons other than a failure by the Local Health Board to co-operate in a reasonable manner with it.

(4) In so far as these Regulations provide for the Authority to exercise a function under paragraph (1) and column 2 of the Schedule—

(a) any act or omission of the Authority in the exercise of the function will be treated solely as an act or omission of the Local Health Board or the Relevant Body; and

(b) any obligation, right or liability arising from the terms of the GDS Contract or PDS Agreement which give effect to the functions specified in column 1 of the Schedule remain solely with the Local Health Board or Relevant Body and will not transfer to the Authority notwithstanding that the function is exercisable or was exercised by the Authority.

(5) The contractor may not refuse to carry out any obligation or requirement or claim for breach of contract under the terms of the GDS Contract or PDS Agreement on the ground that the Local Health Board or Relevant Body has failed to comply with an obligation or requirement under the terms of that Contract or Agreement if the Authority has exercised the function which gave rise to that obligation or requirement.

(6) Except as provided in paragraph (7), where the Authority is given the function under these Regulations of receiving or being given access to records, forms, documents or information, or of requesting any such record, form, document or information, the contractor will—

(a) send or give access to such records, forms, documents or information to the Authority; and

(b) upon sending or giving access to such records, forms, documents or information to the Authority, be treated as having complied with the terms of the GDS Contract or PDS Agreement which give rise to the obligation or requirement to do so.

(7) Where a Local Health Board or Relevant Body requests under the GDS Contract or PDS Agreement the contractor to send or give access to records, forms, documents or information under paragraph 35, 37 or 44 of Schedule 3 to the GDS Contracts Regulations, or paragraph 36, 38 or 44 of Schedule 3 to the PDS Agreements Regulations, the contractor will send or give access

(**6**) 2006/489 (W.58).
(**7**) S.I. 2006/489 (W.58).

to such records, forms, documents or information to the Local Health Board or Relevant Body notwithstanding the fact that it may have provided that record, form, document or information to the Authority or may be under an obligation to do so.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(**8**)

D. Elis-Thomas

28 March 2006 — The Presiding Officer of the National Assembly

(**8**) 1998 c. 38.

SCHEDULE Regulation 2(1) and (2)

Functions of Local Health Boards exercisable by the Authority

Column 1 Provision	*Column 2* Function	*Column 3* Ancillary, Related or Supplemental Functions
National Health Service Act 1977(**9**)—		
1. Directions under section 28N in respect of the payments to be made under GDS Contracts.	(a) (a) The making of payments to the contractor which are required to be paid under the directions. (b) Adjusting the amount of payments to the contractor, as required by the directions, by the annual uplift in respect of each financial year that is determined by the National Assembly for Wales following consideration of a recommendation by the Doctors' and Dentists' Review Body.	(a) (a) Providing a monthly payment schedule, which under the directions must be sent to the contractor, to the Local Health Board in respect of the payments made to the contractor under the GDS Contract. (b) After the end of each financial year, providing an annual reconciliation statement to the Local Health Board about the payments made to the contractor under the GDS Contract in respect of that financial year, and by a date which

(**9**) Sections 28N and 28Y were inserted by section 172(1) and 180 respectively of the 2003 Act. Section 28E(3A) was inserted by section 177(1) of the 2003 Act.

Column 1 Provision		*Column 2* Function	*Column 3* Ancillary, Related or Supplemental Functions
		(c) Providing a monthly payment schedule to the contractor in respect of the payments made to the contractor under the GDS Contract.	allows the Local Health Board sufficient time to prepare the contractor's Annual Reconciliation Report, required under the directions.
2.	Directions under section 28E(3A) and (3B) in respect of the payments to be made under PDS Agreements.	(a) (a) The making of payments to the contractor which are required to be paid under the directions. (b) Adjusting the amount of payments to the contractor, as required by the directions, by the annual uplift in respect of each financial year that is determined by the National Assembly for Wales following consideration of a recommendation by the Doctors' and	(a) (b) Providing a monthly payment schedule, which under the directions must be sent to the contractor, to the Relevant Body in respect of the payments made to the contractor under the PDS Agreement. (b) After the end of each financial year, providing an annual reconciliation statement to the Relevant Body about the payments made to the contractor under the PDS Agreement