WELSH STATUTORY INSTRUMENTS

2006 No. 489 (W.58)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006

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

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred by sections 28D, 28E and 126(4) of the National Health Service Act 1977(**1**) and section 4(5) of the National Health Service and Community Care Act 1990(**2**).

PART 1

GENERAL

Title, commencement and application

1.—(1) The title of these Regulations is the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006 which come into force on 1 March 2006.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

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

"the Assembly" means the National Assembly for Wales;

"the 1990 Act" means the National Health Service and Community Care Act 1990;

(**1**) 1977 c. 49; section 28D was inserted by section 21(1) of the National Health Service (Primary Care) Act 1997 (c. 46) ("the 1997 Act"); section 28E was inserted by section 22(1) of the 1997 Act and section 126(4) was amended by the National Health Service and Community Care Act 1990 (c. 19) ("the 1990 Act"), section 65(2); and by the Health and Social Care Act 2001 (c. 15) ("the 2001 Act") Schedule 5, paragraph 5(13)(b). See section 128(1) of the Act as amended by the 1990 Act, section 26(2)(g) and (i), for the definitions of "prescribed" and "regulations". As regards Wales, the functions of the Secretary of State under sections 28D, 28E and 126(4) of the Act and section 4 of the 1990 Act were transferred to Wales under S.I. 1999/672, article 2 and Schedule 1, as amended by the Health Act 1999 (c. 8) ("the 1999 Act"), section 66(5) and as read with section 40(1) of the NHS Reform and Health Care Professions Act 2002 (c. 17) ("the 2002 Act") and section 197(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) ("the 2003 Act").

(**2**) 1990 c. 19.

"additional services" means one or more of—

(a) advanced mandatory services;

(b) dental public health services;

(c) domiciliary services;

(d) orthodontic services; and

(e) sedation services;

"adjudicator" means the Assembly or a person or persons appointed by the Assembly under section 4(5) of the 1990 Act (NHS contracts) or paragraph 55(4) of Schedule 3 (NHS dispute resolution procedure);

"advanced mandatory services" means any primary dental service that would fall within the services described in regulation 14 of the GDS Contracts Regulations, but by virtue of the high level of facilities, experience or expertise required in respect of a particular patient, is provided as a referral service;

"agreement" means, except where the context otherwise requires, an agreement for primary dental services made under section 28C of the Act;

"Band 1 course of treatment" means a course of treatment, including a course of treatment consisting of urgent treatment, provided to a patient in respect of which a Band 1 NHS Charge is payable pursuant to the NHS Charges Regulations, or would be payable if the patient was not an exempt person;

"Band 2 course of treatment" means a course of treatment provided to a patient in respect of which a Band 2 NHS Charge is payable pursuant to the NHS Charges Regulations, or would be payable if the patient was not an exempt person;

"Band 3 course of treatment" means a course of treatment provided to a patient in respect of which a Band 3 NHS Charge is payable pursuant to the NHS Charges Regulations, or would be payable if the patient was not an exempt person;

"banded course of treatment" means a Band 1, Band 2 or Band 3 course of treatment;

"bank holiday" means any day that is specified or proclaimed as a bank holiday in Wales pursuant to section 1 of the Banking and Financial Dealings Act 1971(**3**);

"bridge" means a fixed or removable bridge which takes the place of any teeth;

"case assessment", in respect of an orthodontic course of treatment, means a clinical examination of the patient, including the taking of such radiographs, colour photographs and models as are required in order to determine what orthodontic treatment (if any) is to be provided to the patient;

"charge exempt course of treatment" means a course of treatment that involves the examination and assessment of a patient leading to—

(a) the issue of a prescription;

(b) the repair of a dental appliance;

(c) the arrest of bleeding; or

(d) the removal of sutures,

which, by virtue of regulation 3(2)(d) or (f) of the NHS Charges Regulations, is provided free of charge to the patient;

"charity trustee" means one of the persons having the general control and management of the administration of a charity;

(**3**) 1971 c. 80.

"child" means a person who has not attained the age of 16 years;

"complete", in relation to—

(a) a course of treatment, means that—

(i) where no treatment plan has to be provided in respect of a course of treatment pursuant to paragraph 8(5) of Schedule 3 (treatment plans), all the treatment recommended to, and agreed with, the patient by the contractor at the initial examination and assessment of that patient has been provided to the patient; or

(ii) where a treatment plan has to be provided to the patient pursuant to paragraph 8(1) of Schedule 3, all the treatment specified on that plan by the contractor (or that plan as revised in accordance with paragraph 8(3) of that Schedule) has been provided to the patient; and

(b) an orthodontic course of treatment, means that—

(i) where the contractor determines in accordance with paragraph 4 of Schedule 1 (patients to whom orthodontic treatment may be provided) that no orthodontic treatment should be provided following the case assessment, the completion of the case assessment; or

(ii) where the contractor has determined that orthodontic treatment should be provided following the case assessment, all of the orthodontic treatment specified on the orthodontic treatment plan by the contractor pursuant to paragraph 6 of Schedule 1 (orthodontic treatment plans) (or that plan as revised in accordance with paragraph 6(3) of Schedule 1) has been provided to the patient,

and "completed" will be construed accordingly;

"contractor" means, except where the context otherwise requires—

(a) where a Local Health Board is not providing services under the agreement, a person or persons other than a Local Health Board, who is a party, or are parties, to the agreement, or

(b) where a Local Health Board is providing services under the agreement, that Local Health Board and any other person or persons who is a party, or are parties, to the agreement;

"course of treatment" means—

(a) an examination of a patient, an assessment of his or her oral health, and the planning of any treatment to be provided to that patient as a result of that examination and assessment, and

(b) the provision of any planned treatment (including any treatment planned at a time other than the time of the initial examination) to that patient,

provided by, except where expressly provided otherwise, one or more providers of primary dental services, but it does not include the provision of any orthodontic services or dental public health services;

"dental appliance" means a denture or bridge and for the purposes of this definition, a denture includes an obturator;

"dental care professional" means a person whose name is included in the register of dental care professionals or on the appropriate roll for dental auxiliaries established in accordance with Part II of the Dental Auxiliaries Regulations(**4**);

(**4**) S.I. 1986/887; relevant amending instrument is S.I. 2002/1671.

"dental performers list" means a list of dental practitioners prepared in accordance with regulations made under section 28X of the Act(**5**) (persons performing primary medical and dental services);

"dental public health services" means services provided by the contractor by virtue of section 16CB(4)(c) of the Act(**6**) (dental public health);

"Dentists Act" means the Dentists Act 1984(**7**);

"Dentists Act Order" means the Dentists Act 1984 (Amendment) Order 2005(**8**);

"Dentists Register" means the register maintained by the General Dental Council pursuant to section 14 of the Dentists Act(**9**) (the dentists register and the registrar);

"domiciliary services" means a course of treatment, or part of a course of treatment, provided at a location other than—

(a) the practice premises of any provider of primary dental services;

(b) a mobile surgery of any provider of primary dental services; or

(c) a prison;

"exempt person" means a person who is, by virtue of either Schedule 12ZA to the Act(**10**) (dental charging: exemptions) or the NHS Charges Regulations, exempt from the need to pay an NHS Charge in respect of the services he or she has received under the agreement;

"family member" means—

(a) a spouse;

(b) a civil partner;

(c) a person whose relationship with the registered patient has the characteristics of the relationship between husband and wife, or civil partners;

(d) a parent or step-parent;

(e) a son;

(f) a daughter;

(g) a child of whom the person is—

(i) the guardian; or

(ii) the carer duly authorised by the local authority to whose care the child has been committed under the Children Act 1989(**11**); or

(h) a grandparent;

"FHSAA" means the Family Health Services Appeal Authority constituted under section 49S of the Act(**12**) (the Family Health Services Appeal Authority);

"financial year" means the period of 12 months ending with 31 March in any year;

"GDS Contracts Regulations" means the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006(**13**);

(**5**) Section 28X was inserted into the Act by section 179(1) of the 2003 Act.
(**6**) Section 16CB was inserted into the Act by section 171(1) of the 2003 Act.
(**7**) 1984 c. 24.
(**8**) S.I. 2005/ 2011.
(**9**) Section 14 of the Dentists Act 1984 is prospectively substituted by the Dentists Act Order, article 6.
(**10**) Schedule 12ZA was inserted into the Act by section 183 of the 2003 Act.
(**11**) 1989 c. 41.
(**12**) Section 49S was inserted into the Act by section 27(1) of the 2001 Act.
(**13**) S.I. 2006/490 (W.59).

"health care professional" has the same meaning as in section 28M of the Act(**14**) (persons eligible to enter into GDS contracts) and "health care profession" will be construed accordingly;

"health service body" has, unless the context otherwise requires, the meaning given to it in section 4(2) of the 1990 Act (NHS contracts)(**15**);

"licensing body" means any body that licenses or regulates any profession;

"listed", in relation to drugs, medicines or appliances, means such drugs, medicines or appliances as are included in a list for the time being approved by the Assembly for the purposes of section 41(1)(c) of the Act(**16**) (arrangements for pharmaceutical services);

"Local Health Board" means, except where the context otherwise requires, the Local Health Board which is a party, or prospective party, to an agreement;

"mandatory services" means the services described in regulation 14 of the GDS Contracts Regulations;

"mobile surgery", except where expressly provided otherwise in these Regulations, means any vehicle in which services under the agreement are to be provided;

"national disqualification" means—

(a) a decision made by the FHSAA under section 49N or under regulations corresponding to that section made under section 28X(4) of the Act(**17**) (national disqualifications);

(b) a decision under provisions in force in Scotland or Northern Ireland corresponding to section 49N of the Act; or

(c) a decision by the NHS Tribunal which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001(**18**) or regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002(**19**);

"NHS Charge" means a charge made to the patient for provision of services pursuant to the NHS Charges Regulations;

"NHS Charges Regulations" means the National Health Service (Dental Charges) (Wales) Regulations 2006(**20**);

"NHS contract" has the meaning assigned to it in section 4 of the 1990 Act;

"NHS dispute resolution procedure" means the procedure for disputes specified in paragraphs 55 and 56 of Schedule 3;

"NHS Tribunal" means the Tribunal constituted under section 46 of the Act(**21**) for England and Wales, and which, except for prescribed cases, had effect in relation to England only until 14 December 2001 and in relation to Wales only until 26 August 2002(**22**);

(**14**) Section 28M was inserted into the Act by section 172(1) of the 2003 Act.
(**15**) Section 4(2) was amended by the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 68, the 1999 Act, Schedule 4, paragraph 76(a) and Schedule 5, the 2002 Act, Schedule 1, paragraph 40 and Schedule 5, paragraph 31.
(**16**) Section 41 of the Act was substituted by the 2001 Act, section 42(1) and amended by the 2002 Act, section 2(5) and Schedule 2, paragraphs 1 and 13, by the 2003 Act, section 184 and Schedule 11, paragraphs 7 and 18(1), (2) and (3) and by S.I. 2003/1590, article 3 and the Schedule, paragraph 3.
(**17**) Section 49N was inserted into the Act by section 25 of the 2001 Act. Section 28X was inserted by section 179 of the 2003 Act.
(**18**) S.I. 2001/3744 amended by S.I. 2002/2469.
(**19**) S.I. 2002/1920.
(**20**) S.I. 2006/491 (W.60).
(**21**) Section 46 was revoked by the 2001 Act, section 67, Schedule 5, paragraph 5 and Schedule 6, Part 1.
(**22**) See S.I. 2001/3738, article 2(5) and (6)(b), which sets out the prescribed cases for England and S.I. 2002/1919, article 2(2) and (3)(b), which sets out the prescribed cases for Wales.