WELSH STATUTORY INSTRUMENTS

2006 No. 488 (W.57)

NATIONAL HEALTH SERVICE, WALES

The General Dental Services and Personal Dental Services Transitional Provisions (Wales) Order 2006

Made - - - -	*28 February 2006*
Coming into force - -	*3 March 2006*

The National Assembly for Wales makes the following Order in exercise of the powers conferred by sections 173, 195, 200 and 201 of the Health and Social Care (Community Health and Standards) Act 2003(**1**).

PART 1

GENERAL

Title, commencement and application

1.—(1) The title of this Order is the General Dental Services and Personal Dental Services Transitional Provisions (Wales) Order 2006 which comes into force on 3 March 2006.

(2) This Order applies in relation to Wales.

Interpretation

2.—(1) In this Order—

"the 1977 Act" means the National Health Service Act 1977(**2**);

"the 1990 Act" means the National Health Service Act 1990(**3**);

"the 2003 Act" means the Health and Social Care (Community Health and Standards) Act 2003;

"the 1992 Regulations" means the National Health Service (General Dental Services) Regulations 1992(**4**);

(**1**) 2003 c. 43.
(**2**) 1977 c. 49.
(**3**) 1990 c. 19.
(**4**) S.I.1992/661.

"capitation arrangement" means an arrangement made under paragraph 5 of Schedule 1 to the 1992 Regulations;

"care and treatment" means—

(a) all proper and necessary care which a dentist usually undertakes for a patient and which the patient is willing to undergo, including advice, planning of treatment and preventive care; and

(b) treatment;

"course of treatment" has the meaning given to it in the GDS Contracts Regulations;

"dental list" means the list of dental practitioners undertaking to provide general dental services for persons in its area that is or was kept by a Local Health Board under section 36(1)(a) of the 1977 Act (regulations as to section 35)(**5**);

"dental performers list" means a list of dental practitioners prepared in accordance with the Performers List Regulations;

"Dentists Act" means the Dentists Act 1984(**6**);

"Dentists Register" means the register kept by the General Dental Council under section 14 of the Dentists Act (the dentists register and the registrar);

"GDS Contracts Regulations" means the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006(**7**);

"general dental services contract" means a contract under section 28K of the 1977 Act (general dental services contracts)(**8**);

"mandatory services" has the meaning given to it in the GDS Contracts Regulations;

"NHS Charges Regulations" means the National Health Service (Dental Charges) (Wales) Regulations 2006(**9**);

"orthodontic course of treatment" has the meaning given to it in the GDS Contracts Regulations;

"PDS Agreements Regulations" means the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006(**10**);

"PDS Directions" means the Directions to Health Authorities concerning the implementation of pilot schemes (personal dental services)(**11**);

"Performers Lists Regulations" means the National Health Service (Performers Lists) (Wales) Regulations 2004(**12**);

"personal dental services agreement" means an agreement for primary dental services under section 28C of the 1977 Act (personal medical or dental services)(**13**);

"pilot dentist" means, in relation to a particular pilot scheme agreement, a dentist who performs dental services by giving care and treatment in connection with that pilot scheme;

(**5**) Section 36(1)(a) was substituted by the National Health Service Reform and Health Care Professions Act 2002 ("the 2002 Act"), Schedule 2, paragraph 10(1) and (2).
(**6**) 1984 c. 24; as amended by S.Is 2001/3926 and 2005/2011.
(**7**) S.I.2006/490 (W.59).
(**8**) Section 28K was inserted into the 1977 Act by section 172(1) of the 2003 Act.
(**9**) S.I. 2006/491 (W.60).
(**10**) S.I 2006/489 (W.58).
(**11**) The Directions were made in August 1998.
(**12**) S.I. 2004/1020 (W.117) as amended by S.I. 2005/258 (W.24).
(**13**) Section 28C was inserted into the 1977 Act by section 21(1) of the National Health Service (Primary Care) Act 1997 (c. 46) ("the 1997 Act").

"pilot scheme agreement" means an agreement made under Part 1 of the National Health Service (Primary Care) Act 1997(**14**));

"pilot scheme provider" means the person or persons, other than a Local Health Board, who provide personal dental services under a pilot scheme agreement and who is a party or are parties to that agreement;

"relevant service" means—

(a) whole-time service in the armed forces of the Crown in a national emergency either as a volunteer or otherwise;

(b) compulsory whole-time service in those forces, including service resulting from any reserve liability; or

(c) any equivalent service by a person liable for compulsory whole-time service in those forces;

"SDR" means the Statement of Dental Remuneration determined and published by the National Assembly for Wales under regulation 19 of the 1992 Regulations, as that statement has or had effect on 31 March 2006;

"section 35 arrangements" means arrangements made under section 35 of the 1977 Act (arrangements for general dental services); and

"treatment" in respect of a period before 1 April 2006, will have the same meaning as in regulation 2 of the 1992 Regulations.

(2) In this Order, the use of the term "it" in relation to the contractor will be deemed to include a reference to a contractor that is an individual dental practitioner or two or more individuals practising in partnership and related expressions will be construed accordingly.

PART 2

GENERAL DENTAL SERVICES

CHAPTER 1

Entitlement to General Dental Services Contracts

Entitlement to a general dental services contract

3.—(1) For the purposes of section 173(2) of the 2003 Act, the circumstances in which a Local Health Board must enter into a general dental services contract with a person who, on 31 March 2006, is providing services under section 35 of the 1977 Act are prescribed in articles 4 and 5.

(2) Nothing in this Order will require a Local Health Board to enter into a general dental services contract with any person (whether as an individual or as a member of a partnership) on more than one occasion.

Individual dental practitioner

4.—(1) Subject to paragraphs (2) and (3), a Local Health Board must, if a person so wishes, enter into a general dental services contract with him or her as an individual dental practitioner if—

(a) on 31 March 2006 or, if earlier, on the date on which the contract is to be signed, he or she is included in the dental list of that Local Health Board;

(**14**) 1997 c. 46.

(b) on the date on which the contract is to be signed, he or she is practising as an individual dental practitioner and—

(i) no other dental practitioner, or

(ii) no other person providing services under section 35 arrangements,

practises in partnership with him or her; and

(c) in the case of a contract that is to be signed after 31 March 2006, he or she is, at the date on which the contract is to be signed, included in a dental performers list.

(2) A person will not be entitled to enter into a general dental services contract if he or she is an individual dental practitioner who is included in the dental list and in accordance with regulation 4(2)(b)(i) of the 1992 Regulations, it is indicated in the dental list that the dental practitioner provides only orthodontic treatment.

(3) A person will be treated as practising for the purposes of paragraph (1)(b) if he or she would have been so practising on the date in question except for the fact that on that date he or she is—

(a) suspended from the—

(i) Dentists Register under section 32 of the Dentists Act (interim suspension)(**15**) or by a direction or order of the Health Committee under that Act (health cases),

(ii) dental list under section 49I (suspension for the protection of the public or in the public interest) or 49J (suspension pending appeal) of the 1977 Act(**16**), or

(iii) dental performers list under regulation 13 of the Performers Lists Regulations (suspension for the protection of public or in the public interest);

(b) on maternity, paternity or adoption leave and is, on that date, in receipt of payments in respect of such leave by virtue of Determination VI of the SDR;

(c) on long term sickness leave and is, on that date, in receipt of payments pursuant to Determination VII of the SDR; or

(d) performing relevant service.

(4) Where a person is suspended under or as a consequence of any of the provisions referred to in paragraph (3)(a), a Local Health Board will only be required under paragraph (1) to enter into a general dental services contract with him or her during the period of that suspension if it is satisfied that—

(a) having regard to the grounds for suspension he or she is able to provide (but not perform) services under the contract and the Local Health Board is not at risk of material financial loss;

(b) the entering into the contract would not—

(i) put at risk the safety of the contractor's patients, or

(ii) be prejudicial to the efficiency of the provision of primary dental services in the area of the Local Health Board; and

(c) the practitioner has in place adequate arrangements for the provision of services under the contract during the period of his or her suspension.

(5) Where a Local Health Board refuses to enter into a general dental services contract as a consequence of paragraph (4), it will notify the prospective contractor in writing of its decision, reasons for that decision and of the individual's right of appeal under article 7.

(6) Where the contracting parties are unable to agree on a particular term of the general dental services contract and the dispute is referred to the National Assembly for Wales for determination in

(**15**) 1984 c. 24; as amended by S.Is 2001/3926 and 2005/2011.
(**16**) Sections 49I and 48J are inserted into the 1977 Act by the Health and Social Care Act 2001 (c. 15) ("the 2001 Act"), section 25.

accordance with section 4 of the 1990 Act (NHS contracts) or regulation 8(1) of the GDS Contracts Regulations (pre-contract disputes), the determination may if it is made after the contract has been entered into—

(a) vary the terms of the contract; or

(b) bring the contract to an end.

(7) Where a determination is made in accordance with paragraph (6), section 4(8)(a) and (b) of the 1990 Act will apply in respect of the determination where the terms of the general dental services contract is varied or brought to an end.

Partnerships

5.—(1) Subject to paragraph (2), a Local Health Board must, if a person so wishes, enter into a general dental services contract with him or her as one of two or more individuals practising in partnership if—

(a) on 31 March 2006 or, if earlier, on the date on which the contract is to be signed, he or she is included in the dental list of that Local Health Board and is practising;

(b) on 31 March 2006 or, if earlier, on the date on which the contract is to be signed, he or she is in partnership with one or more persons who are—

(i) included in the dental list of the Local Health Board, or

(ii) providing general dental services under section 35 arrangements (and are not dental practitioners); and

(c) he or she wishes to enter into a contract as an individual practising in partnership with the persons referred to in paragraph (b).

(2) A dental practitioner does not fall within paragraph (1)(a) if he or she is included in the dental list on the date in question, and in accordance with regulation 4(2)(b)(i) of the 1992 Regulations, it is indicated in the dental list that the dental practitioner only provides orthodontic treatment.

(3) A person will be treated as practising for the purposes of paragraph (1)(a) if he or she would have been so practising on the date in question except for the fact that on that date he or she is—

(a) suspended from the—

(i) Dentists Register by order under section 32 of the Dentists Act or by a direction or order of the Health Committee under that Act,

(ii) dental list under section 49I or 49J of the 1977 Act, or

(iii) dental performers list under regulation 13 of the Performers Lists Regulations;

(b) on maternity, paternity or adoption leave and is, on that date, in receipt of payments in respect of such leave pursuant to Determination VI of the SDR;

(c) on long term sickness leave and is, on that date, in receipt of payments pursuant to Determination VII of the SDR; or

(d) performing relevant service.

(4) Where the person referred to in paragraph (1)(a) is suspended under or as a consequence of any of the provisions referred to in paragraph (3)(a), a Local Health Board will only be required under paragraph (1) to enter into a general dental services contract with that person and the persons practising in partnership with him or her, if it is satisfied that—

(a) having regard to the grounds for suspension the individual so suspended is able to provide (but not perform) services under the contract and the Local Health Board is not at risk of material financial loss;

(b) the entering into the contract would not—