WELSH STATUTORY INSTRUMENTS

2002 No. 1881 (W.190)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (General Dental Services) (Amendment) (Wales) (No. 2) Regulations 2002

Made - - - -	*18th July 2002*
Coming into force - -	*26th August 2002*

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 15(1), 35(1), 36(1), (1A) and (4) to (8), 37(1), 43ZA, 49F, 49I, 49L, 49M, 49N, 49O, 49P, 49R and 126(4) of the National Health Service Act 1977(**1**) and section 65 of the Health and Social Care Act 2001(**2**) hereby makes the following Regulations:

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the National Health Service (General Dental Services) (Amendment)(Wales) (No. 2) Regulations 2002 and shall come into force on 26th August 2002.

(2) In these Regulations—

(a) "the principal Regulations" means the National Health Service (General Dental Services) Regulations 1992(**3**);

(**1**) 1977 c. 49; *see* section 128(1), as amended by the National Health Service and Community Care Act 1990 (c. 19) ("the 1990 Act"), section 26(2)(g) and (i); and by the Health Act 1999 (c. 8) ("the 1999 Act"), Schedule 4, paragraph 38(2), for the definitions of "prescribed" and "regulations". Section 15(1) was amended by the Health and Social Security Act 1984 (c. 48) ("the 1984 Act"), section 5(2); by the 1990 Act, section 12(1) and by the Health Authorities Act 1995 (c. 17) ("the 1995 Act"), Schedule 1, paragraph 6. Section 35(1) was substituted by S.I. 1985/39, article 7(9), and amended by the 1995 Act, Schedule 1, paragraph 24. Section 36(1) was so numbered by the 1984 Act, Schedule 3, paragraph 5(1) and amended by S.I. 1981/432, article 3(3)(a); by S.I. 1985/39, article 7(10); by the Health and Medicines Act 1988 (c. 49), Schedule 2, paragraph 4; by the 1990 Act, section 24 and by the 1995 Act, Schedule 1, paragraph 25(a). Section 36(3) was inserted by the 1990 Act, section 24(3). Sub-sections (1A) and (4) to (8) were inserted by the Health and Social Care Act 2001 (c. 15) ("the 2001 Act"), section 20(4). Section 37(1) (so numbered by the 1988 Act), section 12(2)) was amended by the Health Services Act 1980 (c. 53), section 1 and Schedule 1, paragraph 50; modified by section 12(1) of the 1988 Act and amended by that Act, Schedule 3; and amended by the 1995 Act, Schedule 1, paragraph 26. Section 126 (4) was amended by the 1990 Act, section 65(2); and by the 1999 Act, Schedule 4, paragraph 37(6). Section 43A was inserted by the 2001 Act, section 21. Sections 49F to 49R were inserted by the 2001 Act, section 25. As regards Wales, the functions of the Secretary of State under sections 15, 35, 36 and 126(4) of the 1977 Act were transferred to the National Assembly for Wales under the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1; these Regulations therefore extend only to Wales.

(**2**) 2001 c. 15.

(**3**) S.I. 1992/661; relevant amending instruments are S.I. 1993/2209, 1993/3172, 1995/3092, 1996/704, 1996/2051, 1998/1648, 1998/2224, 2000/2459, 2001/289 and 2001/1746.

(b) except where the context otherwise requires, a reference to a numbered regulation or Schedule is to the regulation or Schedule bearing that number in the principal Regulations.

(3) These Regulations extend to Wales only.

(4) The principal Regulations are amended in accordance with the following provisions of these Regulations.

Amendment of regulation 2

2.—(1) In paragraph (1) of regulation 2 (interpretation)—

(a) insert the following definitions in the appropriate alphabetical positions—

> ""the Abolition of the Tribunal Regulations 2002" means the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2002(**4**);";
>
> ""employment" means any employment whether paid or unpaid and whether under a contract for services or a contract of service, and "employed" and "employer" shall be construed accordingly;"
>
> ""equivalent body" means a Health Authority in Wales, a Health Board or an NHS trust in Scotland or a Health and Social Services Board in Northern Ireland;";
>
> ""equivalent lists" means lists kept by an equivalent body;";
>
> ""FHSAA" means the Family Health Services Appeal Authority constituted under section 49S of the Act"(**5**);
>
> ""fraud case" means a case where a person satisfies the second condition for removal from the dental list set out in section 49F(3) of the Act or by virtue of section 49H of the Act is treated as doing so;";
>
> ""licensing or regulatory body" means the body that licenses or regulates any profession of which the dentist is or has been a member;";
>
> ""lists" means lists referred to in section 49N(1)(a) to (c);"
>
> ""a national disqualification" means—
>
> (a) a decision made by the FHSAA in relation to a dentist under section 49N of the Act,
>
> (b) a decision under provisions in force in Scotland or Northern Ireland corresponding to section 49N of the Act,
>
> (c) a decision by the Tribunal which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4)(b) of the Abolition of the Tribunal Regulations 2002,
>
> (d) a decision by the Tribunal;";
>
> ""the National Health Service Counter Fraud Service" means the service provided by the Secretary of State to deal with inquiries and investigations in relation to any allegations of fraud or corruption in the health service(**6**);";
>
> ""originating events" means the events that gave rise to the conviction, investigation, proceedings, suspension, refusal to admit, conditional inclusion, removal or contingent removal that took place;";

(**4**) S.I. 2002/1920.
(**5**) Section 49S was inserted by the Health and Social Services Act 2001 section 27(1).
(**6**) The National Health Sevice Counter Fraud Service may be contacted by writing to them at Hannibal House, Elephant and Castle, London SE1 6JE or e-mailing them on DCFS@doh.gov.uk.

""professional registration number" means the number against a dentist's name in the register maintained by the General Dental Council;";

""suspended" means—

(a) suspended by a Health Authority under section 49I or 49J of the Act or under regulations made under sections 28DA or 43D of the Act, or section 8ZA of the 1977 Act,

(b) suspended by the Tribunal,

(c) in relation to Scotland or Northern Ireland, suspended under provisions in force corresponding to those in section 49I or 49J of the Act,

and shall be treated as including a case where a person is treated as suspended by a Health Authority in Wales by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations 2002,

and "suspend" and "suspension" shall be construed accordingly;";

(b) for the definition of "the Tribunal" substitute ""the Tribunal" means the Tribunal constituted under section 46 of the Act(**7**) for Wales and England";

(c) in the definition of "estimate", for "an FHSA" substitute "a Health Authority"; and

(d) omit the definition "suspended by direction of the Tribunal".

(2) In paragraph (2)(d) of regulation 2—

(a) for "FHSA" whenever it appears, substitute "Health Authority", and

(b) for "an" where it appears immediately before "FHSA" substitute "a".

Amendment of regulation 4

3. In regulation 4(1) (dental list), after "in its locality" insert "who are not subject to a national disqualification".

Amendment of regulation 5

4. Regulation 5 (application for inclusion in the dental list) shall be amended as follows—

(a) in paragraph (1) after "subject to paragraph (3)" insert "and regulations 5ZA to 5ZD";

(b) for paragraph (2) substitute—

"(2) Subject to paragraphs (3ZA), (3A) and (4) and to regulation 5ZB, a Health Authority shall determine an application made by a dentist under paragraph (1) within 21 days of their receiving all the information referred to in Part I of Schedule 2, including references from any referees, and where the Health Authority considers that the proposed practice premises should be inspected, they shall carry out that inspection within that 21 day period.";

(c) after paragraph (3A), insert—

"(3ZA) The Health Authority must, before determining an application, check so far as practicable—

(a) the information provided by the dentist in accordance with paragraphs 5B, 11A and 14 of Schedule 2, and

(b) with the National Health Service Counter Fraud Service whether the dentist has any record of a fraud case.";

(**7**) Section 46 was substituted by the Health Act 1999 c. 8.

(c) in paragraph (4), for "the date of receipt of the application" substitute "the date of the Health Authority receiving all the information mentioned in paragraph (2)";

(d) after paragraph (4) add—

"(5) Where a Health Authority proposes to include a dentist on a list subject to conditions imposed under regulation 5ZD, the name of the dentist may be included on the list during the period for bringing an appeal to the FHSAA pursuant to that regulation, or if an appeal is brought, until such time as that appeal is decided, provided the dentist agrees to be bound by the condition imposed until the time for appeal has expired or the dentist's appeal is decided.".

Insertion of new regulations 5ZA to 5ZD into the principal Regulations

5. After regulation 5 insert the following regulations—

"**Grounds for refusal**

5ZA.—(1) The grounds on which a Health Authority may refuse to include a dentist in the dental list under regulation 5 are—

(a) that they have considered the declaration required by paragraph 5B of Schedule 2 and any other information in their possession in relation to the dentist's application and consider the dentist is unsuitable to be included in the list;

(b) that having checked the information provided by the dentist under paragraph 5B of Schedule 2 they consider the dentist is unsuitable to be included in the list;

(c) that having contacted referees in accordance with the information given in accordance with paragraph 11A of Schedule 2 the Health Authority is not satisfied with the information provided by the referees;

(d) that having checked with the National Health Service Counter Fraud Service for any facts that it considers relevant relating to past or current investigations involving the dentist, and having considered these and any fraud case relating to the dentist, they consider these justify such refusal;

(e) they consider that there are grounds to consider that admitting the dentist to the list would be prejudicial to the efficiency of the service which he would undertake.

(2) The grounds on which a Health Authority must refuse to include a dentist under regulation 5 are—

(a) where the dentist has been convicted in the United Kingdom of murder;

(b) where, after 30th July 2002, the dentist has been convicted in the United Kingdom of a criminal offence and sentenced to a term of imprisonment of over six months;

(c) where the dentist is subject to a national disqualification;

(d) where the dentist has not updated his or her application in accordance with regulation 5Z(b)(4);

(e) where the dentist does not notify the Health Authority under regulation 5ZD(11) that the dentist wishes to be included in the list subject to the specified conditions.

(3) Where the Health Authority are considering refusing to include a dentist in a list under paragraph (1), they shall consider all facts which appear to them to be relevant and shall in particular take into consideration in relation to paragraph (1)(a), (b) or (d) above—

(a) the nature of any offence, investigation or incident;

(b) the length of time since the offence was committed or the incident occurred and since any conviction or investigation;

(c) whether there are other offences, incidents or investigations to be considered;

(d) any action or penalty imposed by any professional, licensing, regulatory or other body, the police or the courts as a result of any such offence, incident or investigation;

(e) the relevance of any offence, investigation or incident to the provision by the dentist of general dental services and any likely risk to patients or to public finances;

(f) whether any offence was a sexual offence to which Part I of the Sexual Offences Act 1997(**8**) applies;

(g) whether the dentist has been refused admission to or conditionally included in, removed, contingently removed, or is currently suspended from any of a Health Authority's lists or from equivalent lists, and if so, what the facts were in those cases and the reasons given by the Health Authority or equivalent body involved.

(4) When the Health Authority take into consideration the matters set out in paragraph (3), they shall consider the overall effect of all the matters being considered.

(5) When the Health Authority refuse to include a dentist in the dental list they shall notify the dentist of their decision and the reasons for it (and any facts relied on) and of any right of appeal under regulation 5ZC against their decision.

Deferment of decision

5ZB.—(1) A Health Authority may defer a decision whether to include a dentist in a dental list—

(a) where there are legal proceedings that are criminal proceedings in the United Kingdom, or where there are legal proceedings in respect of conduct which, if it occurred in the United Kingdom, would constitute a criminal offence, and that if successful would be likely to lead to the removal of the dentist from the Health Authority list if the dentist had been included;

(b) where there is an investigation anywhere in the world by the dentist's regulatory or licensing body or any other investigation (including one by another Health Authority or equivalent body) relating to the dentist in his or her professional capacity, that if adverse would be likely to lead to the removal of the dentist from the Health Authority list if the dentist were to be included;

(c) where the dentist is suspended from any of the lists or equivalent lists;

(d) where the FHSAA is considering an appeal by the dentist against a decision of a Health Authority to refuse to include the dentist in their list, or to conditionally include in or to contingently remove from, or to remove from any list kept by a Health Authority and if that appeal is unsuccessful the Health Authority would be likely to remove the dentist from the Health Authority list if the dentist were to be included;

(e) where the dentist is being investigated by the National Health Service Counter Fraud Service in relation to any fraud case, where the result if adverse would be likely to lead to the removal of the dentist from the Health Authority list if the dentist were to be included;

(f) where the FHSAA is considering an application from a Health Authority for a national disqualification of the dentist.

(**8**) 1997 c. 51.