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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 289**

**NATIONAL HEALTH SERVICE**

**The National Health Service (General Dental Services) (Scotland) Amendment Regulations 2017**

*Made - - - - 7th September 2017*  
*Laid before the Scottish*  
*Parliament - - - - 11th September 2017*  
*Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 25(1), (2) and (2A), 28A(4), 105(7) and 106(a) of the National Health Service (Scotland) Act 1978(1) and all other powers enabling them to do so.

**Citation and commencement**

1.—(1) These Regulations may be cited as the National Health Service (General Dental Services) (Scotland) Amendment Regulations 2017.

(2) Subject to paragraphs (3), (4), and (5), these Regulations come into force on 26th October 2017.

(3) Regulations 3(1)(b), (c), (e), (f) and (h) and (2), 7, 8, 9, 11(1) to (3), (4)(b) and (5) to (10) come into force on 1st January 2018.

(4) Regulation 11(12) comes into force on 1st October 2018.

(5) Regulations 3(1)(d), 6 and 11(4)(a) come into force on 1st January 2019.

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(1) 1978 c.29; section 25(1) was amended by the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) (“the 2005 Act”), section 15; section 25(2) and (2A) were substituted by the 2005 Act, section 17; section 28A was inserted by the Health Act 1999 (c.8) (“the 1999 Act”), section 57 and amended by the Primary Medical Services (Scotland) Act 2004 (asp 1), schedule 1, paragraph 1; section 105(7) was amended by the Health Services Act 1980 (c.53), schedule 6, paragraph 5(1) and schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 29(1) and schedule 9, Part 1, paragraph 24 and the 1999 Act, schedule 4, paragraph 60; section 108(1) contains a definition of “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

## **Amendment of the National Health Service (General Dental Services) (Scotland) Regulations 2010**

2. The National Health Service (General Dental Services) (Scotland) Regulations 2010(2) are amended in accordance with regulations 3 to 13.

3.—(1) In regulation 2(1) (interpretation)—

(a) after the definition of “dental care professionals register” insert—

““Dental Core Training” means a period of postgraduate training following vocational training (or any equivalent training undertaken in England, Wales or Northern Ireland), administered in Scotland by NHS Education for Scotland and comprising clinical and educational sessions with regular assessment of the competencies required for progress;”;

(b) after the definition of “disqualification” insert—

““electronic communication” has the meaning given by section 15(1) of the Electronic Communications Act 2000(3);”;

(c) for the definition of “estimate” substitute—

““estimate” means information submitted by a dentist to the SDPB in accordance with paragraph 28 of schedule 1 for the purpose of obtaining prior approval of care and treatment on a form supplied by the Health Board or in electronic form;”;

(d) for the definition of “estimate” substitute—

““estimate” means information submitted by a dentist to the SDPB in accordance with paragraph 28 of schedule 1 for the purpose of obtaining prior approval of care and treatment;”;

(e) after the definition of “estimate” insert—

““form to like effect” includes where information that would otherwise be provided in a form supplied by the Health Board is compiled in electronic form (except where otherwise stated);”;

(f) in the definition of “in writing”, for “transmission by electronic means” substitute “an electronic communication”;

(g) after the definition of “orthodontist” insert—

““Part 1 training” means a course of training provided by NHS Education for Scotland which includes training on radiology, managing medical emergencies including basic life support, infection prevention and control, consent, record keeping and best practice guidance;

““Part 2 training” means a course of training provided by NHS Education for Scotland which includes training on consent, the content and application of these Regulations and other relevant rules and law, the Statement of Dental Remuneration, infection prevention and control, record keeping and best practice guidance;”;

(h) for the definition of “practice record form” substitute—

““practice record form” means a form referred to in, and completed in accordance with, paragraph 29(3)(a) or (5)(a) of schedule 1 in the context of obtaining general dental services;”;

(i) after the definition of “scheme member” insert—

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(2) S.S.I. 2010/208; relevant amending instruments are S.S.I. 2010/378 and S.S.I. 2016/53.

(3) 2000 c.7; section 15(1) was amended by the Communications Act 2003 (c.21), schedule 17, paragraph 158.

““Specialty Training” means a period of postgraduate training to the relevant General Dental Council specialty curriculum, administered in Scotland by NHS Education for Scotland and comprising clinical and educational sessions with regular assessment of the competencies required for progress to the award of a Certificate of Completion of Specialty Training;” and

(j) after the definition of “terms of service” insert—

““test of knowledge” means an assessment set by NHS Education for Scotland, which includes questions on any of the topics specified in schedule A1;”.

(2) Paragraph (1)(c) ceases to have effect on 1st January 2019.

4. After regulation 5 insert—

**“5A. Mandatory training**

(1) A dentist who falls within paragraph (3) must have satisfactorily completed Part 2 training before making an application under regulation 5.

(2) A dentist who does not fall within paragraph (3) but who falls within paragraph (4), (5), (6) or (7) must have satisfactorily completed—

- (a) Part 1 training; and
- (b) Part 2 training,

before making an application under regulation 5.

(3) A dentist falls within this paragraph if that dentist is applying under regulation 5 for inclusion either in sub-part A of the first part, or in the second part, of a dental list and—

- (a) is included in an equivalent list in England, Wales or Northern Ireland; and
- (b) has not, throughout the 12 months preceding the application—
  - (i) been included in sub-part A of the first part, or in the second part, of a dental list; and
  - (ii) provided or assisted in the provision of general dental services.

(4) A dentist falls within this paragraph if that dentist is applying under regulation 5 for inclusion in sub-part A of the first part of a dental list and—

- (a) has never previously been included in sub-part A of the first part of a dental list;
- (b) is not currently undertaking Dental Core Training;
- (c) will not commence Dental Core Training or Specialty Training within 2 months following inclusion in sub-part A of the first part of a dental list; and
- (d) has not, throughout the 12 months preceding the application—
  - (i) been included in the second part of a dental list; and
  - (ii) assisted in the provision of general dental services.

(5) A dentist falls within this paragraph if that dentist is applying under regulation 5 for inclusion in the second part of a dental list and—

- (a) has never previously been included in the second part of a dental list;
- (b) will not commence vocational training within 2 months following inclusion in the second part of a dental list; and
- (c) has not, throughout the 12 months preceding the application—
  - (i) been included in sub-part A of the first part of a dental list; and
  - (ii) provided general dental services.

- (6) A dentist falls within this paragraph if that dentist—
  - (a) was previously included in sub-part A of the first part of a dental list;
  - (b) has not, at any point during the 12 months preceding the application, been included in that part of a dental list; and
  - (c) is applying under regulation 5 for inclusion in that part of a dental list.
- (7) A dentist falls within this paragraph if that dentist—
  - (a) was previously included in the second part of a dental list;
  - (b) has not, at any point during the 12 months preceding the application, been included in that part of a dental list; and
  - (c) is applying under regulation 5 for inclusion in that part of a dental list.
- (8) A dentist who falls within paragraph (3), (4), (5), (6), or (7) must have satisfactorily completed a test of knowledge within 6 weeks of the completion of training under paragraph (1) or (2) before making an application under regulation 5.”.
- 5. In regulation 22(1) (statement of dental remuneration), in Column 2 of the Table, for “Clinical audit” substitute “Quality improvement”.
- 6. In regulation 27 (prior approval – patterns of treatment)—
  - (a) after paragraph (2) insert—

“(2A) The SDPB may give a direction to a dentist under paragraph (2) by an electronic communication.”;
  - (b) at the end of paragraph (9)(b) omit “and”; and
  - (c) after paragraph (9)(c) insert—

“; and
  - (d) “in writing”, “write to” and “written to” include by an electronic communication.”.
- 7. In regulation 31 (service of notices etc), in paragraph (1) for “Any notice” substitute “Except where otherwise stated, any notice”.
- 8. After regulation 31 insert—

**“31A. Electronic Communications**

Where a notice or document is sent by means of an electronic communication it is taken to have been received 24 hours after it is sent unless the contrary is proved.”.

- 9. In paragraph (1) of regulation 32 (signatures) for “With the exception of” to “paragraph 29(2) and (3) of Schedule 1, any”, substitute “Any”.
- 10. Before schedule 1, insert schedule A1—

“SCHEDULE A1

Regulation 2(1)

Topics on which questions may be asked in the test of knowledge

- 1. Radiology.
- 2. Managing medical emergencies including basic life support.
- 3. Consent.
- 4. The content and application of these Regulations and other relevant rules and law.

5. The Statement of Dental Remuneration.
6. Infection prevention and control.
7. Record keeping.
8. Managing and working within a dental practice.
9. Ethical obligations.
10. Health and Safety.
11. Prescribing.
12. Quality improvement.”.

11.—(1) Schedule 1 (terms of service for dentists) is amended as follows.

(2) In paragraph 4(1) (a continuing care arrangement)—

- (a) in head (a)(i), after “form of acceptance” insert “, in writing,”; and
- (b) in head (b), after “plan for treatment” insert “, in writing,”.

(3) In paragraph 5(1) (a capitation arrangement)—

- (a) in head (b)(ii), after “form of acceptance” insert “, in writing,”; and
- (b) in head (c) after “plan for treatment” insert “, in writing,”.

(4) In paragraph 14 (treatment on referral)—

- (a) in sub-paragraph (3) after “in writing” insert “(including by an electronic communication)”; and
- (b) in sub-paragraph (4)—
  - (i) in head (a), after “form of acceptance” insert “, in writing,”; and
  - (ii) in head (b), after “plan for treatment” insert “, in writing,”.

(5) In paragraph 15 (inability of contractor to complete care and treatment), after “in writing” insert “(including by an electronic communication)”.

(6) In paragraph 16 (care and treatment summaries), after “to the patient” insert “in writing (including by an electronic communication)”.

(7) In paragraph 18(3) (occasional treatment), after “in writing” insert “(including by an electronic communication)”.

(8) In paragraph 19(4) (referral for occasional treatment), after “in writing” insert “(including by an electronic communication)”.

(9) In paragraph 20 (remuneration)—

(a) for sub-paragraph (2) substitute—

“(2) Subject to sub-paragraph (2A), any claim for a fee or other remuneration for the provision of general dental services must be submitted by an electronic communication and—

- (a) if the care and treatment was provided on behalf of a contractor by a dentist who is also a contractor, the claim must contain the PIN allocated to that dentist;
- (b) if the care and treatment was provided on behalf of a contractor by a dentist whose name is included in the second part of the dental list, the claim must contain the PIN allocated to that dentist; and
- (c) where the care and treatment was provided by a contractor who is a dentist, the claim must contain the PIN allocated to that contractor.”;

- (b) after sub-paragraph (2) insert—
- “(2A) Any claim for a fee or other remuneration for the provision of orthodontic treatment submitted before 1 January 2019 must be submitted in accordance with either head (a) or (b):
- (a) where the claim is submitted by post or by hand it must be signed—
- (i) if the care and treatment was provided on behalf of a contractor by a dentist who is also a contractor, by that dentist, who must also give the name of the contractor on whose behalf the care and treatment was provided;
- (ii) if the care and treatment was provided on behalf of a contractor by a dentist whose name is included in the second part of the dental list, by that dentist, who must also give the name of the contractor on whose behalf the care and treatment was provided; and
- (iii) in other cases where the care and treatment was provided by a contractor who is a dentist, by the contractor;
- (b) where the claim is submitted by an electronic communication—
- (i) if the care and treatment was provided on behalf of a contractor by a dentist who is also a contractor, the claim must contain the PIN allocated to that dentist;
- (ii) if the care and treatment was provided on behalf of a contractor by a dentist whose name is included in the second part of the dental list, the claim must contain the PIN allocated to that dentist; and
- (iii) where the care and treatment was provided by a contractor who is a dentist, the claim must contain the PIN allocated to that contractor.”; and
- (c) in sub-paragraph (3)—
- (i) before “electronic” insert “an”;
- (ii) for “(2)(b)” substitute “(2) or (2A)”;
- (iii) for “programme” substitute “program”.
- (10) In paragraph 27 (records)—
- (a) in sub-paragraph (3)(i), after “Health Board” insert “, including, where appropriate and requested by that officer, in electronic form”;
- (b) after sub-paragraph (3) insert—
- “(3A) For the avoidance of doubt, in paragraph (3)(ii) “send” includes, where appropriate, by an electronic communication.”; and
- (c) in sub-paragraph (4), for “computerised” substitute “electronic”.
- (11) In paragraph 28(7) (prior approval of care and treatment), for “send” substitute “submit”.
- (12) In paragraph 29 (completion of estimate)—
- (a) in sub-paragraph (1), for “sub-paragraphs (2) and (3)” substitute “sub-paragraphs (3) and (5)”;
- (b) omit sub-paragraph (2);
- (c) in sub-paragraph (3)—
- (i) for “A dentist who, in accordance with sub-paragraph (2), uses a computer to submit an estimate to the SDPB shall” substitute—

“Subject to sub-paragraph (4), a dentist must use an electronic communication to submit an estimate to the SDPB for approval as mentioned in sub-paragraph (1), and must”;

(ii) in head (a), after “practice record form” insert “, either on a form supplied by the Health Board or in electronic form”; and

(iii) in head (b), for “programme” substitute “program”; and

(d) after sub-paragraph (3) insert—

“(4) Where the proposed care and treatment mentioned in sub-paragraph (1) is orthodontic treatment, a dentist may use an electronic communication to submit an estimate to the SDPB for approval, when that estimate is submitted before 1st January 2019.

(5) A dentist who, in accordance with sub-paragraph (4), uses an electronic communication to submit an estimate to the SDPB, must—

(a) at the appropriate time secure the completion, so far as applicable, by the patient or by any person acting on behalf of the patient, of the practice record form, either on a form supplied by the Health Board or in electronic form;

(b) use only such computer program as the SDPB has approved as suitable for the purpose; and

(c) include with that estimate—

(i) all the information specified in sub-paragraph (1)(a) to (c) except the dentist’s name and address; and

(ii) the personal identification number allocated to the dentist by the SDPB for that purpose.”.

(13) Paragraph 40 (clinical audit activities) is amended as follows—

(a) the heading becomes “Quality improvement activities”;

(b) for “clinical audit” in each place it occurs substitute “quality improvement”; and

(c) in sub-paragraph (4), for paragraph (a) of the definition of “quality improvement activities” substitute—

“(a) involve the systematic, critical and reflective analysis of the quality of dental care provided by the dentist, and of any changes made by the dentist to bring about improvement in quality of care, patient experience, patient safety and clinical effectiveness, (including the processes used by that dentist for diagnosis, intervention and treatment and use of resources); and”.

**12.**—(1) Paragraph 1 of Part IA of schedule 2 (information, declarations etc. to be included in application for inclusion in sub-part A of first part of dental list) is amended as follows.

(2) In sub-paragraph (u), omit “or” at the end of head (iii).

(3) For sub-paragraphs (v) and (w) (as inserted by the National Health Service (General Dental Services) (Scotland) Amendment Regulations 2016(4)) substitute—

“(w) where the applicant is a dentist who falls within regulation 5A(3), a certificate, issued no more than 12 months before the application is made, confirming that the applicant has satisfactorily completed Part 2 training and the test of knowledge; and

(4) *S.S.I. 2016/53.* The National Health Service (General Dental Services) (Scotland) Amendment Regulations 2016 (“2016 Regulations”) contained a lettering error. Schedule 2(IA) of the National Health Service (General Dental Services) (Scotland) Regulations 2010 already contained a sub-paragraph 1(v) and the new sub-paragraphs inserted by regulation 2(5) of the 2016 Regulations should have been named sub-paragraphs (w) and (x). These Regulations re-name and amend sub-paragraphs (v) and (w) which were apparently inserted by the 2016 Regulations.

- (x) where the applicant is a dentist who falls within regulation 5A(4) or (6), a certificate, issued no more than 12 months before the application is made, confirming that the applicant has satisfactorily completed Part 1 training, Part 2 training and the test of knowledge.”.

**13.**—(1) Paragraph 1 of Part II of schedule 2 (information, declarations etc. to be included in an application for inclusion in the second part of the dental list) is amended as follows.

(2) At the end of sub-paragraph (j) omit “and”.

(3) After sub-paragraph (k) insert—

“(l) where the applicant is a dentist who falls within regulation 5A(3), a certificate, issued no more than 12 months before the application is made, confirming that the applicant has satisfactorily completed Part 2 training and the test of knowledge; and

(m) where the applicant is a dentist who falls within regulation 5A(5) or (7), a certificate, issued no more than 12 months before the application is made, confirming that the applicant has satisfactorily completed Part 1 training, Part 2 training and the test of knowledge.”.

#### **Saving provision**

**14.** An application for inclusion in sub-part A of the first part, or in the second part, of a dental list made in accordance with regulation 5 of the National Health Service (General Dental Services) (Scotland) Regulations 2010<sup>(5)</sup> before 26th October 2017 is to be determined in accordance with the National Health Service (General Dental Services) (Scotland) Regulations 2010 as they had effect immediately before that date.

St Andrew’s House,  
Edinburgh  
7th September 2017

*SHONA ROBISON*  
A member of the Scottish Government

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(5) [S.S.I. 2010/208](#); relevant amending instruments are [S.S.I. 2010/378](#) and [S.S.I. 2016/53](#).



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service (General Dental Services) (Scotland) Regulations 2010 (“2010 Regulations”). The 2010 Regulations provide for arrangements under which general dental services are provided by Health Boards in Scotland in terms of the National Health Service (Scotland) Act 1978. In addition to minor and drafting amendments, the Regulations make a number of changes of substance which fall into 3 main categories:

1. The Regulations clarify the circumstances in which dentists applying to join sub-part A of the first part of a Health Board’s dental list require to have first undertaken mandatory training provided by NHS Education for Scotland (NES), and impose similar requirements on certain dentists applying to join the second part of a dental list. These amendments to the 2010 Regulations come into force on 26th October 2017 (regulations 3(1)(a), (g), (i) and (j), 4, 10, 12 and 13).

2. The Regulations replace the requirement on dentists to undertake clinical audit activities with a requirement to undertake quality improvement activities- a broader concept. These amendments to the 2010 Regulations come into force on 26th October 2017 (regulations 5 and 11(13)).

3. The Regulations insert deadlines by which estimates for prior approval and payment claims for treatment provided under general dental services must be submitted electronically and allow for certain forms or information to be provided by electronic communication. There are 4 separate dates on which these amendments come into force:

- 26th October 2017 (regulation 11(11));
- 1st January 2018 (regulations 3(1)(b), (c), (e), (f) and (h) and (2), 7, 8, 9, 11(1) to (3), (4)(b) and (5) to (10));
- 1st October 2018 (regulation 11(12)); and
- 1st January 2019 (regulations 3(1)(d), 6 and 11(4)(a)).

Regulation 3(1) amends regulation 2(1) of the 2010 Regulations. New definitions of “electronic communication” and “form to like effect” and amendments to definitions of “estimate”, “in writing” and “practice record form” relate to electronic communications. Regulation 3(1)(c) inserts an interim definition of “estimate”. Regulation 3(2) confirms that this definition will cease to have effect when the definition of “estimate” in paragraph (1)(d) comes into force on 1st January 2019. New definitions of “Dental Core Training”, “Part 1 training”, “Part 2 training”, “Speciality Training” and “test of knowledge” relate to mandatory training.

Regulation 4 inserts new regulation 5A into the 2010 Regulations. Regulation 5A details the requirement for mandatory training for certain dentists who are applying under regulation 5 of the 2010 Regulations to be listed in either sub-part A of part 1 of a dental list, or in the second part of a dental list. Regulation 5A(3) describes the dentists who require to complete only Part 2 training and the test of knowledge. Regulation 5A(4) to (7) describes the dentists who require to complete both Part 1 training and Part 2 training as well as the test of knowledge.

Regulation 6 amends regulation 27 of the 2010 Regulations to provide for electronic communications in relation to prior approval of patterns of treatment.

Regulation 7 amends regulation 31 of the 2010 Regulations to expressly exclude any notice or document which is sent or served by an electronic communication where this method of sending or service is permitted by the 2010 Regulations.

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Regulation 8 inserts new regulation 31A, which makes provision as to when an electronic communication is deemed to have been received.

Regulation 10 inserts a new schedule A1 into the 2010 Regulations which lists the topics on which questions may be asked in the test of knowledge, following mandatory training.

Regulation 11 makes various amendments to schedule 1 of the 2010 Regulations (“schedule 1”), which contains the terms of service for dentists. In addition to minor and drafting amendments, it makes the following changes of substance:

- paragraph (2) amends paragraph 4 of schedule 1 to retain the requirement for the plan for treatment and form of acceptance to be given to the patient in writing, following the change to the 2010 Regulations whereby the plan for treatment and form of acceptance can originate in electronic form. The same amendments are made by paragraph (3) in relation to capitation arrangements (paragraph 5 of schedule 1) and paragraph (4)(b) in relation to treatment on referral (paragraph 14(4) of schedule 1);
- paragraph (4)(a) amends paragraph 14(3) of schedule 1 to allow a contractor to obtain prior approval of the SDPB as required by that paragraph using an electronic communication;
- paragraph (5) amends paragraph 15 of schedule 1 to allow a contractor to notify the SDPB as required by that paragraph using an electronic communication;
- paragraph (6) amends paragraph 16 of schedule 1 to enable a contractor to provide a care and treatment summary to a patient either in writing or by an electronic communication irrespective of whether the form on which the summary is provided was supplied by the Health Board or originated in an electronic form;
- paragraph (7) amends paragraph 18(3) of schedule 1 to allow a contractor to notify the SDPB as required by that paragraph using an electronic communication;
- paragraph (8) amends paragraph 19(4) of schedule 1 to allow a contractor to obtain the prior approval of the SDPB, as required by that paragraph, by an electronic communication;
- paragraph (9) amends paragraph 20(2) of schedule 1 to require all claims for a fee or other remuneration for the provision of general dental services to be submitted by electronic communication from 1st January 2018, with the exception of claims submitted under new sub-paragraph (2A). New sub-paragraph (2A) provides that any claim for a fee or remuneration for the provision of orthodontic treatment submitted before 1st January 2019 may continue to be submitted by post, by hand or by electronic communication;
- paragraph (10)(a) amends paragraph 27(3)(i) of schedule 1 to allow the information listed in paragraph 27(3) to be produced in electronic form, at the discretion of the dental officer or authorised officer, and where it is possible on account of the form in which the information is held. New paragraph 27(3A) provides that, where appropriate, the information listed in paragraph 27(3) can be sent to the SDPB, dental officer or authorised officer by an electronic communication;
- paragraph (12)(b) deletes paragraph 29(2) of schedule 1 and paragraph (c)(i) amends paragraph 29(3) to require all estimates for the provision of care and treatment to be submitted by electronic communication from 1st October 2018, with the exception of claims submitted under new sub-paragraph (4);
- paragraph (12)(c)(ii) amends paragraph 29(3)(a) of schedule 1 to provide that the practice record form (as defined in regulation 2(1) of the 2010 Regulations and amended by regulation 3(1) of these Regulations) can originate in electronic form;
- paragraph (12)(d) inserts new sub-paragraphs (4) and (5) into paragraph 29 of schedule 1, which provide that any estimate for the provision of orthodontic treatment submitted before 1st January 2019 may continue to be submitted other than by electronic communication;

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Regulation 12 amends paragraph 1 of Part IA of schedule 2 of the 2010 Regulations. Sub-paragraph (w) requires dentists described in regulation 5A(3) of the 2010 Regulations to provide a certificate confirming satisfactory completion of Part 2 training and the test of knowledge. Sub-paragraph (x) requires dentists described in regulation 5A(4) or (6) of the 2010 Regulations to provide a certificate from NES confirming satisfactory completion of Part 1 and Part 2 training and the test of knowledge. Regulation 13 makes the equivalent amendment to paragraph 1 of Part II of schedule 2 of the 2010 Regulations for dentists applying to be listed in the second part of a dental list.