

EXECUTIVE NOTE

THE NATIONAL HEALTH SERVICE (GENERAL DENTAL SERVICES) (SCOTLAND) REGULATIONS 2010

SSI/2010/208

1. The above Instrument was made in exercise of the powers conferred by sections 2(5), 4(1A), (1B) and (1C), 25(1), (2), (2A) and (2B), 25(3), 25(5), 28(1), 28A, 28C, 32D, 32E, 34, 105(6) and (7), 106 and 108(1) of the National Health Services (Scotland) Act 1978 (“the 1978 Act”). The Instrument is laid before Parliament and is subject to negative resolution in accordance with section 105(2) of the 1978 Act.

Policy Objectives

2. The purposes of the Instrument are:

- to consolidate the National Health Service (General Dental Services) (Scotland) Regulations 1996 and the subsequent amending Regulations to these;
- to extend the Health Board dental list system to a) enable dental bodies corporate to be included on dental lists for the first time; and b) enable those dentists who assist with the provision of general dental services (“GDS”) to be included on dental lists for the first time in addition to those dentists who undertake to provide GDS;
- to extend the requirements with which those who apply to join a dental list and those whose names appear on dental lists must comply in order to demonstrate their fitness to provide or assist with the provision of GDS in a Health Board’s area;
- to introduce a power for a Health Board to suspend a dentist or body corporate on a dental list in a limited range of circumstances; and
- to make consequential amendments to The National Health Service (Choice of Dental Practitioner) (Scotland) Regulations 1998 and The Police Act 1997 (Criminal Records) (Scotland) Regulations 2006.

3. The Regulations implement the provisions of the Smoking, Health and Social Care (Scotland) Act 2005 regarding dental lists.

4. Under the new provisions, the dental list maintained by a Health Board will be split into two parts, the first part listing dentists and bodies corporate who undertake to provide GDS in the Board’s area and the second part listing those dentists who are approved to assist with GDS provision in the Board’s area. The first part will be further divided. Those dentists and bodies corporate named on sub-part A will provide GDS under normal arrangements. Those listed on sub-part B will provide emergency dental services only, for which the Health Board is responsible, at a hospital or in premises approved by that Health Board. If a dentist or body corporate is already listed on sub-part A, their names do not need to appear on sub-part B. Providing for a separate sub-part B widens the number of dentists who may take part in emergency services. Those listed on sub-part B do not need to have a vocational training

number and this enables, for example, dentists who usually work in hospitals to take part in emergency dental service arrangements. Transitional provisions will provide that those whose names feature on current dental lists at 1 July 2010 will be deemed to be on the first part of such lists from 2 July 2010.

5. At present, assistant dentists may work in an area without being listed. It will in future be a breach of the Regulations for a dentist to assist with GDS provision in an area without being on that Board's dental list but transitional provisions will enable assistant dentists to work in an area without being on the dental list for that area until 1 October 2010.

6. Graduate dentists will be able to undertake vocational training in general dental practice for up to 3 months of a one year training programme without being named on the Health Board's dental list. This will give Health Boards time to process the relevant applications for list entry.

7. The listing for the first time of both dental bodies corporate and assistant dentists will bring them within current family health service disciplinary arrangements, including referral, where relevant, to the NHS Tribunal for disqualification. It will also increase Boards' knowledge of those providing GDS/working in GDS in their areas.

8. Terms of service and other requirements will apply to all of those named on dental lists, with the terms of service for those on the second part being more limited than for those on the first part.

9. This Instrument sets down in detail expanded categories of information, documents, consents and undertakings which applicants will need to provide and which Health Boards will then check, in support of a formal application for inclusion in either part of a Board's dental list. In considering any such application, a Health Board will undertake checks to determine if the applicant meets the criteria to be included in its dental list. There is a procedure for dealing with listing applications, including grounds for deferment; a power for a Health Board to require further information from an applicant which the applicant must provide and grounds on which a Health Board must refuse an application. The grounds on which a Board must remove someone from its dental list are broadly similar. The circumstances in which a Health Board must refuse list entry or must remove a dentist or dental body corporate from its list are very limited. An example would be where a list applicant or a listed person has been convicted of murder in the British islands. In such cases, there is a power for re-inclusion where an adverse finding is overturned on appeal. In all other cases, where a Health Board considers that an applicant should not be allowed to join its dental list or a dentist or dental body corporate should no longer be named on its dental list, it may refer the applicant to the NHS Tribunal to seek national disqualification.

10. The criteria provided by this Instrument for inclusion on a dental list are intended to increase protection of patients and of NHS resources. The information, documents, consents, declarations and undertakings which applicants will have to provide are therefore very comprehensive. Those already named on dental lists will be required to provide similar information, documents, consents, declarations and undertakings and will need to inform the

Health Board within 7 days if there is any change in circumstances and provide the changed declarations, undertakings etc as soon as the relevant event occurs or, alternatively, within a timescale specified by the Health Board. This could be where he or she becomes the subject of a criminal conviction or there are currently proceedings against him or her by a regulatory body such as the General Dental Council. Transitional provisions will provide that those dentists on the first part of a dental list at 2 July 2010 must provide the required information, undertakings, declarations by 1 October 2010 but there will be a power for a Health Board to extend this period in cases where it considers it is not practicable for the dentist concerned to provide the material within the prescribed period. If the information, undertakings etc have not been provided by certain dentists within the specified period, there will be a power for Health Boards to remove the relevant dentists from their lists, having first given them notice of their intention to do so.

11. The Instrument also makes provision for dentists undertaking vocational training and wishing to join the first part of a dental list to provide within a specified period the same consents, certificates, information, declarations and undertakings as other applicants except for their vocational training number which they will only receive on satisfactory completion of their training. This allows the Health Board to begin the required checks and therefore speeds up the application process. The vocational training number must be provided to the Health Board as soon as they receive this from NHS Education Scotland.

12. There are provisions enabling an applicant to a Health Board's dental list to include with the application information on other Health Boards where the applicant wishes to provide or assist with the provision of GDS. There are also provisions enabling these other Health Boards to determine the application and accept the applicant onto their dental lists without further inquiry once the Board to which the application has been made initially has carried out all of the necessary checks and obtained all of the required information etc. Additionally, there will be an accelerated procedure where a listed dentist or dental body corporate applies to join the dental list of another Health Board. That Board will have a power to determine the application and accept the dentist or body corporate onto its dental list without further inquiry.

13. The consents which will be required of list applicants and those who are already listed will allow the exchange of information between the Health Board and specified bodies or persons. This will enable a Board to request, for example, information from a former employer or from the General Dental Council concerning an adverse finding or current proceedings involving the applicant or listed contractor. It will also enable the Health Board to notify, for example, a current employer or another Health Board or equivalent body of its decision to refuse entry to a list applicant or to remove a listed contractor from its dental list.

14. Further protection will be afforded by a power enabling a Health Board to impose conditions on the provision, or assistance with provision, of GDS in cases where a dentist wishes to be included on its dental list and he or she has had conditions relating to his or her inclusion on an equivalent list in England, Wales or Northern Ireland. The Health Board may modify the conditions as required to suit Scottish circumstances, provided the dentist concerned has been given the opportunity to make representations about these.

15. This Instrument introduces a power for a Health Board to suspend a dentist or dental body corporate from its dental list on certain grounds. There are, however, only a limited number of grounds on which this power may be exercised – while the Health Board awaits the findings of a court, a professional regulatory or licensing body or the NHS Tribunal or equivalent body; while it decides whether to refer a dentist or dental body corporate to the NHS Tribunal; while it decides whether to remove a dentist or dental body corporate from its dental list or where it has decided on removal from its list but before that decision takes effect. This power does not replace the power of the NHS Tribunal to direct a suspension. It provides Health Boards with a choice of whether to suspend from its own list or make a Tribunal referral for suspension.

16. The Instrument recognises the right of the dentist or dental body corporate to receive payments while suspended either by a Health Board or by the NHS Tribunal to reflect the neutrality of the suspension.

17. GDS payments are made by the Common Services Agency for the Scottish Health Service on behalf of the Scottish Dental Practice Board (SDPB). The Instrument makes provision for the payment of fees, allowances and reimbursement of expenses in relation to the provision of GDS by means of a determination, continuing the method of payment provided for in the National Health Service (GDS) (Scotland) Regulations 1996 which this Instrument replaces. The Instrument also provides for the continuation of various powers of the SDPB - to conduct or commission surveys or other research relating to GDS and to require a dentist to submit to it estimates for approval prior to providing treatment for a specified period where that dentist's pattern of treatment differs significantly from the local or national treatment pattern and it provides for the continuation of an appeals provision against the decisions of the SDPB.

18. Amendments are required to The National Health Service (Choice of Dental Practitioner) (Scotland) Regulations 1998 and The Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 in consequence of the coming into force of The National Health Service (General Dental Services) (Scotland) Regulations 2010 and these are provided for in Schedule 8.

Consultation

19. A consultation paper "The Listing of Non Principal Dentists, Optometrists and Ophthalmic Medical Practitioners" (<http://www.scotland.gov.uk/consultations/health/lfdp-00.asp>) was issued to a range of bodies in February 2004. This contained proposals relating to the expansion of the listing system to assistant dentists. Responses, including those from professional representative bodies, were mainly supportive of the concept.

20. The listing of dental bodies corporate was one of a wide range of proposals listed in the consultation paper "Modernising NHS Dental Services in Scotland" (<http://www.scotland.gov.uk/Publications/2003/11/18542/29108>), issued in November 2003. No particular concerns on the proposal were raised.

21. Placing additional requirements on family health service practitioners, including those wishing to join dental lists or whose names already appear on these lists was proposed in the consultation paper “Further Measures to Improve the Provision of Primary Care Services” (<http://www.scotland.gov.uk/consultations/health/fmippc-00.asp>) which was issued in March 2004 to a wide range of interests. The major proportion of respondees, including the professional representative bodies, voiced support for the proposals.

22. The regulation-making provisions relating dental lists are provided for in the Smoking, Health and Social Care (Scotland) Act 2005. Evidence was taken by the Health Committee from the British Dental Association (BDA) and others during the passage of the Bill and views have been sought from the BDA on the draft Regulations.

Financial Effects

23. There will be some additional administrative costs linked to the expanded listing regime. These will be met from Health Boards’ financial allocations.

SCOTTISH GOVERNMENT HEALTH DIRECTORATES

20 May 2010