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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 174**

**NATIONAL HEALTH SERVICE**

**The National Health Service (General Dental Services) (Scotland) Amendment Regulations 2019**

<i>Made</i>	- - - -	<i>16th May 2019</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>20th May 2019</i>
<i>Coming into force</i>	- -	<i>1st July 2019</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 2(5), 25(1), (2) and (2A), 28A(4) and 105(7), of the National Health Service (Scotland) Act 1978(1), and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the National Health Service (General Dental Services) (Scotland) Amendment Regulations 2019 and come into force on 1 July 2019.

**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 22.

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

(a) after the definition of “area dental committee” insert—

““assign” means, in relation to a care home, to allocate responsibility for providing enhanced skills in domiciliary care, “assigned” is to be construed accordingly;”,

(b) after the definition of “care and treatment” insert—

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- (1) [1978 c.29](#). Section 2(5) was amended by the National Health Service and Community Care Act 1990 ([c.19](#)), schedule 9, paragraph 19(1); section 25(1) was amended by the Smoking, Health and Social Care (Scotland) Act 2005 ([asp 13](#)) (the “2005 Act”), section 15; sections 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, 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](#)), 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. In each case, 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](#)).
- (2) [S.S.I. 2010/208](#). Relevant amending instruments are [S.S.I. 2010/378](#), [S.I. 2013/235](#), [S.S.I. 2016/53](#) and [S.S.I. 2017/289](#).

““care home” means accommodation occupied mainly or exclusively by individuals aged 16 or over which is provided by an organisation carrying on a care home service within the meaning of paragraph 2 of schedule 12 of the Public Services Reform (Scotland) Act 2010(3);

“care home resident” means a person whose place of residence is a care home;

“Certificate of Completion of Enhanced Skills Training (Domiciliary Care)” means a certificate issued by NHS Education For Scotland to a dentist following completion of enhanced training and mentoring in domiciliary care by that dentist;”,

(c) after the definition of “corresponding decision” insert—

““cross-border dentist” means a domiciliary care dentist who does not provide general dental services from practice premises in the area, but has undertaken to only provide enhanced skills in domiciliary care in the area;”,

(d) after “deputy” insert—

““designation procedure” means the procedure for requesting to become, and being designated as, a domiciliary care dentist set out in schedule B1;”,

(e) after “disqualification” insert—

““domiciliary care dentist” means a dentist—

(a) whose name appears on sub-part A of the first part of the dental list;

(b) who has received a Certificate of Completion of Enhanced Skills Training (Domiciliary Care); and

(c) whose information on the Health Board’s dental list indicates that they have been designated under paragraph 5 of schedule B1;”,

(f) after “enhanced criminal record certificate” insert—

““enhanced skills in domiciliary care” means general dental services provided to a care home resident in a care home by a domiciliary care dentist;

“enhanced training and mentoring in domiciliary care” means a programme of training and mentoring delivered by NHS Education for Scotland and a Health Board which includes the training and mentoring described in paragraph 3 of schedule B1;”,

(g) after “health centre” insert—

““in-hours period” means the period beginning with 0800 hours and ending with 1800 hours on any working day;”,

(h) in the definition of “practice premises” at the end insert “excluding any place which is a care home”;

(i) after “vocational training number” insert—

“; and

“working day” means any day apart from a Saturday, Sunday, Christmas Day, New Year’s Day and any other public or local holiday.”.

4. In regulation 3 (terms of service)—

(a) omit “and” at the end of paragraph (1)(c),

(b) after paragraph (1)(d) insert—

“; and

- (e) in the case of a contractor (other than a salaried dentist) undertaking to provide general dental services as a domiciliary care dentist, the terms of service contained in Parts I, II, III, IV, V and VII of schedule 1.”,
  - (c) at the beginning of paragraph (3) insert “Subject to paragraph (4),”,
  - (d) after paragraph (3) insert—
    - “(4) The following are not special arrangements for the purposes of paragraph (3)—
      - (a) designating a dentist as a domiciliary care dentist under paragraph 5 of schedule B1; or
      - (b) assigning a domiciliary care dentist to a care home under paragraph 5 of schedule B1 or paragraph 55 of schedule 1.”.
5. In regulation 4(4) (dental list)—
- (a) after sub-paragraph (b) insert—
    - “(ba) in the case of a cross-border dentist, the address to which correspondence in connection with the general dental services they provide in the area should be sent;”,
  - (b) after sub-paragraph (c) insert—
    - “(ca) in the case of a domiciliary care dentist, the address of any care homes regularly visited by that dentist;”,
  - (c) after sub-paragraph (f) insert—
    - “(fa) in the case of a dentist, whether the dentist is a domiciliary care dentist in respect of the area;”,
  - (d) after sub-paragraph (g) insert—
    - “(ga) whether a person named on the dental list provides only enhanced skills in domiciliary care in the area;”.
6. In regulation 5 (application for inclusion in the dental list and notification of changes)—
- (a) omit “and” at the end of paragraph (3)(e),
  - (b) after paragraph (3)(f) insert—
    - “; and
    - (g) in the case of an application which includes a request to be designated as a domiciliary care dentist, decide upon that request in accordance with the designation procedure.”,
  - (c) at the beginning of paragraph (10) insert “Subject to paragraphs (10A) and (10B),”,
  - (d) after paragraph (10) insert—
    - “(10A) Where an application—
      - (a) includes with it a request to be designated as a domiciliary care dentist in an area; and
      - (b) the applicant does not propose to provide general dental services from practice premises in that area,the Health Board for that area must not add the applicant to its dental list before the Health Board has decided that request in accordance with the designation procedure.
    - (10B) Where an application—
      - (a) includes with it a request to be designated as a domiciliary care dentist in an area; and

- (b) the applicant proposes to provide general dental services from practice premises in that area,

the Health Board for that area may add the name of the dentist to its dental list, but must not designate the dentist as a domiciliary care dentist, before the Health Board has decided that request in accordance with the designation procedure.”.

- 7. After regulation 5A (mandatory training) insert—

**“Enhanced Skills in Domiciliary Care**

**5B.** Schedule B1 has effect.”.

- 8. In regulation 6(3) (general provision relating to the dental list), after sub-paragraph (e) insert—

“(f) a dentist may not provide general dental services (except insofar as those services are limited to enhanced skills in domiciliary care) where that dentist has indicated in their application that they will only provide enhanced skills in domiciliary care as a cross-border dentist.”.

- 9. In regulation 7 (grounds for refusal of application)—

- (a) after sub-paragraph (1)(r) insert—

“(s) subject to paragraph (1A), in the case of an application by a dentist who indicates that they will only provide enhanced skills in domiciliary care in the area and the dentist is not designated as a domiciliary care dentist in the area.”,

- (b) after paragraph (1) insert—

“(1A) Where the applicant has made a request to be designated as a domiciliary care dentist in the area and that request is outstanding, the Health Board must not refuse an application on the ground specified in paragraph (1)(s).”.

- 10. In regulation 8 (deferment of a decision on application)—

- (a) after paragraph (2) insert—

“(2A) A Health Board may defer a decision on any application to be included in its dental list as a cross-border dentist until the Health Board has reached a decision in accordance with the designation procedure.”,

- (b) after paragraph (5) insert—

“(5A) Where the Health Board has deferred an application on the ground mentioned in paragraph (2A), as soon as possible after the Health Board has made its decision in accordance with the designation procedure, the Health Board must—

- (a) make its decision on the deferred application; and
- (b) notify the dentist of its decision and the grounds for it.”.

- 11. In regulation 12 (removal from dental list)—

- (a) after paragraph (3) insert—

“(3A) A Health Board must remove the name of a dentist from the dental list and notify the dentist as soon as practicable of the removal and its reasons for doing so, if—

- (a) the dentist is listed by the Health Board as a cross-border dentist; and
- (b) the designation of that dentist as a domiciliary care dentist is removed in accordance with regulation 12A.

(3B) A Health Board must remove the name of a dentist from the dental list and notify the dentist that it has done so if—

- (a) the dentist is listed by the Health Board as a cross-border dentist;
  - (b) the dentist has requested to have their designation removed in accordance with paragraph 54 of schedule 1; and
  - (c) the Health Board has granted that request.”
- (b) After paragraph (6)(b) insert—
- “(ba) the dentist was on statutory shared parental leave;”.

**12.** After regulation 12 insert—

**“Removal of domiciliary care designation**

**12A.**—(1) Where a Health Board has determined that a domiciliary care dentist has not provided general dental services in a care home for the preceding 6 months, the Health Board may amend the dental list to remove that dentist’s designation as a domiciliary care dentist.

(2) Before removing a dentist’s designation under paragraph (1) the Health Board must—

- (a) give the dentist 28 days’ notice of its intention to do so; and
- (b) afford the dentist an opportunity to make representations to the Health Board in writing or in person.

(3) In calculating the period of 6 months referred to in paragraph (1), the Health Board must disregard any period during which—

- (a) the dentist was performing relevant service;
- (b) the dentist was on statutory maternity, paternity, adoption leave;
- (c) the dentist was on statutory shared parental leave;
- (d) the dentist was unable to provide general dental services in a care home because of sickness;
- (e) the dentist was suspended by direction of the Tribunal or was suspended by the Health Board; or
- (f) the dentist was performing personal dental services in connection with a pilot scheme.

(4) In this regulation “relevant service” means—

- (a) whole-time service in the armed forces of the Crown in a national emergency as 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.

(5) A Health Board must remove the designation of a domiciliary care dentist if—

- (a) a discipline committee established under regulation 3 of the National Health Service (Discipline Committees) (Scotland) Regulations 2006(4) recommends a sanction or warning which would place the domiciliary care dentist in breach of the eligibility criterion specified in paragraph 1(2)(d)(iv) of schedule B1 and the Health Board decides to apply that sanction or warning;
- (b) the Tribunal disqualifies the domiciliary care dentist; or

(c) the Tribunal imposes conditional disqualification on the domiciliary care dentist which has the effect of prohibiting them from performing any aspect of enhanced skills in domiciliary care.

(6) Nothing in this regulation prejudices any right of a dentist to be designated again as a domiciliary care dentist.”.

13. After regulation 13 (re-inclusion in dental list) insert—

**“Re-instatement of designation**

13A.—(1) Where a dentist has had their designation as a domiciliary care dentist removed under regulation 12A, and the occurrence that led to that removal is overturned, either on appeal, or for any other reason, the Health Board may designate that dentist as a domiciliary care dentist without a request being made in accordance with paragraph 1 of schedule B1 if the Health Board is satisfied that there is no further information which it should consider, and provided that the Health Board receives undertakings from that dentist to comply with these Regulations.

(2) Where the Health Board considers that further information is required, a dentist who wishes to be designated again as a domiciliary care dentist must provide that further information and undertakings or, at the option of the Health Board, submit a full request in accordance with paragraph 1 of schedule B1.”.

14. In regulation 14(1) (disclosure of information)—

- (a) omit “or” at the end of sub-paragraph (b),
- (b) after sub-paragraph (c) insert—

“; or

- (d) remove the designation of a dentist as a domiciliary care dentist on the grounds specified in regulation 12A,”.

15. In regulation 15 (withdrawal from dental list)—

- (a) in paragraph (1), for “paragraph (2)” substitute “paragraphs (1A) and (2)”,
- (b) after paragraph (1) insert—

“(1A) A domiciliary care dentist must not be removed from the dental list until the expiry of 6 months from the date of the notice given under paragraph (1), or such shorter period as the Health Board may agree.”.

16. In the table in regulation 22(1) (statement of dental remuneration) insert at the end—

“XVI	Enhanced skill allowances”.
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17. In regulation 23(4)(b)(i) (approval of payments), for “and XV” substitute “, XV and XVI”.

18. After schedule A1 (topics on which questions may be asked in the test of knowledge) insert—

“SCHEDULE B1

Regulation 5B

Enhanced skills in domiciliary care

**Request to become a domiciliary care dentist and eligibility**

1.—(1) A dentist who meets the eligibility criteria specified in sub-paragraph (2) may submit a request to a Health Board to become a domiciliary care dentist—

- (a) in the case of a dentist whose name appears on the list of the Health Board to which they are making the request, in such form as the Health Board may require; or
  - (b) in the case of a dentist whose name does not appear on the list of the Health Board to which they are applying, as an addition to that dentist’s application to be included on the dental list under regulation 5.
- (2) The eligibility criteria are that—
- (a) for the period of three years ending with the date of the request, the name of the dentist has continuously appeared on sub-part A of the first part of a dental list maintained by any Health Board, or an equivalent part of a dental list maintained for England, Wales or Northern Ireland;
  - (b) the dentist has complied with the requirements of paragraph 40(1) of schedule 1 as they apply to the dentist;
  - (c) the dentist has—
    - (i) completed appropriate continuing professional development activities on the care of older people; or
    - (ii) provided general dental services to care home residents in care homes on a sufficient number of occasions,to enable the Health Board to form the opinion that the dentist is likely to be a suitable person to be a domiciliary care dentist, following completion of the enhanced training and mentoring in domiciliary care;
  - (d) the dentist—
    - (i) is not suspended from the dental list under regulation 11;
    - (ii) is not suspended from the dental list under sections 32A or 32B of the Act;
    - (iii) is not conditionally disqualified under section 29B of the Act;
    - (iv) is not currently subject to a warning or sanction which was applied following an investigation under the National Health Service (Discipline Committees) (Scotland) Regulations 2006;
    - (v) is not subject to a corresponding decision made in England, Wales or Northern Ireland which has an equivalent effect to anything specified by (i) to (iv);
    - (vi) is not subject to undertakings under section 27A of the Dentists Act 1984 (“the 1984 Act”)(5);
    - (vii) does not have conditions placed upon their registration under sections 27B or 28 of the 1984 Act;
    - (viii) is not suspended from the register of dentists under sections 27C, 30, or 32 of the 1984 Act;
  - (e) any practice premises from which the dentist provides general dental services were, at their most recent inspection by the Health Board for the area in which those premises are located, found to comply with the requirements of paragraph 42 of schedule 1 which relate to the standards of premises and equipment required for the provision of general dental services.
- (3) Where the Health Board receives a request from a dentist under sub-paragraph (1), the Health Board may—
- (a) write to the dentist to offer them an initial interview in accordance with paragraph 2;

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(5) 1984 c.24. Sections 27, 27A, 27B, 27C, 28, 30 and 32 were substituted by S.I. 2005/2011. Subsequent relevant amendments were made by the Health and Social Care (Safety and Quality) Act 2015 (c.28), schedule, paragraph 1(3) and by S.I. 2009/1182, S.I. 2012/3006 and S.I. 2016/496.

- (b) write to the dentist to offer them a final interview in accordance with paragraph 4; or
  - (c) if the Health Board considers that additional domiciliary care dentists are not required in the area, write to the dentist to refuse their request.
- (4) A Health Board may not offer a dentist an interview under sub-paragraph (3) if that dentist does not meet the eligibility criteria.
- (5) Where a Health Board decides not to interview a dentist, the Health Board must, within 28 days beginning with the day on which it received the dentist's request, write to the dentist to inform them of the decision and to give reasons for it.
- (6) Where a Health Board has decided to offer an interview to a dentist who does not have a Certificate of Completion of Enhanced Skills Training (Domiciliary Care), the Health Board must offer the dentist an initial interview in accordance with paragraph 2.
- (7) Where a Health Board has decided to offer an interview to a dentist who has a Certificate of Completion of Enhanced Skills Training (Domiciliary Care), the Health Board must offer the dentist a final interview in accordance with paragraph 4.

### **Initial Interview**

- 2.—(1) At an initial interview arranged under paragraph 1(3), the Health Board must—
- (a) confirm whether the dentist meets the eligibility criteria specified in paragraph 1(2);
  - (b) consider whether the dentist has—
    - (i) completed appropriate continuing professional development activities on the care of older people; or
    - (ii) provided general dental services to care home residents in care homes on a sufficient number of occasions,
 to enable the Health Board to form the opinion that the dentist is a suitable person to undertake the enhanced training and mentoring in domiciliary care;
  - (c) consider whether the dentist can demonstrate that they are able to make arrangements which would permit them to comply with the increased requirements of paragraph 6 (emergency cover) of schedule 1 as they would apply to that dentist if that dentist were a domiciliary care dentist in the Health Board area;
  - (d) decide whether a place on the enhanced training and mentoring in domiciliary care will be requested by the Health Board on behalf of the dentist.
- (2) The Health Board must provide the dentist with confirmation in writing of the decision taken under sub-paragraph (1)(d) within 7 days beginning with the date of the interview and must give its reasons for the decision.
- (3) The Health Board must submit a request for a place on the enhanced training and mentoring in domiciliary care to NHS Education for Scotland on behalf of each dentist for whom it decides to request a place after an initial interview conducted under sub-paragraph (1).

### **Enhanced training and mentoring in domiciliary care**

3. The enhanced training and mentoring in domiciliary care must be composed of—
- (a) training containing elements on—
    - (i) treating medically complex patients;
    - (ii) attending to patients with a physical or cognitive disability;
    - (iii) treating the ageing patient;
    - (iv) practical considerations when providing domiciliary care;

- (v) communication skills;
- (vi) delivering the oral health improvement programme for carers of older people;
- (b) training on the legal and ethical responsibilities of a dentist when treating adults with incapacity;
- (c) supported learning in which the dentist attends domiciliary care visits accompanied by a mentor selected by a Health Board.

### **Final Interview**

- 4.—(1) A Health Board must conduct a final interview if—
- (a) the Health Board has decided to offer an interview to a dentist who has a Certificate of Completion of Enhanced Skills Training (Domiciliary Care); or
  - (b) the Health Board receives notice that a dentist for whom they requested a place on the enhanced training and mentoring in domiciliary care has been awarded a Certificate of Completion of Enhanced Skills Training (Domiciliary Care).
- (2) At the final interview the Health Board must—
- (a) if the dentist is being interviewed under the circumstances described in sub-paragraph (1)(a)—
    - (i) consider whether the dentist meets the eligibility criteria specified in paragraph 1(2);
    - (ii) consider whether the previous provision of enhanced skills in domiciliary care by the dentist is sufficient to enable the Health Board to form the opinion that the dentist has the necessary competence to provide enhanced skills in domiciliary care in the area;
  - (b) if the dentist is being interviewed under the circumstances described in sub-paragraph (1)(b), consider whether the performance of the dentist at the enhanced training and mentoring in domiciliary care was sufficient to enable the Health Board to form the opinion that the dentist has the necessary competence to provide enhanced skills in domiciliary care in the area;
  - (c) consider whether the dentist has demonstrated that they are able to make arrangements which would permit them to comply with the increased requirements of paragraph 6 (emergency cover) of schedule 1 as they would apply to that dentist if that dentist were to be designated as a domiciliary care dentist for the area;
  - (d) decide whether the dentist should be designated as a domiciliary care dentist for the area.
- (3) The Health Board must provide the dentist with confirmation in writing of the decision taken under sub-paragraph (2)(d) within 7 days of the date of the interview and must give the reasons for the decision.
- (4) A decision taken by the Health Board under sub-paragraph (2)(d) will have effect from such date as the Health Board may specify in writing to the dentist.

### **Designating a new domiciliary care dentist**

5. Where the Health Board decides to designate a dentist as a domiciliary care dentist for the area the Health Board must—
- (a) amend the information on the dental list in respect of that dentist to indicate that they are a domiciliary care dentist for the area;

- (b) identify a salaried dentist with sufficient experience of domiciliary care to provide support and advice to the dentist in the dentist's enhanced skills in domiciliary care duties;
  - (c) if the Health Board is aware of one or more care homes which the Health Board believes would benefit from having the dentist assigned to them, assign the dentist to that care home or those care homes;
  - (d) inform the dentist that it has taken these actions.”.
- 19.** In schedule 1 (terms of service for dentists)—
- (a) in paragraph 6 (emergency cover)—
    - (i) in sub-paragraph (1), after “paragraph 18” insert “and sub-paragraph (1A)”;
    - (ii) after sub-paragraph (1) insert—
      - “(1A) Where the contractor is a domiciliary care dentist, the contractor must personally provide prompt care and treatment to a care home resident with whom they have a continuing care arrangement unless—
      - (a) the need for prompt care and treatment arises outside of the in-hours period; or
      - (b) the exception in paragraph 51(1) applies.”,
    - (iii) in sub-paragraph (2), after “sub-paragraph (1)” insert “or sub-paragraph (1A)”,
  - (b) in paragraph 10 (termination of a continuing care arrangement or a capitation arrangement)—
    - (i) in sub-paragraph (1), after “sub-paragraphs” insert “(1A)”,
    - (ii) after sub-paragraph (1) insert—
      - “(1A) Where a contractor wishes to terminate a continuing care arrangement under sub-paragraph (1) if—
      - (a) the contractor is a domiciliary care dentist; and
      - (b) the patient concerned is a care home resident,

the contractor must give not less than 6 months' notice in writing of the termination of the arrangement.”,
    - (iii) after sub-paragraph (2) insert—
      - “(2A) Where a contractor who is a domiciliary care dentist gives notice under sub-paragraph (1) to a care home resident, the contractor must obtain the written consent of the Health Board before making any arrangements for another dentist to complete the treatment of the patient on the contractor's behalf.”,
    - (iv) in sub-paragraph (4), for “3 months' notice” substitute “the applicable length of notice required by this paragraph”,
  - (c) in paragraph 11 (violent patients), before sub-paragraph (1) insert—
    - “(A1) A domiciliary care dentist may not terminate a continuing care arrangement with a care home resident in accordance with this paragraph.”,
  - (d) after paragraph 11 insert—

**“Violent behaviour against domiciliary care dentists**

**11A.—**(1) Where a care home resident who is receiving enhanced skills in domiciliary care commits an act of violence against any dentist, dental care professional or any other person employed or engaged by the contractor, or has behaved in such a way that such

a person has feared for their safety, the contractor may notify the Health Board and care home manager that an incident has occurred.

(2) Notification to the Health Board under sub-paragraph (1) or sub-paragraph (11) may be given by any means including telephone, e-mail or fax, but if it is not given in writing the contractor must subsequently confirm it in writing before the end of the period of seven days beginning with the date of the notification under sub-paragraph (1) or sub-paragraph (11) (and, for this purpose a faxed or e-mailed confirmation is not a written one).

(3) Notification to the Health Board under sub-paragraph (1) or sub-paragraph (11) must confirm that the contractor has also notified the care home manager.

(4) The Health Board must, before the end of the period of 7 days beginning with the date on which the notification was given under sub-paragraph (1) or sub-paragraph (11), arrange for a meeting between the contractor, the Health Board and a representative of the care home.

(5) The Health Board must take all reasonable steps to ensure that a meeting arranged under sub-paragraph (4) takes place before the end of the period of 35 days beginning with the date of the notification under sub-paragraph (1) or sub-paragraph (11).

(6) At a meeting arranged under sub-paragraph (4) the Health Board must—

- (a) discuss the incident about which the contractor has given notification under sub-paragraph (1) or sub-paragraph (11);
- (b) discuss measures which can be taken to reduce the likelihood of a further incident;
- (c) take all reasonable steps to agree with the contractor and the representative of the care home either—
  - (i) the measures (if any) which will be implemented; or
  - (ii) the further steps to be taken with a view to reaching agreement on such measures;
- (d) if measures are agreed under sub-paragraph (c)(i), agree with the contractor and the representative of the care home the dates by which the agreed measures will be implemented;
- (e) if further steps are agreed under sub-paragraph (c)(ii), agree with the contractor and the representative of the care home the dates by which the further steps will be completed.

(7) Subject to sub-paragraph (8), the contractor may, by notification to the Health Board, terminate its continuing care arrangement with a care home resident about whom it has given notification under sub-paragraph (1) or sub-paragraph (11) if—

- (a) a measure agreed at a meeting arranged under sub-paragraph (4) is not implemented by the date agreed;
- (b) a further step agreed at a meeting arranged under sub-paragraph (4) is not completed by the date agreed;
- (c) no measures or further steps are agreed at a meeting arranged under sub-paragraph (4).

(8) The contractor may not terminate a continuing care arrangement under sub-paragraph (7) if the contractor agreed at a meeting arranged under sub-paragraph (4) that no measures were required.

(9) Where the contractor notifies the Health Board under sub-paragraph (7) of the termination of a continuing care arrangement, the Health Board must take reasonable steps to inform the care home resident concerned.

(10) Where no measures or further steps are agreed at a meeting arranged under sub-paragraph (4), the Health Board may treat the contractor as having given notification to the Health Board of the contractor’s wish to terminate its continuing care arrangement with the care home resident and the Health Board may notify the contractor and the care home resident that the continuing care arrangement between them is terminated.

(11) Where a further incident of the kind described in sub-paragraph (1) is caused by a care home resident, about whom measures agreed under this paragraph have previously been implemented, the contractor may notify the Health Board of this further incident and the Health Board must either—

- (a) send a notice to the contractor agreeing to allow the contractor to terminate the continuing care arrangement with the care home resident and take all reasonable steps to inform the care home resident of this termination; or
- (b) arrange a further meeting under sub-paragraph (4).”

(e) in paragraph 13 (referral to dental students), before sub-paragraph (2)(a) insert—

“(za) that the patient is not a care home resident who has a continuing care arrangement with a domiciliary care dentist;”,

(f) in paragraph 26 (domiciliary visits)—

- (i) at the beginning of sub-paragraph (2) insert “Subject to sub-paragraph (3),”,
- (ii) after sub-paragraph (2) insert—

“(3) Where the contractor is a domiciliary care dentist who is assigned to a care home, the contractor must make visits to the residents of that care home regardless of the distance between the care home and the contractor’s practice premises.”,

(g) in paragraph 44 (deputies and assistants)—

- (i) after sub-paragraph (1) insert—

“(1A) A contractor who is a domiciliary care dentist may not arrange for the care and treatment of care home residents to be provided on their behalf by a deputy or assistant other than in accordance with paragraph 51.”,

(h) after paragraph 49 insert—

## “PART VII

### ADDITIONAL TERMS OF SERVICE FOR DOMICILIARY CARE DENTISTS

#### **Attendance at the care home**

**50.—**(1) A domiciliary care dentist must, within 14 days of being assigned to a care home, write to the care home manager of the assigned care home to ask if there are any days and times at which it would be inconvenient to the manager or other care home staff for the contractor to attend the care home (“protected times”).

(2) Except in the case of an emergency, the domiciliary care dentist must—

- (a) only attend an assigned care home during the in-hours period;
- (b) not attend an assigned care home within protected times of which they have been informed.

(3) Where a care home resident (or a person acting on their behalf) who resides in a care home to which the domiciliary care dentist is assigned informs the domiciliary care

dentist that the care home resident would like to enter into a continuing care arrangement, the domiciliary care dentist must, within 6 weeks beginning with the day on which the information was received, examine and accept the patient in accordance with paragraph 4 of this schedule.

(4) The domiciliary care dentist must examine care home residents with whom they have a continuing care arrangement not less frequently than—

- (a) in the case of dentate patients, once every 6 months
- (b) in the case of edentulous patients, once every 12 months.

(5) The domiciliary care dentist must offer to provide topical fluoride treatment as a part of their regular examination of dentate care home residents with whom they have a continuing care arrangement .

### **In-hours emergencies**

**51.**—(1) A domiciliary care dentist must personally provide prompt care and treatment to care home residents with whom they have a continuing care arrangement during the in-hours period, except where the domiciliary care dentist is absent from their enhanced skills in domiciliary care duties.

(2) The domiciliary care dentist must enter, and maintain in effect, emergency cover arrangements with one or more other dentists which, in the event that the domiciliary care dentist is absent from their enhanced skills in domiciliary care duties, will—

- (a) cover the in-hours period on each working day; and
- (b) provide sufficient emergency care provision to each of the care homes to which the domiciliary care dentist is assigned.

(3) A domiciliary care dentist must receive approval from the Health Board for any proposed emergency cover arrangement, or proposed change to an existing emergency cover arrangement, before that arrangement or change can take effect.

(4) A request for the approval of the Health Board under sub-paragraph (3) must provide—

- (a) the name of the dentist with whom the contractor proposes to make the arrangement;
- (b) the address of that dentist's practice premises;
- (c) the proposed duration of the arrangement (if this duration is not indefinite); and
- (d) the days and times during which that dentist will provide emergency cover under the proposed arrangement.

(5) The Health Board must within 28 days beginning with the day on which it receives a request under sub-paragraph (3) make its decision on the request and write to the domiciliary care dentist to inform them that—

- (a) the request is approved; or
- (b) the request is refused and to give the reasons for that refusal.

(6) The domiciliary care dentist must give the Health Board not less than 7 days' notice of the termination of an emergency cover arrangement.

### **Continuing professional development**

52. A domiciliary care dentist must complete update training on the legal and ethical responsibilities of a dentist when treating adults with incapacity provided by NHS Education for Scotland not less than once every five years.

### **Procedure for withdrawing from assigned care home**

53. A domiciliary care dentist who is assigned to a care home may withdraw from their position as an assigned domiciliary care dentist for that care home by giving the Health Board and the care home manager not less than 6 months' notice in writing.

### **Voluntary removal of designation as a domiciliary care dentist**

54.—(1) A domiciliary care dentist may request to withdraw from being designated as a domiciliary care dentist in the area by giving the Health Board not less than 6 months' notice in writing.

(2) A Health Board must grant a request made under sub-paragraph (1) if the domiciliary care dentist has served notice—

- (a) to terminate the continuing care arrangements with all care home residents with whom they have an arrangement;
- (b) to withdraw from acting as the assigned domiciliary care dentist for all of the care homes to which they are assigned.

### **Procedure for assignment to additional care homes**

55.—(1) A domiciliary care dentist may apply to the Health Board to be assigned to one or more care homes in addition to the care homes to which the domiciliary care dentist has been assigned under paragraph 5 of schedule B1.

(2) Within 28 days beginning with the day on which it receives a request under sub-paragraph (1), the Health Board must write to the domiciliary care dentist to—

- (a) inform the domiciliary care dentist that there are currently no care homes in the area which would benefit from an assigned domiciliary care dentist, or as the case may be, an additional assigned domiciliary care dentist; or
- (b) invite the domiciliary care dentist to a meeting to discuss the suitability of the domiciliary care dentist to be assigned to an additional care home.

(3) At a meeting arranged under sub-paragraph (2)(b), the Health Board must—

- (a) consider whether the domiciliary care dentist can demonstrate that they are able to make arrangements which would permit them to comply with the increased requirements of paragraph 6 (emergency cover) of this schedule as those requirements apply to domiciliary care dentists—
  - (i) in relation to the care homes currently assigned to the domiciliary care dentist;
  - (ii) in relation to the additional care homes to which it is proposed to assign the domiciliary care dentist;
- (b) consider whether any other aspect of the performance of the general dental services usually undertaken by the domiciliary care dentist is likely to be negatively affected by assigning additional care homes to the dentist;

(c) decide whether to assign the domiciliary care dentist to one or more additional care homes.

(4) The Health Board must provide the domiciliary care dentist with confirmation in writing of the decision taken under sub-paragraph (3)(c) within 7 days beginning with the date of the meeting and must give the reasons for the decision.”.

**20.** In paragraph 1 of Part IA of schedule 2—

(a) after sub-paragraph (d) insert—

“(da) where the application includes a request to be designated as a domiciliary care dentist, whether the applicant has a Certificate of Completion of Enhanced Skills Training (Domiciliary Care);”.

(b) after sub-paragraph (e) insert—

“(ea) where the dentist is applying to be a cross-border dentist, the address to which correspondence may be sent;”.

(c) after sub-paragraph (l) insert—

“(la) whether the general dental services to be provided are to be restricted to enhanced skills in domiciliary care;”.

**21.** In paragraph 1 of schedule 5 (information to be included in a patient information leaflet) omit sub-paragraph (b).

**22.** In paragraph 1 of schedule 6 (information to be included in a Health Board patient information leaflet) omit sub-paragraph (b).

St Andrew’s House,  
Edinburgh  
16th May 2019

*JOE FITZPATRICK*  
Authorised to sign by the Scottish Ministers

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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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 (the “2010 Regulations”). The 2010 Regulations set out arrangements which a Health Board may make with a dentist under section 25 of the National Health Service (Scotland) Act 1978 (the “1978 Act”). Dental care provided under these section 25 arrangements is known as “general dental services”.

These Regulations amend the 2010 Regulations to allow Health Boards to give certain dentists an additional designation as a “domiciliary care dentist” alongside the dentist’s existing work providing general dental services. The role of a domiciliary care dentist is to provide general dental services to care home residents.

Regulation 3 insert new definitions into the 2010 Regulations and makes modifications to existing definitions in connection with domiciliary care dentists.

Regulations 7 and 18 amend the 2010 Regulations to set out the process by which a dentist may request to become a domiciliary care dentist, the eligibility criteria to be applied and the procedure for deciding on that request.

The 2010 Regulations require Health Boards to maintain a “dental list”, of dentists who are eligible to perform general dental services in the Health Board’s area. Regulations 5, 6, 8, and 20 amend the 2010 Regulations to allow a dental list to record that a dentist is designated as a domiciliary care dentist. Regulation 9 to 15 provide for circumstances in which designation as a domiciliary care dentist on the dental list may be removed or refused.

Schedule 1 of the 2010 Regulations sets out the terms of service which dentists must follow when providing general dental service. Regulations 4 and 19 modify the way in which certain of the terms of service apply to domiciliary care dentists and introduce additional terms of service which apply to domiciliary care dentists.

Regulations 16 and 17 amend the 2010 Regulations to provide for payments to be made to domiciliary care dentists in connection with their work.

The 2010 Regulations require dentists to produce “patient information leaflets” and set out the information which the leaflet must contain. Regulations 21 and 22 amend the 2010 Regulations to remove from the list of information which these leaflets must include the dentist’s sex.