
STATUTORY INSTRUMENTS

2005 No. 3435

**The General Dental Services and Personal Dental
Services Transitional Provisions Order 2005**

PART 2

GENERAL DENTAL SERVICES

CHAPTER 1

Entitlement to General Dental Services Contracts

Entitlement to a general dental services contract

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

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

Individual dental practitioner

4.—(1) Subject to paragraphs (2) and (3), a Primary Care Trust must, if a person so wishes, enter into a general dental services contract with him as an individual dental practitioner if—

- (a) on 31st March 2006 or, if earlier, on the date on which the contract is to be signed, he is included in the dental list of that Primary Care Trust;
- (b) on the date on which the contract is to be signed, he is practising as an individual dental practitioner and—
 - (i) no other dental practitioner, or
 - (ii) no other person providing services under section 35 arrangements, practises in partnership with him; and
- (c) in the case of a contract that is to be signed after 31st March 2006, he is, at the date on which the contract is to be signed, included in a dental performers list.

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

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

- (a) suspended from the—

- (i) Dentists Register under section 32 of the Dentists Act (interim suspension)(1) or by a direction or order of the Health Committee under that Act (health cases),
 - (ii) dental list under section 49I (suspension for the protection of the public or in the public interest) or 49J (suspension pending appeal) of the 1977 Act(2), or
 - (iii) dental performers list under regulation 13 of the Performers Lists Regulations (suspension for the protection of public or in the public interest);
 - (b) on maternity, paternity or adoption leave and is, on that date, in receipt of payments in respect of such leave by virtue of Determination VI of the SDR;
 - (c) on long term sickness leave and is, on that date, in receipt of payments pursuant to Determination VII of the SDR; or
 - (d) performing relevant service.
- (4) Where a person is suspended under or as a consequence of any of the provisions referred to in paragraph (3)(a), a Primary Care Trust shall only be required under paragraph (1) to enter into a general dental services contract with him during the period of that suspension if it is satisfied that—
- (a) having regard to the grounds for suspension he is able to provide (but not perform) services under the contract and the Primary Care Trust is not at risk of material financial loss;
 - (b) the entering into the contract would not—
 - (i) put at risk the safety of the contractor's patients, or
 - (ii) be prejudicial to the efficiency of the provision of primary dental services in the area of the Primary Care Trust; and
 - (c) the practitioner has in place adequate arrangements for the provision of services under the contract during the period of his suspension.
- (5) Where a Primary Care Trust refuses to enter into a general dental services contract as a consequence of paragraph (4), it shall notify the prospective contractor in writing of its decision, reasons for that decision and of the individual's right of appeal under article 7.
- (6) Where the contracting parties are unable to agree on a particular term of the general dental services contract and the dispute is referred to the Secretary of State for determination in accordance with section 4 of the 1990 Act (NHS contracts) or regulation 8(1) of the GDS Contracts Regulations (pre-contract disputes), the determination may if it is made after the contract has been entered into—
- (a) vary the terms of the contract; or
 - (b) bring the contract to an end.
- (7) Where a determination is made in accordance with paragraph (6), section 4(8)(a) and (b) of the 1990 Act shall apply in respect of the determination where the terms of the general dental services contract is varied or brought to an end.

Partnerships

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

- (a) on 31st March 2006 or, if earlier, on the date on which the contract is to be signed, he is included in the dental list of that Primary Care Trust and is practising;
- (b) on 31st March 2006 or, if earlier, on the date on which the contract is to be signed, he is in partnership with one or more persons who are—

(1) 1984 c. 24; as amended by S.I. 2001/3926 and 2005/2011.

(2) Sections 49I and 48J are inserted into the 1977 Act by the 2001 Act, section 25.

- (i) included in the dental list of the Primary Care Trust, or
 - (ii) providing general dental services under section 35 arrangements (and are not dental practitioners); and
 - (c) he wishes to enter into a contract as an individual practising in partnership with the persons referred to in paragraph (b).
- (2) A dental practitioner does not fall within paragraph (1)(a) if he is included in the dental list on the date in question, and in accordance with regulation 4(2)(b)(i) of the 1992 Regulations, it is indicated in the dental list that the dental practitioner only provides orthodontic treatment.
- (3) A person shall be treated as practising for the purposes of paragraph (1)(a) if he would have been so practising on the date in question except for the fact that on that date he is—
- (a) suspended from the—
 - (i) Dentists Register by order under section 32 of the Dentists Act or by a direction or order of the Health Committee under that Act,
 - (ii) dental list under section 49I or 49J of the 1977 Act, or
 - (iii) dental performers list under regulation 13 of the Performers Lists Regulations;
 - (b) on maternity, paternity or adoption leave and is, on that date, in receipt of payments in respect of such leave pursuant to Determination VI of the SDR;
 - (c) on long term sickness leave and is, on that date, in receipt of payments pursuant to Determination VII of the SDR; or
 - (d) performing relevant service.
- (4) Where the person referred to in paragraph (1)(a) is suspended under or as a consequence of any of the provisions referred to in paragraph (3)(a), a Primary Care Trust shall only be required under paragraph (1) to enter into a general dental services contract with that person and the persons practising in partnership with him, if it is satisfied that—
- (a) having regard to the grounds for suspension the individual so suspended is able to provide (but not perform) services under the contract and the Primary Care Trust is not at risk of material financial loss;
 - (b) the entering into the contract would not—
 - (i) put at risk the safety of the contractor's patients, or
 - (ii) be prejudicial to the efficiency of the provision of primary dental services in the area of the Primary Care Trust; and
 - (c) the partnership has in place adequate arrangements for the provision of services under the contract during the period of the individual's suspension.
- (5) Where a Primary Care Trust refuses to enter into a general dental services contract as a consequence of paragraph (4), it shall notify the individual who is suspended in writing of its decision, reasons for that decision and of the individual's right of appeal under article 7.
- (6) Where the contracting parties are unable to agree on a particular term of the general dental services contract, article 4(6) and (7) shall apply.

Pilot scheme providers

6.—(1) Subject to section 28M(3) of the 1977 Act (but not subject to regulation 4 and 5 of the GDS Contracts Regulations), a Primary Care Trust must, if a pilot scheme provider so wishes, enter

into a general dental services contract instead of a personal dental services agreement where the pilot scheme provider—

- (a) is entitled to enter into a personal dental services agreement with the Primary Care Trust under article 14;
- (b) is on 31st March 2006, or if earlier, on the date on which the contract is to be signed, providing services that are equivalent to mandatory services under the pilot scheme agreement; and
- (c) wishes to enter into a general dental services contract instead of a personal dental services agreement.

(2) Where a pilot scheme provider enters into a general dental services contract under paragraph (1), it shall have no entitlement to enter into a personal dental services agreement with the Primary Care Trust under article 14.

(3) Where the contracting parties are unable to agree on a particular term of the contract, article 4(6) and (7) shall apply.

Appeal against refusal to enter into a contract as a consequence of a suspension

7.—(1) A person who has been notified by a Primary Care Trust under article 4(5) or 5(5) of its refusal to enter into a general dental services contract may appeal to the Secretary of State by giving notice in writing to the Secretary of State within a period of six weeks beginning on the day that the Primary Care Trust notified him of the refusal.

(2) A notice of appeal under paragraph (1) shall include—

- (a) the names and addresses of the parties to the dispute;
- (b) a copy of the notification received from the Primary Care Trust under article 4(5) or 5(5); and
- (c) a brief statement of the grounds for appeal.

(3) The Secretary of State may determine the appeal herself or, if she considers it appropriate, appoint a person or persons to consider and determine it.

(4) Before reaching a decision as to who should determine the dispute, the Secretary of State shall, within the period of seven days beginning with the date on which the notice of appeal was sent to her, send a written request to the parties to make in writing, within a specified period, any representations which they may wish to make about the matter.

(5) The Secretary of State shall give, with the notice under paragraph (4), to the Primary Care Trust which is a party to the appeal, a copy of the notice of appeal.

(6) The Secretary of State shall—

- (a) give a copy of any representations received from a party to the other party; and
- (b) in each case request (in writing) a party to whom a copy of the representations is given to make, within a specified period, any written observations on those representations.

(7) Following receipt of any representations from the parties or, if earlier, at the end of the period for making such representations specified in the request sent under paragraph (4) or (6), the Secretary of State shall, if she decides to appoint a person or persons to consider and determine the dispute—

- (a) inform the parties in writing of the name of the person or persons whom she has appointed; and
- (b) pass to the person or persons so appointed any documents received from the parties pursuant to paragraph (2), (4) or (6).

(8) For the purpose of assisting him in his consideration of the matter, the adjudicator may—

- (a) invite representatives of the parties to appear before him to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which he wishes them to give special consideration; or
- (b) consult other persons whose expertise he considers will assist him in his consideration of the matter.

(9) Where the adjudicator consults another person under paragraph (8)(b), he shall notify the parties accordingly in writing and, where he considers that the interests of any party might be substantially affected by the results of the consultation, he shall give to the parties such opportunity as he considers reasonable in the circumstances to make observations on those results.

(10) In considering the matter, the adjudicator shall consider—

- (a) any written representations made in response to a request under paragraph (4), but only if they are made within the specified period;
- (b) any written observations made in response to a request under paragraph (6), but only if they are made within the specified period;
- (c) any oral representations made in response to an invitation under paragraph (8)(a);
- (d) the results of any consultation under paragraph (8)(b); and
- (e) any observations made in accordance with an opportunity given under paragraph (9).

(11) In this article, “specified period” means such period as the Secretary of State shall specify in the request, being not less than two, nor more than four, weeks beginning with the date on which the notice referred to is given, but the Secretary of State may, if she considers that there is good reason for doing so, extend any such period (even after it has expired) and, where she does so, a reference in this article to the specified period is to the period as so extended.

(12) The adjudicator may, when determining the appeal require the Primary Care Trust to enter into a general dental services contract with the prospective contractor on terms to be agreed between the parties or, where necessary, determined under the pre-contract dispute resolution procedure in section 4(4) of the 1990 Act (NHS contracts) or under regulation 8 of the GDS Contracts Regulations (pre-contract disputes) (whichever is applicable) but may not require the prospective contractor to proceed with the contract.

(13) The adjudicator shall record his determination in writing and shall give notice of the determination (including the record of the reasons) to the parties.

(14) The determination of the adjudicator shall be binding upon the parties.

(15) Subject to the other provisions of this article, the adjudicator shall have wide discretion in determining the procedure of the appeal to ensure the just, expeditious, economical and final determination of the dispute.

(16) In this article, “adjudicator” means the Secretary of State or a person or persons appointed by her under this article.

Duration of entitlement to a general dental services contract

8.—(1) In a case where—

- (a) the prospective contractor has appealed in accordance with article 7; and
- (b) the determination requires the Primary Care Trust to enter into a general dental services contract,

the entitlement of the prospective contractor to enter into such a contract continues for the period of six weeks beginning with the date on which the parties were notified of the determination.

(2) Where a person who is entitled to enter into a general dental services contract under article 4(1) or 5(1) has been unable to do so before 1st April 2006 because he is performing relevant service, his entitlement shall continue until the end of the period of six weeks beginning with the date on which he ceases to perform relevant service.

Appeal against failure of a Primary Care Trust to enter into a general dental services contract

9.—(1) This article applies where a person has—

- (a) offered to enter into a general dental services contract under article 4, 5 or 6; and
- (b) as a result of a failure to act by the Primary Care Trust—
 - (i) been unable to sign such a contract before 1st April 2006, or
 - (ii) in a case where article 8 applies, been unable to sign such a contract within the period of entitlement provided for in accordance with that article.

(2) Where this article applies, the prospective contractor must, if he wishes to enter into a general dental service contract, apply in writing to the Secretary of State—

- (a) before 15th April 2006; or
- (b) in a case where article 8 applies, no later than the end of the period of 14 days beginning on the date his entitlement to enter into such a contract ceases.

(3) An application under paragraph (2) shall specify—

- (a) the names and addresses of the parties to the dispute;
- (b) the grounds on which the applicant claims to be entitled to enter into a general dental services contract; and
- (c) the grounds for alleging default by the Primary Care Trust.

(4) Article 7(3) to 7(16) shall apply to an application made under paragraph (1), subject to the modification that the references in article 7(4) and (5) to a notice of appeal shall be read as references to an application under paragraph (2) of this article.

CHAPTER 2

Contracts: Required Terms

Number of units of dental activity

10.—(1) The number of units of dental activity to be provided by the contractor under a general dental services contract entered into under Chapter 1 shall be determined in accordance with—

- (a) paragraphs (2) to (8) in the case of entitlement to a general dental services contract under article 4 or 5; or
- (b) paragraphs (5) to (7) in the case of entitlement to a general dental services contract under article 6.

(2) The Primary Care Trust shall, by—

- (a) analysing the data it holds in respect of the care and treatment provided under section 35 arrangements during the year 1st October 2004 to 30th September 2005 by the person or persons with whom the contract is to be entered into;
- (b) categorising that care and treatment in accordance with Schedules 1 to 4 of the NHS Charges Regulations, and the principles set out in regulation 4(2) to (5) of those Regulations; and

(c) reference to the conversion criteria to units of dental activity specified in Part 1 of Schedule 2 to the GDS Contracts Regulations,
calculate how many units of dental activity is the equivalent to the care and treatment provided by that person or persons during the year 1st October 2004 to 30th September 2005.

(3) For the purposes of analysing the data in cases where a patient was accepted for care and treatment under a capitation arrangement, the Primary Care Trust shall make an assumption that two clinical examinations have taken place during the year 1st October 2004 to 30th September 2005.

(4) The Primary Care Trust shall reduce the number of units of dental activity calculated in accordance with paragraphs (2) and (3) by 5 per cent in order to determine how many units of dental activity the contractor will provide in each financial year.

(5) Where—

- (a) data does not exist for the period specified in paragraph (2)(a); or
- (b) data does exist, but it is appropriate to adjust the data,

the contractor and the Primary Care Trust shall agree the number of units of dental activity to be provided.

(6) Where the contractor and the Primary Care Trust cannot agree the number of units of dental activity as provided for in paragraph (5), the general dental services contract shall state this to be the case, and shall specify a number of units of dental activity which is determined by the Primary Care Trust.

(7) In determining the number of units of dental activity to be specified under paragraph (6), the Primary Care Trust shall have regard to any data it holds regarding the amount of care and treatment provided under section 35 arrangements or, as the case may be, the pilot scheme agreement, by the person or persons with whom the general dental services contract is to be entered into in the period since 1st October 2004.

(8) Nothing in paragraphs (2) to (4) shall prevent the contracting parties agreeing that the contractor shall provide a number of units of dental activity that is higher or lower than the number calculated in accordance with those paragraphs.

Number of units of orthodontic activity

11.—(1) The number units of orthodontic activity to be provided by the contractor under a general dental services contract entered into under Chapter 1 shall be determined in accordance with—

- (a) paragraphs (2) to (6) in the case of entitlement to a general dental services contract under article 4 or 5; or
- (b) paragraphs (3) to (5) in the case of entitlement to a general dental services contract under article 6.

(2) The Primary Care Trust shall, by—

- (a) analysing the data it holds in respect of the orthodontic care and treatment provided under section 35 arrangements during the year 1st October 2004 to 30th September 2005 by the person or persons with whom the general dental services contract is to be entered into; and
- (b) reference to the conversion criteria to units of orthodontic activity specified in Part 2 of Schedule 2 to the GDS Contracts Regulations,

calculate how many units of orthodontic activity is the equivalent to the orthodontic care and treatment provided by that person or persons during the year 1st October 2004 to 30th September 2005.

(3) Where—

- (a) data does not exist for the period specified in paragraph (2)(a); or

(b) data does exist, but it is appropriate to adjust the data,
the contractor and the Primary Care Trust shall agree the number of units of orthodontic activity to be provided.

(4) Where the contractor and Primary Care Trust cannot agree the number of units of orthodontic activity as provided for in paragraph (3), the general dental services contract shall state this to be the case, and shall specify a number of units of orthodontic activity which is determined by the Primary Care Trust.

(5) In determining the number of units of orthodontic activity to be specified under paragraph (4), the Primary Care Trust shall have regard to any data it holds regarding the amount of orthodontic care and treatment provided under section 35 arrangements or, as the case may be, the pilot scheme agreement, by the person or persons with whom the general dental services contract is to be entered into in the period since 1st October 2004.

(6) Nothing in paragraph (2) shall prevent the contracting parties agreeing that the contractor shall provide a number of units of orthodontic activity that is higher or lower than the number calculated in accordance with paragraph (2).

Premises, facilities and equipment

12.—(1) Where a Primary Care Trust is not satisfied that the prospective contractor has practice premises to be used for the provision of services under the contract that are—

- (a) suitable premises for the delivery of those services; or
- (b) sufficient to meet the reasonable needs of the contractor's patients,

paragraph 12 of Schedule 3 to the GDS Contracts Regulations shall apply as substituted by paragraph (2).

(2) For that paragraph 12 substitute the following—

“Premises, facilities and equipment

12.—(1) The Primary Care Trust and prospective contractor shall ensure that the contract includes a plan that—

- (a) is drawn up and agreed by the Primary Care Trust and the prospective contractor; and
- (b) specifies—
 - (i) the steps to be taken by the contractor to bring the practice premises up to the appropriate standard,
 - (ii) any financial support that may be available from the Primary Care Trust, and
 - (iii) the timescale on which the steps referred to in sub-paragraph (i) will be taken.

(2) Subject to the plan referred to in sub-paragraph (1), the contractor shall ensure that the practice premises used for the provision of services under the contract are—

- (a) suitable for the delivery of those services; and
- (b) sufficient to meet the reasonable needs of the contractor's patients.

(3) The obligation in sub-paragraph (2) includes providing proper and sufficient waiting-room accommodation for patients.

(4) The contractor shall provide, in relation to all of the services to be provided under the contract, such other facilities and equipment as are necessary to enable it to perform those services properly.

(5) In this paragraph, “practice premises” includes a mobile surgery.”

Treatment commenced before 1st April 2006

13.—(1) Where care and treatment is commenced under section 35 arrangements or, as the case may be, a pilot scheme agreement, before 1st April 2006 and is not completed on 31st March 2006, the contractor shall use its best endeavours to complete that treatment under its general dental services contract in accordance with paragraph 5(3) of Schedule 1 or, as the case may be, paragraph 6(2) of Schedule 3 to the GDS Contracts Regulations.

(2) Subject to paragraph (3), where treatment specified in a treatment plan provided in accordance with—

- (a) paragraph 4 of Schedule 1 to the 1992 Regulations (as amended by article 27); or
- (b) the PDS Directions as modified by article 28,

is not completed by 1st April 2006 that plan shall, after that date, be treated as though it were a treatment plan provided in accordance with paragraph 7 of Schedule 3 to the GDS Contracts Regulations and with regard to it, the requirements in sub-paragraph (1) of that paragraph were satisfied.

(3) Where treatment specified in a treatment plan in respect of orthodontic care and treatment provided in accordance with—

- (a) paragraph 4 of Schedule 1 to the 1992 Regulations (as amended by article 27); or
- (b) the PDS Directions (as modified by article 28),

is not completed by 1st April 2006 that plan shall, after that date, be treated as though it were a treatment plan provided in accordance with paragraph 6 of Schedule 1 to the GDS Contracts Regulations and with regard to it, the requirements in sub-paragraph (1) of that paragraph were satisfied.

(4) Where care and treatment is commenced prior to 1st April 2006 and continues or is completed on or after that date, all of that care and treatment provided shall be treated as though it were a course of treatment or, as the case may be, an orthodontic course of treatment provided in accordance with the GDS Contracts Regulations.