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STATUTORY INSTRUMENTS

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**2005 No. 3435**

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

**PART 3**

**PERSONAL DENTAL SERVICES**

**CHAPTER 1**

**Entitlement to Personal Dental Services Agreements**

**Pilot scheme providers**

**14.**—(1) A Primary Care Trust must, if a pilot scheme provider so wishes, enter into a personal dental services agreement with a provider if, on 31st March 2006 or, if earlier, on the date the agreement is to be signed, the pilot scheme provider is providing services to that Primary Care Trust under a pilot scheme agreement.

(2) Where a pilot scheme provider enters into a personal dental services agreement under paragraph (1), it shall have no entitlement to enter into a general dental services contract under article 6.

(3) Where the contracting parties are unable to agree on a particular term of the agreement 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 PDS Agreements Regulations (pre-contract disputes), the determination may if it is made after the agreement has been entered into—

- (a) vary the terms of the agreement; or
- (b) bring the agreement to an end.

(4) Where a determination is made in accordance with paragraph (3), section 4(8)(a) and (b) of the 1990 Act shall apply in respect of the determination where the agreement is varied or brought to an end.

**Persons who would be entitled to enter into a general dental services contract**

**15.**—(1) A Primary Care Trust must, if a person so wishes, enter into a personal dental services agreement instead of a general dental services contract, where—

- (a) the person would be entitled to enter into a general dental services contract with it under article 4 or 5; and
- (b) that person wishes to enter into a personal dental services agreement instead of a general dental services contract.

(2) Where the person would be entitled to enter into a general dental services contract under article 5, the personal dental services agreement must be with that person and the persons referred to it in article 5(1)(b).

(3) Where a person enters into a personal dental services agreement under paragraph (1), he shall have no entitlement to enter into a general dental services contract under article 4 or 5.

(4) Where the contracting parties are unable to agree on a particular term of the agreement, article 14(3) and (4) shall apply.

### **Individual dental practitioners who provide only orthodontic care and treatment**

**16.**—(1) Subject to paragraph (2), a Primary Care Trust must, if a person so wishes, enter into a personal dental services agreement with him as the only other party to an agreement if—

- (a) on 31st March 2006 or, if earlier, on the date on which the agreement is to be signed, he is included in the dental list of that Primary Care Trust 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 care and treatment;
- (b) on the date on which the agreement 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 an agreement that is to be signed after 31st March 2006, he is, at the date on which the agreement is to be signed, included in a dental performers list.

(2) 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) or by a direction or order of the Health Committee under that Act (health cases),
  - (ii) dental list under section 49I (suspension for protection of the public or in the public interest) or 49J (suspension pending appeal) of the 1977 Act, 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.

(3) Where a person is suspended under or as a consequence of any of the provisions referred to in paragraph (2)(a), a Primary Care Trust shall only be required under paragraph (1) to enter into a personal dental services agreement 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 agreement and the Primary Care Trust is not at risk of material financial loss;
- (b) the entering into the agreement 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 agreement during the period of his suspension.

(4) Where a Primary Care Trust refuses to enter into a personal dental services agreement as a consequence of paragraph (3), 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 18.

(5) Where the contracting parties are unable to agree on a particular term of the personal dental services agreement, article 14(3) and (4) shall apply.

### **Partnerships that provide only orthodontic care and treatment**

**17.**—(1) A Primary Care Trust must, if a person so wishes, enter into a personal dental services agreement with him (and the persons referred to in paragraph (b)) if—

- (a) on 31st March 2006 or, if earlier, on the date on which the agreement is to be signed, he is—
  - (i) included in the dental list of that Primary Care Trust and, in accordance with regulation 4(2)(b)(i) of the 1992 Regulations, it is indicated in that list that the dental practitioner provides only orthodontic care and treatment, and
  - (ii) practising;
- (b) on 31st March 2006 or, if earlier, on the date on which the agreement is to be signed, he is practising in partnership with one or more persons who are—
  - (i) included in the dental list of the Primary Care Trust and, in accordance with regulation 4(2)(b)(i) of the 1992 Regulations, it is indicated in the list that they provide only orthodontic care and treatment, or
  - (ii) providing general dental services under section 35 arrangements (and are not dental practitioners); and
- (c) he wishes the Primary Care Trust to enter into an agreement with him and the persons referred to in paragraph (b).

(2) 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 the date he is—

- (a) suspended from the—
  - (i) Dentists Register under section 32 of the Dentist 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 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.

(3) 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 (2)(a), a Primary Care Trust shall only be required under paragraph (1) to enter into a personal dental services agreement with that person and the persons referred to in paragraph (1)(b), 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 agreement and the Primary Care Trust is not at risk of material financial loss;
- (b) the entering into the agreement 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 agreement during the period of the individual's suspension.
- (4) Where the Primary Care Trust refuses to enter into a personal dental services agreement as a consequence of paragraph (3), 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 18.
- (5) Where the contracting parties are unable to agree on a particular term of the personal dental services agreement, article 14(3) and (4) shall apply.

### **Appeal against refusal to enter into an agreement as a consequence of a suspension**

**18.**—(1) A person who has been notified by a Primary Care Trust under article 16(4) or 17(4), of its refusal to enter into a personal dental services agreement 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) The procedure referred to in article 7(2) to (16) shall apply as if the reference—
  - (a) in paragraph (2)(b), to article 4(5) or 5(5) were to article 16(4) or 17(4); and
  - (b) in paragraph (12)—
    - (i) to a general dental services contract were to a personal dental services agreement,
    - (ii) to GDS Contracts Regulations were to PDS Agreements Regulations, and
    - (iii) to the contract were to the agreement.

### **Duration of entitlement to a personal dental services agreement**

- 19.**—(1) In a case where—
- (a) the prospective contractor has appealed in accordance with article 18; and
  - (b) the determination requires the Primary Care Trust to enter into a personal dental services agreement,

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

(2) Where a person who is entitled to enter into an agreement under article 14(1), 15(1), 16(1) or 17(1) has been unable to do so before 1st April 2006 because he is performing relevant service, he shall be entitled to exercise his entitlement to enter into a personal dental services agreement until the end of the period of six weeks beginning on the date on which he ceases to perform relevant service.

(3) Nothing in this Order shall require a Primary Care Trust to enter into a personal dental services agreement with any person (whether that person contracts alone or with others) on more than one occasion.

### **Appeal against failure of a Primary Care Trust to enter into a personal dental services agreement**

- 20.**—(1) This article applies where a person or persons has—
- (a) offered to enter into a personal dental services agreement under article 14, 15, 16 or 17; and
  - (b) as a result of a failure to act by the Primary Care Trust—
    - (i) been unable to sign such an agreement before 1st April 2006, or

- (ii) in a case where article 19 applies, been unable to sign such an agreement 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 personal dental service agreement, apply in writing to the Secretary of State—
  - (a) before 15th April 2006; or
  - (b) in a case where article 19 applies, no later than the end of the period of 14 days beginning on the date his entitlement to enter into such an agreement 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 personal dental services agreement; and
  - (c) the grounds for alleging default by the Primary Care Trust.
- (4) Article 7(3) to (16) shall apply to an application made under paragraph (2) subject to the modifications in paragraph (5).
- (5) In article 7—
  - (a) in paragraphs (4) and (5), the references to notice of appeal shall be read as references to an application under this article; and
  - (b) in paragraph (12)—
    - (i) to a general dental services contract were to a personal dental services agreement,
    - (ii) to GDS Contracts Regulations were to PDS Agreements Regulations, and
    - (iii) to the contract were to the agreement.

## CHAPTER 2

### Agreements: Required Terms

#### **Duration of agreements**

**21.**—(1) In the case of entitlement to a personal dental services agreement under article 14, the duration of the agreement to be entered into shall be a period of not less than the unexpired period as at the 31st March 2006 of the pilot scheme agreement.

(2) In the case of entitlement to a personal dental services agreement under article 16 or 17, the duration of the agreement to be entered into shall be for a period of not less than five years.

#### **Number of units of dental activity**

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

- (a) paragraphs (5) to (7) in the case of entitlement to a personal dental services agreement under article 14; or
  - (b) paragraphs (2) to (8) in the case of entitlement to a personal dental services agreement under article 15.
- (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 agreement 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 personal dental services agreement 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 personal dental services agreement 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**

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

- (a) paragraphs (3) to (5) in the case of entitlement to a personal dental services agreement under article 14;
- (b) paragraphs (2) to (5) and (7) in the case of entitlement to a personal dental services agreement under article 15; or
- (c) paragraph (6) in the case of entitlement to a personal dental services agreement under article 16 or 17.

(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 personal dental services agreement 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 personal dental services agreement 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 personal dental services agreement is to be entered into in the period since 1st October 2004.

(6) In the case to which paragraph (1)(c) applies, the number of units of orthodontic activity to be provided under the personal dental services agreement shall be one fifty-fifth of the negotiated annual agreement value of that agreement, as determined in accordance with directions under section 28E(3A) of the 1977 Act (personal dental services: regulations)(1) (so the contractor and the Primary Care Trust must agree the number of units of orthodontic activity to be provided and the negotiated annual agreement value simultaneously).

(7) Nothing in paragraph (2) shall prevent the contracting parties from 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 that paragraph.

### **Premises, facilities and equipment**

**24.**—(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 personal dental services agreement 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 13 of Schedule 3 to the PDS Agreements Regulations shall apply as substituted by paragraph (2).

(2) For that paragraph 13 substitute the following—

#### **“Premises, facilities and equipment**

**13.**—(1) The Primary Care Trust and prospective contractor shall ensure that the agreement includes a plan that—

- (a) is drawn up and agreed by the Primary Care Trust and the prospective contractor; and

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(1) Section 28E was inserted into the 1977 Act by the 1997 Act, section 22(1) and subsection (3A) was inserted into section 28E by the 2003 Act, section 177(8).

(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 agreement 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 agreement, 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 prior to 1st April 2006**

**25.**—(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 personal dental services agreement in accordance with paragraph 5(3) of Schedule 1 or, as the case may be, paragraph 7(2) of Schedule 3 to the PDS Agreements 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 8 of Schedule 3 to the PDS Agreements Regulations and with regard to that plan, 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 PDS Agreements Regulations and with regard to that plan, 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 care and treatment provided in accordance with the PDS Agreements Regulations.