

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (PERFORMERS LISTS)
AMENDMENT REGULATIONS 2005

2005 No. 3491

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 These Regulations amend the National Health Service (Performers Lists) Regulations 2004 (“The 2004 Regulations”) (S.I. 2004/585) which provide for lists of persons performing primary medical services to be kept by Primary Care Trusts (PCTS) in accordance with the provisions of section 28X of the National Health Service Act 1977 (“the 1977 Act”).
 - 2.2 The amendment regulations insert new regulation 18A in relation to national disqualifications from lists made by the Family Health Services Appeal Authority established by section 49S of the 1977 Act and inserts new Part 3 in relation to Dental Performers Lists.
 - 2.3 The Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”) provides the legislative framework for the establishment of primary dental services. It is intended that the new contracting arrangements will underpin modernised, locally sensitive primary dental services properly integrated with the rest of the NHS.
 - 2.4 The National Health Service (General Dental Services Contracts) Regulations 2005 (“the GDS Regulations”) replace the NHS (General Dental Services) Regulations 1992 (SI 1992/661)(“the 1992 Regulations”) which provide for general dental services under section 35 of the National health Service Act 1977 (“the 1977 Act”).
 - 2.5 The National Health Service (Personal Dental Services Agreements) Regulations 2005 (“the PDS Regulations”) replace the PDS piloting regime under the National Health Service (Primary Care) Act 1997 (“the 1997 Act”). The policy intention is to “mainstream” the successful piloting of local contracts as a permanent part of NHS contracting.
 - 2.6 From 1 April 2006 it is intended to establish GDS contracts and PDS agreements for high street dentists to provide primary dental services. The new contractual arrangements move away from the general dental services item of service remuneration to an annual payment no longer directly related to the dentists activity. This will enable dentists to spend more time with their patients and adopt a more preventive approach to oral health care.

- 2.7 Section 16CA(2) of the 1977 Act, inserted by the 2003 Act enables the PCT to provide primary dental services itself.
- 2.8 Provision of primary dental services under a GDS contract, a PDS agreement or by the PCT itself under s16CA(2) requires the dental performer to be included in a performers list kept by a PCT in England.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Background

- 4.1 The National Health Service (General Dental Services) Regulations 1992 (“the 1992 Regulations”) and The National Health Service (General Dental Services Supplementary List) and (General Dental Services) Amendment Regulations 2003 (“the 2003 Regulations) provide for the “listing” of dental practitioners considered by the Primary Care Trust (PCT) to be suitable to provide or assist in the provision of general dental services. When primary dental services under the 2003 Act are established on 1 April 2006, the 1992 Regulations and the 2003 Regulations will be revoked.
- 4.2 The 2003 Act inserts into the 1977 Act new section 28X, which provides for lists of persons performing primary medical and dental services. The National Health Service (Performers Lists) Regulations 2004 provide for the listing of medical performers of primary medical services. The National Health Service (Performers Lists) Amendment Regulations 2005 (“the Performers Lists Regulations”) amend the principal regulations, the National Health Service (Performers Lists) Regulations 2004 (S.I. 2004 No. 585), to include dental performers on similar terms to medical performers.
- 4.3 The principal regulations provide for refusal to include, conditional inclusion, contingent removal and suspension from the relevant performers list and for application for disqualification.

5. Extent

This instrument applies to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution, no statement is required.

7. Policy background

- 7.1 The Shipman Enquiry reported in 2002 but the Government acted before then to take powers to ensure that medical, dental, ophthalmic and pharmaceutical lists held by PCTs included all practitioners who work under NHS

arrangements in primary care. The relevant “Lists” include practitioners considered suitable to be engaged in the provision of the relevant service under Part 2 of The National Health Service Act 1977 (“the 1977 Act”).

- 7.2 The Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”) provides the legislative framework for the establishment of primary dental services
- 7.3 From 1 April 2006 it is intended to establish GDS contracts and PDS agreements for high street dentists to provide primary dental services. Primary dental services are dental services provided under a GDS contract, a PDS agreement or by the PCT itself.
- 7.4 To perform primary dental services, dentists must be included in a performers list of a PCT in England and met the conditions prescribed in the Performers lists Regulations.
- 7.5 The regulations set out the information which must be provided and the declarations a dentist must make to be included in a list. The regulations make other prescribed conditions which must be met, for example completion of a period of vocational training.
- 7.6 The listing regime includes provisions in relation to the conditional inclusion in a list, suspension from the list, contingent removal and disqualification. A national disqualification can be determined by the Family Health Services Appeal Authority established by section 49S of the 1977 Act.

8. Impact

- 8.1 A full Regulatory Impact Assessment is attached to this memorandum.
- 8.2 The Dental Practice Board (DPB) is currently responsible for all payments to, and monitoring of, dentists providing services under the current general dental services. The DPB is to be replaced by the NHS Business Services Authority (BSA) in 2006. The intention is that the BSA will be used in the same way in the new regime as in the old i.e. to pay and monitor providers of dental services. This will significantly reduce the impact on the public sector.
- 8.3 It is planned to delegate PCTs’ administrative functions in relation to GDS Contracts and PDS Agreements to the BSA . The BSA will verify patient charges and provide the PCT with regular monitoring information. PCTs’ administrative costs should not increase.
- 8.4 As a by-product of this monitoring information the BSA will be able to provide information for PCTs about performers in its area and to contractors employing the performers, in which PCT list the performers name is included.

9. Contact

Chris Audrey

Department of Health
New King's Beam House
20 Upper Ground
London SE1 9BW
Tel 020 7633 4149
GTN 396 34149
Chris.Audrey@dh.gsi.gov.uk

can answer any queries regarding the instrument.

FULL REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

The National Health Service (Performers Lists) Amendment Regulations 2005.

2. Purpose and intended effect of measure

(i) The objective

The Government objective is to continue protection of the public and commitments made in response to the Shipman Case in relation to the “listing” of dental professionals suitable to be engaged in the performance of primary dental services.

(ii) The background

The Shipman Enquiry reported in 2002 but the Government acted before then to take powers to ensure that medical, dental, ophthalmic and pharmaceutical lists held by PCTs included all practitioners who work under NHS arrangements in primary care. The relevant “Lists” include practitioners considered suitable to be engaged in the provision of the relevant service under Part 2 of The National Health Service Act 1977 (“the 1977 Act”).

The Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”) provides the legislative framework for the establishment of primary dental services. It is intended that the new contracting arrangements will underpin modernised, locally sensitive primary dental services properly integrated with the rest of the NHS.

The National Health Service (General Dental Services Contracts) Regulations 2005 (“the GDS Regulations”) replace the NHS (General Dental Services) Regulations 1992 (SI 1992/661)(“the 1992 Regulations”) which provide for general dental services under section 35 of the National health Service Act 1977 (“the 1977 Act”).

The National Health Service (Personal Dental Services Agreements) Regulations 2005 (“the PDS Regulations”) replace the PDS piloting regime under the National Health Service (Primary Care) Act 1997 (“the 1997 Act”). The policy intention is to “mainstream” the successful piloting of local contracts as a permanent part of NHS contracting.

From 1 April 2006 it is intended to establish GDS contracts and PDS agreements for high street dentists to provide primary dental services. The new contractual arrangements move away from the general dental services item of service remuneration to an annual payment no longer directly related to the dentists activity. This will enable dentists to spend more time with their patients and adopt a more preventive approach to oral health care.

Section 16CA(2) of the 1977 Act, inserted by the 2003 Act enables the PCT to provide primary dental services itself.

(iii) Rationale for Government intervention

The 1992 Regulations and The National Health Service (General Dental Services Supplementary List) and (General Dental Services) Amendment Regulations 2003 (“the 2003 Regulations) provide for the “listing” of dental practitioners considered by the Primary Care Trust (PCT) to be suitable to provide or be engaged in the provision of general dental services. When primary dental services under the 2003 Act are established on 1 April 2003, the 1992 Regulations and the 2003 Regulations will be revoked.

The 2003 Act inserts into the 1977 Act new section 28X which provides for Lists of persons performing primary medical and dental services. The National Health Service (Performers Lists) Regulations 2004 provide for the listing of medical performers of primary medical services. The National Health Service (Performers Lists) Amendment Regulations 2005 (“the Performers Lists Regulations”) amend the principal regulations, The National Health Service (Performers Lists) Regulations 2004 (S.I. 2004 No. 585) to include dental performers on similar terms to medical performers.

The principal regulations provide for refusal to included, conditional inclusion, disqualification, contingent removal and suspension from the relevant performers list.

The National Health Service (Performers Lists) Amendment Regulations 2005 will apply in England only.

3. Consultation

i) Within government

The Secretary of State has new powers pursuant to the amendments made to the 1977 Act by the 2003 Act to make regulations providing for listing of dental practitioners considered suitable to perform primary dental services under general dental services contracts, arrangements under section 28C of the 1977 Act (personal medical services and personal dental services agreements) and where the PCT is providing primary dental services itself.

ii) Public Consultation

The proposal is not new policy and there has therefore been no public consultations. The British Dental Association and the British Orthodontic Society have been fully involved in the planning of local commissioning under GDS contracts and PDS agreements. Both BDA and BOS have been consulted on the draft Performers Lists Regulations. Following consultation amendments were made to the draft Regulations to address concerns raised.

In addition to amendments for clarification of definitions in regulation 28 and to improve drafting, the main policy changes following consultation include:

- insertion of new regulation 18A making provisions in relation to a national disqualification by the 1977 Act
- remove reference to hospital training post from regulation 31(5)(b)
- reduce from 4 years to 2 years the requirement under regulation 31(5)(b)
- revise previous Schedule paragraph 15 in relation to employed dentists.

4. Options

The following 2 options were considered:

- Option 1 Leave things unchanged. The regulations which underpin the listing of dental practitioners will be revoked in April 2006 with consequent loss of the listing provisions.
- Option 2 Introduce new subordinate legislation under section 28X of the 1977 Act to establish performers lists for dental practitioners performing primary dental services.

5. Costs and Benefits

- (i) Sectors and groups affected

The 1992 Regulations and the Supplementary Lists Regulations already affect:

- dental practitioners providing general dental services
- dental practitioners assisting in the provision of general dental services

The Performers Lists Regulations will have a similar effect, once they are in force. They do not impact on voluntary organisations or charities.

The policy for the new listing regime will not have any race equality impact.

Administration of the new listing arrangements will continue to be the responsibility of PCTs. Both option 1 and option 2 have similar affect on administration by these NHS bodies.

Option 1 and option 2 have a differential affect on users of the service. Under option 1 the arrangements for listing dental practitioners would be lost when the current regulations are revoked in April 2006. The gain under option 2 would be maintenance of the approval and listing of dental practitioners for the protection of NHS dental patients.

- (ii) Analysis of costs and benefits

Option 1

Economic impacts

Practitioners would no longer be asked to apply to PCTs in whose area they wish to work and complete forms and obtain references in each case. PCTs would no longer process applications from applicants with the associated administrative costs.

Social impacts

The listing arrangements would not remain for the protection of NHS patients.

Environmental impacts

There are no environmental impacts from continuing with the current NHS arrangements.

Option 2

Economic impacts

Performers Lists will allow listed dental practitioners to perform primary dental services in any part of England without the need for a fresh application in each area as is the case with the current dental list requirements for principal dentists. This will smooth business processes and allow dental corporations (permitted under Part 4 of the Dentists Act 1984 to carry on the business of dentistry) to move more effectively staff around to meet particular needs in different areas.

There will also, after the transitional exercise, be less administrative burden on PCTs as a practitioner on one performers list will be able to perform in any PCT area in England. This will mean that PCTs will no longer consider applications from individuals who wish to work in their areas provided they are on a performers list in another area. As these practitioners will be on a performers list PCTs will be assured that another NHS body has considered and accepted the dental practitioner.

Newly qualified practitioners undertaking vocational training will be able to practice under the direction of a trainer for a period of two months before inclusion in the list.

Social impacts

Following an oral examination a dentist will set out for the patient the type and extent of dental work required and which charge band that falls into. The patient would then be entitled to, within that course of treatment, all proper and necessary dental care and treatment which the patient is willing to undergo. Since the payment is set in advance the patient knows exactly what the course of treatment will cost and can plan accordingly. Payment can be made up-front, during the course of treatment or at the end.

The new contracting regime and associated charging system may help encourage dentists to do more NHS dental work because it is simpler to operate, calculate charges and to explain to patients.

Environmental impacts

There are no environmental impacts from this measure.

Summary of Costs and Benefits

Option	Total benefit : economic, environmental, social and administrative	Total cost per annum: economic, environmental, social and administrative
Option 1 Do nothing	Some saving of any additional costs to PCTs administrative systems Possible savings upgrading DPB/BSA payment and monitoring systems	Social cost to loss of suitability testing and listing of dental practitioner and NHS patients at greater risk Administrative arrangements of BSA remain as now
Option 2 Implement new listing arrangements	Retain ability for PCTs to scrutinise dentists' applications for inclusion in lists of dentists suitable to be engaged in the provision of primary dental services More clinically effective cost effective and safer dental care for patients	There is already a listing system and these Regulations have no impact on payments. The number of persons on lists will be reduced by not having to be listed in each PCT where a dentists is a provider.

6. Small Firms Impact Test

Of the 8,963 dental practice addresses in England which would qualify as small businesses, some will be providing general dental services and others, around 2,500, personal dental services. Some of these practices may be owned by dental corporations. A dental corporation means a body corporate which, in accordance with the provisions of the Dentists Act 1984, is entitled to carry on the business of dentistry. It is unlikely that any dental corporation has more than 10% market share in England.

The British Dental Association was consulted on the Performers Lists Regulations and contributed to the final draft. The Performers Lists Regulations will replace the 1992 Regulations and Supplementary List Regulations will slightly reduce the burden on small businesses by removing the need for multiple listing.

7. Competition Assessment

These regulations introduce new requirements for dentists employed by PCTs who intend performing primary dental services. The Performers Lists Regulations introduce no new requirements for listing of dentists working in general dental practices which affect who may be listed with PCTs as performers of primary dental services.

The Performers Lists Regulations provide for individual dental practitioners only to meet the prescribed conditions and not for businesses.

8. Enforcement, Sanctions and Monitoring

The transitional provisions in the schedule to the Performers Lists Regulations require PCTs to reassign dentists to the new lists and to consider applications and supporting information from dentists not already listed. PCTs must currently ensure that only practitioners on either the dental or supplementary lists practise in their areas. Failure to comply with the regulations can lead to PCTs removing individuals from their lists, which will mean that they cannot perform primary dental services under NHS arrangements. There is an appeal against decisions of the PCT to the Family Health Services Appeal Authority established by section 49S of the 1977 Act.

The transitional provisions have been included to maintain continuity of service whilst PCTs reconfigure listing.

9. Post-implementation review

Once the new arrangements for contracting are in place data will be submitted by contractors on the treatment provided and the persons to whom services have been provided. The data will be submitted to the NHS Business Services Authority (successor body to the Dental Practice board) acting on behalf of the commissioning PCTs. That data will be identifiable by performer and so the BSA will have a national view of the location and relevant PCT listing each performer.

Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed: Rosie Winterton

Date: 20th December 2005

Minister of State, Department of Health.

Contact point

Chris Audrey
Dental & Ophthalmic Services Division
New King's Beam House
020 7633 4149

Annex

Implementation and Delivery Plan for Dental Reform Programme

Option 2

Following approval of the National Health Service (Dental Charges) Regulations 2005, by a resolution of each House of Parliament, they will be published on the Department of Health website <http://www.dh.gov.uk> and the NHS Primary care Contracting website <http://www.primarycarecontracting.nhs.uk> for the information of stakeholders. It is hoped that the Regulations will have been approved by both Houses and made by the end of December. The Regulations will come into force on 1 April 2006, which will amount to more than a 3 month period in which preparations can be undertaken for implementation.

The NHS (General Dental Services Contracts) Regulations 2005, and the NHS (Personal Dental Services Agreements) Regulations 2005 are both constructed on the basis of the provision of courses of treatment weighted by complexity. The categories of course of treatment and weightings, to be known as units of activity, are derived from the banded charging regime. These Regulations will come into force early in January 2006 for the purpose of agreeing contracts and for provision of services from April 2006. This provides a three month preparatory period.

Publication of the finalised NHS (Dental Charges) Regulations 2005 will enable the DPB to provide definitive information to dentists on their contract values for 2006-07 and the number of units of dental activity (UDAs), and where appropriate, the number of units of orthodontic activity (UOAs) they are to provide in relation to the contract value. This will be sent to dentists and their PCTs early in December 2005 to enable contracts for 2006-07 to be finalised

Publication of the NHS (Dental Charges) Regulations 2005 will also enable the DPB to finalise new payment systems for payments to contractors and the validation of patient charges raised for dental services provided under contracts. Similarly the dental software systems suppliers will finalise the dental practice based software systems to run the new contracting arrangements. The Department has worked closely both with the DPB and the dental systems suppliers to ensure a smooth transition from the current arrangements to the new regime.

The implementation timetable for option 2 is:

Information for dentists, PCTs, system suppliers	end November 2005
GDS Contracts regulations	laid December 2005
	in force January 2006
PDS Agreements Regulations	laid December 2005
	In force January 2006
Statement of Financial Entitlements	December 2005
Transitional Provisions Order	December 2005
Performers Lists Regulations	January 2006