

EXPLANATORY MEMORANDUM TO

THE FUNCTIONS OF THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD AND THE NHS BUSINESS SERVICES AUTHORITY (AWDURDOD GWASANAETHAU BUSNES Y GIG) (PRIMARY DENTAL SERVICES) (ENGLAND) REGULATIONS 2013

2013 No. 469

1. This explanatory memorandum has been prepared by the Department of Health and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations replace provision made by the Functions of Primary Care Trusts and Strategic Health Authorities and the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Primary Dental Services) (England) Regulations 2006 (S.I. 2006/596) (“the Functions Regulations”) following their revocation on 1st April 2013. This is being done to provide that those functions that were exercised by the Authority on behalf of Primary Care Trusts and Strategic Health Authorities pursuant to the Functions Regulations, will be exercised by the Authority on behalf of the National Health Service Commissioning Board (“the Board”) after that date, as part of the implementation of the National Health Service reforms introduced by the Health and Social Care Act 2012 (“the 2012 Act”).

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

3.1 None

4. Legislative Context

4.1 These Regulations are being made as part of the implementation of the National Health Service reforms, and consequent on the abolition of Primary Care Trusts and Strategic Health Authorities by sections 35 (abolition of Strategic Health Authorities) and 34 (abolition of Primary Care Trusts) of the 2012 Act with effect from 1st April 2013. The Functions Regulations fall away consequent to sections 14 (exercise of Strategic Health Authorities Functions) and 19 (exercise of Primary Care Trust Functions) of the National Health Service Act 2006 (“the 2006 Act”) being repealed by section 35 and 34 of the 2012 Act with effect from 1st April 2013. The NHS Business Services Authority is a Special Health Authority which was established by the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005 (2005/2414), as amended by S.I. 2006/632.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 Section 99 of the National Health Service Act 2006 (“the 2006 Act”) requires the Board, to the extent that it considers necessary to meet all reasonable requirements, to exercise its powers so as to secure the provision of primary dental services throughout England. These services are commissioned under general dental services contracts (“GDS contracts”) entered into under section 100 of the 2006 Act and personal dental services agreements (“PDS agreements”) entered into under section 107 of that Act. The National Health Service (General Dental Services Contracts) Regulations 2005 (S.I. 2005/3361) (“the GDS Contracts Regulations”) and the National Health Service (Personal Dental Services Agreements) Regulations 2005 (S.I. 2005/3373) (“the PDS Agreements Regulations”) set out the mandatory contractual terms required for a GDS contract and a PDS agreement respectively.

7.2 Patients in receipt of NHS dental services have to pay charges in respect of their treatment under the National Health Service (Dental Charges) Regulations 2005 (S.I.2005/3477) (“the Dental Charges Regulations”) unless they are exempt from such charges under section 177 of the 2006 Act or the Dental Charges Regulations. The Dental Charges Regulations set out the patient charges that can be levied for NHS dental services, which are based mainly on a system of three bands of charges, where treatment provided or appliances supplied will attract one of the three set charges depending on the components and complexity of the treatment provided. NHS dental charges recovered under those Regulations can be deducted from the contractual payments made by a Primary Care Trust or a Strategic Health Authority in respect of NHS dental services provided under a GDS contract or a PDS agreement.

7.3 Primary Care Trusts and Strategic Health Authorities were defined as employing authorities for the purposes of the National Health Service Pension Scheme Regulations 1995 and 2008 prior to 1st April 2013, and were required under those Regulations to make deductions and contributions relating to members superannuation contributions in respect of dentists performing services under GDS contracts and PDS agreements.

7.4 The Authority exercises functions in England and Wales in connection with the processing of payments made to providers of goods and services to the health service, and in relation to developing, planning and coordinating business and regulatory services in

specified parts of the health service. The Authority can be directed by the Secretary of State to perform other functions in relation to England.

7.5 Prior to 1st April 2013, the functions of Primary Care Trusts and Strategic Health Authorities under the Regulations referred to in paragraphs 7.1 to 7.3 in respect of -

- (a) the making of payments to dentists providing NHS dental services under GDS contracts and PDS agreements, under directions made under section 103(1) (GDS contracts: payments) and 109(4) (regulations about section 107 arrangements) of the 2006 Act,
- (b) monitoring the performance of dentists in relation to services commissioned under GDS contracts and PDS agreements,
- (c) the making and recovery of dental charges made under the Dental Charges Regulations, and
- (d) the making of deductions and members superannuation contributions in accordance with the National Health Service Pension Scheme Regulations 1995 and 2008,

have been exercised by the Authority in accordance with the Functions Regulations.

7.6 As part of the implementation of the National Health Service reforms introduced by the 2012 Act, the Board was established by section 1H of the 2012 Act, to take over the functions of Primary Care Trusts and Strategic Health Authorities on 1st April 2013. The BSA Functions Regulations make provision for those functions set out above that were exercised by the Authority on behalf of Primary Care Trusts and Strategic Health Authorities prior to 1st April 2013 pursuant to the Functions Regulations to be exercised on behalf of the Board in accordance with these Regulations after that date.

- Consolidation

7.7 As these Regulations replace and update the Functions Regulations there are no plans to consolidate these Regulations.

8. Consultation outcome

8.1 The Department has consulted the Board in relation to functions to be exercised by the Authority under these Regulations as required by section 7 (1B) of the 2006 Act, and the Board has indicated that it is content for these functions to be exercised by the Authority. The Department has also consulted the Authority which has indicated that it is content with the changes made by this Instrument.

9. Guidance

9.1 No guidance is being issued in relation to these Regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared in respect of this Instrument as no impact on the private or voluntary sector is foreseen.

11. Regulating small business

11.1 Dentists providing dental services under GDS contracts and PDS agreements are outside the scope of the micro business exemption as such services are regarded as the delivery of public services and are governed by a statutory framework under which NHS dental services are delivered.

12. Monitoring & review

12.1 This Instrument relates to administrative functions which will be undertaken by the Authority on behalf of Board. The Department will have regular discussions with the Board, the Authority and other interested parties including contractors' representatives (the BDA) to ensure these provisions are implemented and to consider any problems identified by their operation.

13. Contact

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