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WELSH STATUTORY INSTRUMENTS

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**2006 No. 945 (W.94)**

**NATIONAL HEALTH SERVICE, WALES**

**The National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2006**

*Made* - - - - 28 March 2006  
*Coming into force* - - 1 April 2006

The National Assembly for Wales makes these Regulations, in exercise of the powers conferred by sections 28X and 126(4) of the National Health Service Act 1977(1):

**Title, commencement, application and interpretation**

1.—(1) The title of these Regulations is the National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2006 which come into force on 1 April 2006.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations “the principal Regulations” means the National Health Service (Performers Lists) (Wales) Regulations 2004(2).

**Amendment of regulation 2 of the principal Regulations**

2. In regulation 2(1) of the principal Regulations (interpretation and modification)—

- (a) in the definition of “list”, after “49N(1)(a) to (c), ”, insert “a performers list, a dental list,”;
- (b) in the definition of “medical performers list”, for “regulation 3(1)”, substitute “regulation 3(1)(a)”;
- (c) in the definition of “a national disqualification” add, at the end of paragraph (a), “or under regulations corresponding to that section made under section 28X(4) (persons performing primary medical and dental services)”;

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(1) 1977 c. 49 (“the 1977 Act”); see section 128(1) as amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 26(2)(g) and (i), for the definitions of “prescribed” and “regulations”. Section 28X was inserted by the Health and Community Care (Community Health and Standards) Act 2003 (c. 43) (“the 2003 Act”), section 179(1). Section 126(4) was amended by the 1990 Act, s. 65(2); by the Health Act 1999 (c. 8) (“the 1999 Act”), Schedule 4, paragraph 37(6) and by the Health and Social Care Act 2001 (c. 15) (“the 2001 Act”), Schedule 5, paragraph 5(13) (b). As regards Wales, the functions of the Secretary of State under sections 28X and 126(4) of the 1977 Act are transferred to the National Assembly for Wales under article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672; section 68 of the 2001 Act provides that Schedule 1 will be construed so as to include the amendments made by that Act.

(2) S.I. 2004/1020 (W.117).

- (d) insert the following definitions at the appropriate alphabetical places—
- ““the Amendment Regulations” means the National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2006(3);”;
  - ““dental list” means the list prepared by a Local Health Board under regulation 4(1) of the Dental Regulations;”;
  - ““dental performers list” means the list prepared by a Local Health Board and published pursuant to regulation 3(1)(b);”;
  - ““the Dental Regulations” means the National Health Service (General Dental Services) Regulations 1992(4);”.

### **Amendment of regulation 3 of the principal Regulations**

3. For regulation 3(1) of the principal Regulations (performers lists) substitute—
- “(1) A Local Health Board will prepare and publish, in accordance with this Part, as modified or supplemented by the relevant Part—
  - (a) a medical performers list; and
  - (b) a dental performers list.”.

### **Amendment of regulation 6 of the principal Regulations**

4. At the end of regulation 6 of the principal Regulations (decisions and grounds for refusal) add paragraph (7)—
- “(7) When the Local Health Board notifies the performer under paragraph (6)(b), it will—
  - (a) notify the performer that if the performer wishes to exercise a right of appeal, the performer must do so within the period of 28 days beginning with the date on which it gave the performer the notice informing the performer of its decision; and
  - (b) tell the performer how to exercise any such right.”.

### **Amendment of regulation 9 of the principal Regulations**

5. At the end of regulation 9(5) of the principal Regulations (requirements with which a performer in a performers list must comply), add “to these Regulations or the Schedule to the Amendment Regulations”.

### **Amendment of regulation 14 of the principal Regulations**

6. In regulation 14 of the principal Regulations (reviews) after paragraph (7), insert paragraph (7A)—
- “(7A) When the Local Health Board notifies the performer under paragraph (7)(c), it will—
  - (a) notify the performer that if the performer wishes to exercise a right of appeal, the performer must do so within the period of 28 days beginning with the date on which it gave the performer the notice informing the performer of its decision; and
  - (b) tell the performer how to exercise any such right.”.

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(3) S.I. 2006/945 (W.94).  
(4) S.I. 1992/661.

### **Amendment of regulation 16 of the principal Regulations**

7. At the end of regulation 16(1)(a) of the principal Regulations (notification), add “, 24(1) or 31(1);”.

### **Insertion of regulation 18A of the principal Regulations**

8. After regulation 18 of the principal Regulations, insert regulation 18A—

#### **“National disqualification**

**18A.**—(1) In this regulation and in regulation 19 “national disqualification” means the disqualification of the performer from inclusion in—

- (a) a performer’s list; and
- (b) a list referred to in section 49N(1) prepared by a Local Health Board,

or only from inclusion in one or more descriptions of such list prepared by a Local Health Board or an equivalent list, the description being that specified by the FHSAA in its decision.

(2) If a performer appeals to the FHSAA under regulation 15 and the FHSAA decides—

- (a) to remove the appellant from a performers list; or
- (b) to refuse to admit the appellant to a performers list,

the FHSAA may also impose a national disqualification on that performer.

(3) A Local Health Board which has—

- (a) removed a performer from its performers list; or
- (b) refused to include the performer in its performers list,

may apply to the FHSAA for a national disqualification to be imposed on the performer.

(4) Any application under paragraph (3) must be made before the end of the period of three months beginning with—

- (a) the date of the removal or the refusal; or
- (b) 1 April 2006,

whichever is the later.

(5) If the FHSAA imposes a national disqualification on a person—

- (a) no Local Health Board may include that person in any list from which the person has been so disqualified; and
- (b) if that person is included in any such list, the Local Health Board will remove that person from that list forthwith.

(6) The FHSAA may, at the request of a person upon whom it has imposed a national disqualification, review that disqualification.

(7) On a review under paragraph (6), the FHSAA may confirm or revoke that disqualification.

(8) Subject to regulation 19, a request referred to in paragraph (6) may not be made before the end of the period of—

- (a) two years beginning with the date on which the national disqualification was imposed; or
- (b) one year beginning with the date of the FHSAA’s decision on the last such review.”.

### Amendment of regulation 19

9. In regulation 19 of the principal Regulations (review periods on national disqualification)—
- (a) for “section 49N(8)”, in each of the two places where it occurs, substitute “regulation 18A(8)”;
  - (b) in paragraph (1) for “section 49N(8)(a)” substitute “regulation 18A(8)(a)”; and
  - (c) in paragraph (2) for “section 49N(8)(b)” substitute “regulation 18A(8)(b)”.

### Amendment of regulation 22 of the principal Regulations

10. In regulation 22(4)(c) of the principal Regulations (medical performers list) delete “the medical practitioner’s date of birth, where the medical practitioner consents, or it not,”.

### Insertion of Part 4 to the principal Regulations

11. After Part 3 of the principal Regulations insert Part 4—

## “PART 4

## DENTAL PERFORMERS LISTS

### Interpretation

28.—(1) For the purposes of this Part, the prescribed description of performer is dentist and the relevant body is the General Dental Council.

(2) In this Part—

“the 2005 Order” means articles 18 to 24 of the Dentists Act 1984 (Amendment) Order 2005<sup>(5)</sup>;

“approved trainer” means a dentist—

- (a) whose name is included in a dental performers list; and
- (b) who has been approved for a specified period, which has not elapsed, by a postgraduate dental dean or a director of postgraduate dental education as having the requisite skills and suitable practice facilities to enable him or her to act as a trainer;

“community dental service” means dental services provided under—

- (a) sections 3(1)(c) and 5(1A);
- (b) in Scotland, under sections 1 and 39(2) of the NHS (Scotland) Act 1978<sup>(6)</sup>; and
- (c) in Northern Ireland, under article 5(1)(c) and 9(1A) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(7)</sup>;

“contractor” means a dentist, who both provides and performs primary dental services in accordance with section 28C<sup>(8)</sup> arrangements or under a general dental services contract under section 28K<sup>(9)</sup>;

“dentist” means a dental practitioner who is registered in the dentists register;

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(5) S.I. 2005/2011.

(6) 1978 c. 29.

(7) S.I. 1972/1265 (N.I. 14).

(8) Section 28C was inserted by the National Health Service (Primary Care) Act 1997, s. 21(1).

(9) Section 28K was inserted by the 2003 Act, s. 172(1).

- “Dentists Act” means the Dentists Act 1984<sup>(10)</sup>;
- “dentists register” means the register referred to in section 14(1) of the Dentists Act<sup>(11)</sup>;
- “health case” means a case falling within either section 28(1) (powers of the Health Committee) or, after the coming into force of the 2005 Order, section 27(2)(c) of the Dentists Act (allegations) <sup>(12)</sup>;
- “Health Committee” means the Health Committee of the General Dental Council, referred to in section 2 of the Dentists Act (committees of the Council)<sup>(13)</sup>;
- “personal dental services” means personal dental services provided pursuant to Part I of the Primary Care Act (pilot schemes for primary care);
- “postgraduate dental dean or director of postgraduate dental education” means a dentist appointed to that position by the National Assembly for Wales and the University of Cardiff to assist in the provision of a suitable learning environment for dentists performing primary dental services to meet the requirements and standards of the General Dental Council, the University of Cardiff and the National Assembly for Wales;
- “Practice Committee”, after the coming into force of the 2005 Order, means the Professional Conduct Committee, the Health Committee or the Professional Performance Committee of the General Dental Council referred to in section 2 of the Dentists Act;
- “Preliminary Proceedings Committee” means the Preliminary Proceedings Committee of the General Dental Council, referred to in section 2 of the Dentists Act;
- “Professional Conduct Committee” means the Professional Conduct Committee of the General Dental Council, referred to in section 2 of the Dentists Act;
- “professional registration number” means the number against the dentist’s name in the dentists register;
- “relevant scheme” means the scheme in respect of which the dentist is applying to be included in a dental performers list;
- “scheme” means an arrangement to provide primary dental services—
- (a) in accordance with section 28C; or
  - (b) under a general dental services contract; and
- “vocational training” means a relevant period of employment during which a dentist is employed under a contract of service by an approved trainer to provide an appropriate range of dental care and treatment and to attend such study days as that contract provides, with the aims and objectives of enhancing clinical and administrative competence and promoting high standards through relevant postgraduate training and in particular to—
- (a) enable the dentist to practise and improve his or her skills;
  - (b) introduce the dentist to dental practice in primary care;
  - (c) identify the dentist’s personal strengths and weaknesses and balance them through a planned programme of training;
  - (d) promote oral health of, and quality dental care for, patients;

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<sup>(10)</sup> 1984 c. 24.

<sup>(11)</sup> Section 14 is substituted by S.I. 2005/2001 from a date to be determined.

<sup>(12)</sup> Sections 27 and 28 are substituted by S.I. 2005/2001 from a date to be determined.

<sup>(13)</sup> Section 2 was amended by S.I. 2001/3926, art. 2 and 6(b) and by S.I. 2005/2011, article 4, from a date to be determined.

- (e) develop further and implement peer and self review, and promote awareness of the need for professional education, training and audit as a continuing process; and
  - (f) enable the dentist to—
    - (i) make competent and confident professional decisions including decisions for referrals to other services,
    - (ii) demonstrate that he or she is working within the guidelines regarding the ethics and confidentiality of dental practice,
    - (iii) implement regulations and guidelines for the delivery of safe practice,
    - (iv) know how to obtain appropriate advice on, and practical experience of, legal and financial aspects of practice, and
    - (v) demonstrate that he or she has acquired skill and knowledge in the psychology of care of patients and can work successfully as a member of a practice team.
- (3) In the definition of “vocational training” in paragraph (2), “relevant period of employment” means—
- (a) one year’s full-time employment;
  - (b) an equivalent period of part-time employment; or
  - (c) in the case of a dentist, who is neither exempt under regulation 31(5) from the requirement to undertake vocational training, nor has completed vocational training as in sub-paragraph (a) or (b), but—
    - (i) has performed community dental service,
    - (ii) has performed personal dental services prior to 1 April 2006,
    - (iii) has otherwise gained experience of dentistry in primary care as a dentist,
    - (iv) has been employed in a hospital as a dentist, or
    - (v) holds or is enrolled on a course to achieve a postgraduate qualification in dentistry registerable with the General Dental Council as an additional diploma by virtue of regulations made under section 19(1)(c) of the Dentists Act (regulations with respect to the register),
 such period of employment, which may be less than, but will not exceed that in sub-paragraph (a) or an equivalent period of part-time employment, as a postgraduate dental dean or director of postgraduate dental education may determine that he or she must complete in order to have satisfactorily completed vocational training.

### **Dental performers list**

**29.**—(1) Subject to paragraph 14 of the Schedule to the Amendment Regulations, a dentist may not perform any primary dental services, unless he or she is a dentist whose name is included in a dental performers list.

(2) Paragraph (1) does not apply to a dentist, who is undertaking vocational training, during the first two months of that training.

(3) In respect of any dentist, whose name is included in a dental performers list, the list will include—

- (a) his or her full name;

- (b) his or her professional registration number with, suffixed to it, the organisational code given by the National Assembly for Wales to the Local Health Board;
- (c) his or her date of first registration in the dentists register;
- (d) whether he or she is a dentist undertaking vocational training;
- (e) whether he or she is a contractor; and
- (f) the date that his or her name was included in the dental performers list or, if his or her name was included in any dental list of a Local Health Board, first included in such a list.

### **Application for inclusion in a dental performers list**

**30.**—(1) In addition to the information required by regulation 4(2), the dentist, when making an application for the inclusion of his or her name in a dental performers list, will give the following information—

- (a) his or her dental qualifications and where they were obtained, with evidence concerning his or her qualifications and experience;
- (b) unless he or she is a dentist undertaking vocational training, evidence that he or she has completed vocational training;
- (c) a declaration that he or she is included in the dentists register;
- (d) his or her professional registration number and date of first registration;
- (e) if he or she is a dentist undertaking vocational training, the name and practice address of his or her approved trainer;
- (f) whether he or she is a contractor; and
- (g) whether he or she is a contractor for more than one scheme and, if so, which schemes and which of those schemes is the relevant scheme.

(2) In addition to the undertakings required by regulation 4(3), the dentist will give the following further undertakings—

- (a) not to perform any primary dental services in the area of another Local Health Board or equivalent body from whose dental performers list, dental list, or equivalent list he or she has been removed, except where that removal was at his or her request or in accordance with regulation 10(6) of these Regulations or regulation 8(3) of the Dental Regulations or any equivalent provision in Scotland or England, without the consent, in writing, of that Board or equivalent body;
- (b) if he or she is a dentist undertaking vocational training, an undertaking—
  - (i) not to perform any primary dental services except when acting for and under the direction of his or her approved trainer,
  - (ii) to withdraw from the dental performers list if he or she fails to complete his or her vocational training, and
  - (iii) upon completion of his or her vocational training, to provide the Local Health Board with satisfactory evidence that he or she has completed that training;
- (c) if he or she is a contractor, to comply with the requirements of paragraph 83 of Schedule 3 to the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006 (gifts)(14) or paragraph 81 of Schedule 3

to the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006 (gifts)(**15**), as the case may be; and

- (d) if he or she is not a contractor, to comply with those requirements as though he or she were a contractor.

### **Additional grounds for refusal**

**31.**—(1) In addition to the grounds in regulation 6(1), a Local Health Board may also refuse to admit a dentist to its dental performers list if—

- (a) having checked the information he or she provided under regulation 30(1), it considers he or she is unsuitable to be included in its list;
- (b) his or her registration in the dentists register is subject to conditions—
- (i) imposed by the Health Committee under section 28 of the Dentists Act (powers of the Health Committee), or
- (ii) after the coming into force of the 2005 Order, imposed by a Practice Committee under sections 27B(6)(c) (Practice Committees), 27C(1)(c), (2)(b) or (c) (resumed hearings) or 28(6)(b) of that Act (restoration to register)(**16**);
- (c) after the coming into force of the 2005 Order, he or she is subject to an order for immediate conditional registration imposed by a Practice Committee under section 30(2) of that Act (orders for immediate suspension and immediate conditional registration)(**17**); or
- (d) after the coming into force of the 2005 Order, he or she is subject to an order for interim conditional registration imposed by a Practice Committee or the Interim Orders Committee under section 32(4)(b) or (6)(c) or by the Court under section 32(9) of that Act (interim orders)(**18**).

(2) In addition to the grounds in regulation 6(2), a Local Health Board will also refuse to admit a dentist to its dental performers list if—

- (a) he or she is a contractor and the relevant scheme is not one that lies within its area;
- (b) he or she is included in the dental performers list of another Local Health Board, unless he or she has given notice to that Board that he or she wishes to withdraw from that list; or
- (c) he or she is not undertaking vocational training and has neither completed vocational training nor is exempt under paragraph (5) from the requirement to undertake vocational training.

(3) For the purposes of regulation 6(2)(d), the day prescribed in this Part is 26 August 2002.

(4) In addition to checking the information provided by the dentist as required by regulation 6(3)(a), the Local Health Board will also check the information he or she provided under regulation 30(1).

(5) A dentist is exempt from the requirement to undertake vocational training if—

- (a) he or she is registered as a dentist by virtue of section 15(1)(b) of the Dentists Act (registration of nationals of member States who hold appropriate European

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(15) S.I. 2006/489 (W.58).

(16) Sections 27B, 27C and 28 were inserted by the 2005 Order from a date to be determined.

(17) Section 30 is substituted by S.I. 2005/2011 from a date to be determined.

(18) Section 32 is substituted by S.I. 2005/2011 from a date to be determined.



- diplomas)(19) or is in any other way a person in respect of whom a member State is prohibited by Community law from imposing such a requirement; or
- (b) he or she has experience in primary care as a dentist for a total period of at least two years full-time or an equivalent period part-time—
- (i) in community dental service,
  - (ii) in the armed forces of the Crown, or
  - (iii) prior to 1 April 2006, in the performance of personal dental services,
- and part or all of that period fell within the period of four years beginning with the date of his or her application under regulation 4.

### **Grounds for removal from a dental performers list**

**32.**—(1) Subject to paragraph (2) and in addition to the grounds in regulation 10(1), the Local Health Board must remove a dentist from its dental performers list where it becomes aware that he or she—

- (a) is the subject of—
- (i) a determination by the Professional Conduct Committee to suspend him or her under section 27 of the Dentists Act (erasure or suspension), or
  - (ii) after the coming into force of the 2005 Order, a direction of a Practice Committee under section 27B(6)(b) or 27C(2)(d) or (3) of that Act;
- (b) is included in the dental performers list of another Local Health Board; or
- (c) has failed to complete vocational training and has not withdrawn from the list pursuant to regulation 30(2)(b)(ii).

(2) Paragraph (1)(a)(ii) will not apply where a direction that a dentist's registration be suspended is made in a health case.

(3) For the purposes of regulation 10(1)(b), the day prescribed in this Part is 26 August 2002.

(4) In calculating the period of 12 months under regulation 10(7) (periods to be disregarded), the Local Health Board will disregard any period during which the dentist's registration or his or her entitlement to practise as such was suspended by—

- (a) the Health Committee under section 28(1)(a) or (3)(a) of the Dentists Act (powers of the Health Committee);
- (b) the Preliminary Proceedings Committee under section 32(1) of that Act (orders for interim suspension);
- (c) after the coming into force of the 2005 Order, by a Practice Committee under sections 27B (6)(b) (Practice Committee) or 27C(1)(b) or (d) (resumed hearings) of that Act in a health case; or
- (d) after the coming into force of the 2005 Order, by a Practice Committee or the Interim Orders Committee of the General Dental Council under section 32(4)(a) or (6)(d) of that Act or by the court under section 32(9) of that Act.

### **Additional decision that may be appealed**

**33.** A dentist may also appeal, under regulation 15, against a decision of the Local Health Board to refuse to include his or her name in its dental performers list under regulation 31(1).”

### Consequential amendments

12.—(1) The Regulations set out below will be amended in accordance with the following paragraphs of this regulation.

- (2) In paragraph (a) of the definition of “national NHS disqualification” in—
- (a) regulation 1(2) of the NHS Pensions Agency (Asiantaeth Pensiynau'r GIG) Regulations 2004<sup>(20)</sup> (citation, commencement and interpretation);
  - (b) regulation 1(2) of the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Regulations 2005<sup>(21)</sup> (citation, commencement and interpretation); and
  - (c) regulation 1(2) of the NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) Regulations 2005<sup>(22)</sup> (citation, commencement and interpretation),

after “of the Act”, insert “or under regulations corresponding to that section made under section 28X(4) of the Act (persons performing primary medical and dental services)”.

(3) In paragraph (a) of the definition of “a national disqualification” in regulation 2 (interpretation) of the National Health Service (General Ophthalmic Services) Regulations 1986<sup>(23)</sup>, after “of the Act”, insert “or under regulations corresponding to that section made under section 28X(4) of the Act (persons performing primary medical and dental services)”.

(4) In paragraph (a) of the definition of “a national disqualification” in regulation 2(1) of the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004<sup>(24)</sup> (interpretation), after “of the Act” insert “or under regulations corresponding to that section made under section 28X(4) of the Act (persons performing primary medical and dental services).”

(5) In paragraph (a) of the definition of “a national disqualification” in regulation 2(1) (interpretation) of the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services) (Amendment and Consequential Amendment) (Wales) Regulations 2006<sup>(25)</sup>, after “section 49N”, insert “or under regulations corresponding to that section made under section 28X(4) (persons performing primary medical and dental services)”.

### Revocations

13. Schedule 1 to the principal Regulations is hereby revoked.

### Transitional provisions

14. The transitional provisions in the Schedule will have effect.

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(20) 2004/668.  
(21) 2005/2415.  
(22) 2005/2531.  
(23) 1986/975.  
(24) 2004/478 (W.48).  
(25) 2006/181 (W.32).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(26).

28 March 2006

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly

## SCHEDULE

Regulation 14

### TRANSITIONAL PROVISIONS

#### **Interpretation**

**1.** In this Schedule—

“the 2001 Rules” means the Family Health Services Appeal Authority (Procedure) Rules 2001(27);

“continuing matter” means any case where the Initial Local Health Board had not yet come to a decision on any matter, other than a matter falling within paragraph 8, under the Dental Regulations;

“Initial Local Health Board” means a Local Health Board in whose dental list the dentist’s name was or had been included prior to the relevant date;

“the relevant date” means 1 April 2006,

and other terms used will bear the same meaning in this Schedule that they have in Part 4 of the principal Regulations.

#### **Allocation of dentists on previous lists**

**2.** In the case of a dentist, whose name, immediately before the relevant date, was included in a Local Health Board’s dental list, but was not included in the dental list of any other Local Health Board, his or her name will, on that day, be included in that Local Health Board’s dental performers list.

**3.** In the case of a dentist whose name was, immediately before the relevant date, included in the dental list of more than one Local Health Board, his or her name will, on that date, be included in the dental performers list of one of those Boards in accordance with paragraphs 4 to 9.

**4.** In which Local Health Board’s list that dentists name is to be included will be determined by reference to the payments that the Dental Practise Board made to the dentist under regulation 20 (approval of payments) of the Dental Regulations in the quarter ending 31 December 2005 in relation to the general dental services that that dentist had provided in the area of each such Local Health Board in accordance with paragraph 5.

**5.** The dentist will be included in the dental performers list of the Board in respect of whose area the largest total of payments was made, unless the payments in respect of two or more such areas in that quarter were the same, in which case the matter will be determined by reference to the previous quarter.

**6.** This paragraph applies to a dentist who—

(a) falls within paragraph 3; but

(b) would, by reason of paragraphs 4 and 5, be included in the dental performers list of a Local Health Board in whose area he or she will not be party to a scheme to provide primary dental services on or after the relevant date.

**7.** A dentist to whom paragraph 6 applies—

(a) if he or she is party to such a scheme in the area of another Board in whose dental list his or her name was included immediately before the relevant date, it will be included in the dental performers list of that Board; and

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(27) S.I. 2001/3750, as amended by S.I. 2002/1921 and 2469.

- (b) if he or she was on that day included in the dental list of more than one such Board, the question of which dental performers list his or her name is to be included in will be determined in accordance with paragraphs 4 and 5.

#### **Applications not decided by the relevant date**

**8.** Subject to paragraph 9, in any case where there was any application, including an application which the Local Health Board has deferred, by a dentist to a Board for his or her name to be included in its dental list and that application has not been decided before the relevant date, it will be deemed to be an application to have his or her name included in the dental performers list of that Local Health Board.

**9.** In a case where—

- (a) a dentist has made an application to which paragraph 8 applies;
- (b) his or her name was already included in a dental list of any Local Health Board; and
- (c) he or she had not given notice of an intention to withdraw from that list with that application,

that application will be void and the Local Health Board will so notify him or her, informing him or her of the reason for that.

#### **Matters relating to the dentist**

**10.** In a case falling within paragraph 2, any matter, question or proceeding relating to any dentist under the Dental Regulations that had not been finally decided before the relevant date, will be treated as though it had arisen in relation to the dental performers list in which that dentist has been included or, but for that matter, would have been included and will continue to be dealt with by the Local Health Board.

**11.** In a case where a dental list on which the dentist's name was included immediately before the relevant date, contained, in relation to him or her, any condition or contingent removal, or if he or she was then suspended from that list, that condition, contingent removal or suspension, as the case may be, will equally apply to the dental performers list in which his or her name is included on and after the relevant date as it did, in relation to any other list, before that date.

**12.** Subject to paragraph 13, in any case where there is any continuing matter and that matter had not been finally decided before the relevant date, it will be treated as though it had arisen in relation to the dental performers list in which that dentist has been included or, but for that matter, would have been included.

**13.** In any case where there is a continuing matter and the dental performers list in which that dentist's name is included is not that of the Initial Local Health Board that matter will proceed as though his or her name were included in the Initial Local Health Board's dental performers list.

#### **Dentists performing personal dental services, general dental services or community dental service**

**14.—(1)** Any dentist, whose name was not included in a dental list immediately before the relevant date and was performing personal dental services, general dental services or community dental service before the relevant date, may perform primary dental services, notwithstanding regulation 29(1) of the principal Regulations (dental performers list), until—

- (a) 1 October 2006; or
- (b) the date on which the Local Health Board notifies him or her of its decision on his or her application to be included in its dental performers list,

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whichever is the earlier, provided that that dentist applies, in accordance with the principal Regulations, to a Local Health Board to be included in its dental performers list not later than 1 May 2006.

(2) A dentist making an application to a Local Health Board to perform personal dental services, general dental services or community dental service immediately before the relevant date, will only be required to provide the information required under regulations 4(2), (4) and (5) (application for inclusion in a performers list) and 30(1) (application for inclusion in a dental performers list) of the principal Regulations in so far as—

- (a) he or she has not already supplied it to that Board; or
- (b) it has changed since it was provided.

(3) Any dentist to whom sub-paragraph (1) applies will comply with regulation 9 of the principal Regulations (requirements with which a performer in a performers list must comply), if any of the events therein specified occur, as though he or she were included in the dental performers list of the Local Health Board in whose area he or she is performing primary dental services.

(4) A dentist may not perform primary dental services by virtue of sub-paragraph (1) during any period in which he or she is the subject of a suspension notice given by a Local Health Board under sub-paragraph (5).

(5) A Local Health Board may give a suspension notice to a dentist to whom sub-paragraph (1) applies where it is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest.

(6) A Local Health Board may withdraw a suspension notice it has given under sub-paragraph (5) at any time.

(7) During a period of suspension payments may be made to or in respect of the dentist by the Local Health Board in accordance with a determination by the National Assembly for Wales.

(8) Where a Local Health Board—

- (a) has received an application from a dentist to whom sub-paragraph (1) applies; and
- (b) becomes aware in respect of that dentist of any of the matters listed in regulations 10(1) (removal from a performers list) or 32(1) (grounds for removal from a dental performers list) of the principal Regulations,

it will immediately decide the dentist's application to be included in its dental performers list.

### **Enhanced criminal record certificates**

**15.**—(1) Where a dentist's name has been included in a dental performers list of a Local Health Board pursuant to this Schedule, and—

- (a) it has not received an enhanced criminal record certificate under section 115 of the Police Act 1997(28) relating to him or her; and
- (b) the National Assembly for Wales directs that the Local Health Board will require such a certificate from any dentist whose name is included in its dental performers list,

the dentist will, within 3 months of the Board notifying him or her of that requirement, provide that certificate to it.

(2) When sub-paragraph (1)(b) applies, the Local Health Board will write to each such dentist informing him or her that he or she is now under a duty to—

- (a) provide it with such a certificate; and
- (b) do so within the period of 3 months beginning with the date of that letter,

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(28) 1997 c. 50.

and, subject to sub-paragraph (3), if the dentist has not provided it with such a certificate within that time, it will remove him or her from its dental performers list.

(3) The Local Health Board—

(a) will extend the period prescribed in sub-paragraph (1), if the National Assembly for Wales directs that an extension should be required in relation to all such cases or in such categories of case as it may set out in the directions; and

(b) may, if it thinks it is not reasonably practicable for that dentist to provide it with such a certificate within the period of 3 months, beginning with the date of the letter under sub-paragraph (2), as extended by reason of any direction to which paragraph (a) applies, extend that period for such time as it considers appropriate in the circumstances of the case,

and will notify that dentist of that extension of time.

### **Appeals to the FHSAA under Part II of the 2001 Rules**

**16.**—(1) Where—

(a) the FHSAA receives a notice of appeal within the time limit specified in rule 5 of the 2001 Rules (time period in which an FHS regulations appeal must be heard) on or after the relevant date; and

(b) that notice of appeal concerns a disputed decision taken by a respondent Initial Local Health Board before the relevant date,

that Board will continue to be the respondent, even if the dentist's name is from the relevant date, included in the dental performer's list of a different Local Health Board.

**17.** Where—

(a) the FHSAA has received a notice of appeal in accordance with rule 6 of the 2001 Rules (notice of appeal) before the relevant date;

(b) that appeal concerns a disputed decision taken by a respondent Initial Local Health Board before the relevant date; and

(c) it has not been finally determined before the relevant date,

that Board will continue to be the respondent, even if the dentist's name is, from the relevant date, included in the dental performer's list of a different Local Health Board.

### **Applications to the FHSAA under Part III of the 2001 Rules**

**18.** Where the FHSAA—

(a) has received an application pursuant to Part III of the 2001 Rules (applications to the FHSAA) before the relevant date; and

(b) that application has not been finally determined immediately before the relevant date,

the parties to that application will, from the relevant date, continue to be the dentist who was a party immediately before the relevant date and the Initial Local Health Board.

### **General matters relating to cases under Part IV of the 2001 Rules**

**19.** Where a panel has—

(a) pursuant to rule 32(1) (directions in respect of hearings), 33 (further directions), 44(2) (miscellaneous powers of panel) or 45(2) (irregularities) of the 2001 Rules given any directions; or

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(b) pursuant to rule 37 (varying or setting aside directions) of those Rules, varied any directions,

in relation to any appeal falling within paragraph 16, those directions or varied directions will continue to apply to the Initial Local Health Board, even if the dentist's name is, on and after the relevant date, included in the dental performers list of a different Local Health Board.

**20.** Where a panel has, pursuant to rule 42 (decision of panel) or 43 (review of panel's decision) of the 2001 Rules, given a decision—

- (a) that decision will continue to apply to the Initial Local Health Board; and
- (b) that Board, will be entitled to apply to the FHSAA pursuant to and in accordance with rule 43 of the 2001 Rules for a review of a panel's decision.

**21.** Where the FHSAA has taken a decision before the relevant date which, by virtue of rule 46 of the 2001 Rules (publication of certain decisions by the FHSAA), it would, at the time it took that decision have been obliged to publish, that obligation will continue on or after the relevant date if it has not published the decision immediately.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

These Regulations amend the National Health Service (Performers Lists) (Wales) Regulations 2004 ("the Principal Regulations") so as to provide for lists of persons performing primary dental care to be kept by Local Health Boards in accordance with the provisions of section 28X of the National Health Service Act 1977. It also makes amendments to the general provisions relating to performers lists.

Regulation 2 provides some further definitions for the Principal Regulations and regulations 3 to 7, 9 and 10 make minor amendments to those Regulations.

Regulation 8 adds provision for national disqualification.

Regulation 11 adds a new Part 4 to the Principal Regulations (regulations 28 to 33 of the Principal Regulations) which modifies the general provisions in Part 1 of those Regulations to make provisions specific to dentists.

Regulation 28 of Part 4 provides some definitions for Part 4.

Regulation 29 of Part 4 provides, subject to specified exceptions, that no dentist may perform any primary dental services unless included in such a list, what information is to be included in the list and that the list will be published.

Regulation 30 of Part 4 supplements regulation 4 by providing for certain specific information to be provided by dentists.

Regulation 31 of Part 4 provides further grounds on which the Local Health Board may or must refuse to admit a dentist to its list, and matters to which it must have regard.

Regulation 32 of Part 4 provides additional grounds for the mandatory removal from its list by a Local Health Board of a dentist, and modifies certain provisions for removal from a list in regulation 10.

Regulation 33 of Part 4 provides an additional ground of appeal for a dentist to those in regulation 15.



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Regulation 12 makes consequential amendments.

Regulation 13 revokes Schedule 1 to the Principal Regulations.

Regulation 14 gives effect to the Schedule.

The Schedule makes transitional provisions.