

HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Dental and Medical Services

Primary dental services

Section 170: Provision of primary dental services

350. *Section 170* inserts a new *section 16CA* into the 1977 Act. The new *section 16CA* directly confers on each PCT and LHB a duty to provide or secure the provision of primary dental services in its area to the extent it considers necessary to meet all reasonable requirements (*16CA(1)*). This new duty replaces the duty in section 35 of the 1977 Act (arrangements for general dental services) which requires a PCT to make arrangements with dental practitioners and dental corporations for the provision of dental services where a dental practitioner has agreed to provide dental treatment and appliances to a patient.
351. *Section 16CA(2)* confers a power for PCTs and LHBs to provide dental services themselves. This will enable a PCT or LHB to employ dentists to provide primary dental services.
352. *Section 16CA(3)* places a duty on PCTs and LHBs to publish information about the services they commission or provide. This will assist patients in identifying providers of NHS dental care in the PCT's or LHB's area and the range of services offered. The duty is in response to the recommendations in *Options for Change* for "improving the patient experience".
353. *Section 16CA(4)* imposes a duty on PCTs and LHBs to co-operate with other PCTs and LHBs in making arrangements for primary dental services. In particular, PCTs will need to co-operate with LHBs where practices straddle the England and Wales border.
354. *Section 16CA(5)* and *(6)* provide regulation making powers to define what should, or should not, be considered as primary dental services. This would allow for services in care homes, for example, to be provided not as primary dental services, but under section 3 of the 1977 Act.

Section 171: Dental public health

355. *Section 171* inserts a new *section 16CB* into the 1977 Act. *Section 16CB* gives power to confer on PCTs, LHBs and the Assembly dental public health functions. Under *section 171(2)*, the existing duty on the Secretary of State under section 5(1A) of the 1977 Act to provide dental treatment and dental education in schools is repealed. PCTs and LHBs may involve other agencies in discharging dental public health functions, such as independent contractors or dental practices. For example, a PCT or LHB might

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wish to involve a dental practice in providing an oral health promotion or smoking cessation programme.

Section 172: General dental services contracts

356. *Section 172* inserts six new *sections* 28K to 28P into the 1977 Act.
357. New *section 28K(1)* and *(2)* provide for a PCT or LHB to enter into a general dental services contract (“GDS contract”). A general dental services contract is a contract for primary dental services, but it may also include services which are not primary dental services, for example, specialised services such as orthodontics. The general dental service contract replaces the arrangements for the provision of general dental services under sections 35 of the 1977 and the [National Health Service \(General Dental Services\) Regulations 1992 \(S.I. 1992/661\)](#). *Section 28K(3)* provides for PCTs and LHBs to negotiate the terms of a GDS contract with individual practices seeking to provide dental services under a GDS contract.
358. *Section 28L(1)* provides regulation-making power for the Secretary of State or the Assembly to prescribe the services that must be provided under a GDS contract. *Section 28L(2)* would allow the services to be prescribed by reference to the manner or circumstances in which they are provided. So, for example, the regulations could provide for certain services to be provided on weekdays only between 9am and 6pm.
359. *Section 28M* provides for the PCT or LHB to enter into a GDS contract either with a dental practitioner, dental corporation¹ or a group of individuals practising in partnership. Where the contract is to be with a partnership at least one member of the partnership must be a dental practitioner. *Section 28M(2)(b)* provides that where any partner is not a dental practitioner, that person must be either a health care professional or individual who is engaged in the provision of services under the NHS Act or the health services of Scotland and Northern Ireland. This will enable persons who are not dentists to be a party to a GDS contract. *Section 28M(1)* provides that regulations may place conditions on the persons who may enter into GDS contracts.
360. *Section 28M(3)* will allow regulations to make provision about the effect on a GDS contract of a change of partnership.
361. New *sections 28K* and *28N* replace the system of remuneration for dentists providing general dental services under section 35 of the 1977 Act.
362. *Section 28N(1)* allows the Secretary of State or the Assembly to give directions regarding payments to be made under the new contract. Where directions are made, the GDS contract must require that payments are made under the contract in accordance with the directions (*subsection (2)*). In this way, payments in respect of any particular matter under the contract can be set on a national basis. Directions may relate to payments to be made by a PCT to a GDS provider or by a GDS provider to a PCT. Where there are no applicable directions, the parties to the GDS contract are free to determine the remuneration to be paid under the contract (*section 28K(3)(b)*).
363. *Section 28N(3)* sets out how the power to make directions may be exercised. It will enable directions to provide for payments to be determined by reference to the meeting of particular standards for example. Directions may also be made in respect of individual practitioners and so would enable, for example, payments to be made in respect of a dental practitioner’s maternity.
364. *Section 28N(4)* recreates the requirement in section 43B of the 1977 Act for the Secretary of State or the Assembly to consult representative bodies on remuneration matters. Under the new multi-professional GDS contract this extends consultation rights to other groups whose members can become GDS providers, for example

¹ A dental corporation is a limited company permitted to carry on the business of dentistry under s40 of the Dentists Act 1984

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representatives of other groups of dental health care professionals whose remuneration might also be affected.

365. *Section 28N(5)* provides for directions to be made by regulations or by an instrument in writing and provides for directions to be revoked or varied where they are made by an instrument in writing. Where directions are made by regulations the Interpretation Act 1978 makes equivalent provision.
366. *Section 28N(6)* sets out some examples of what payments under this section will include, namely fees, allowances, reimbursements, loans and repayments.
367. *Section 28O(1)* provides for the Secretary of State or the Assembly to make regulations to determine terms which the contract must include or the contract must make provision about. *Section 28O(2)* gives examples of what the regulations under *section 28O(1)* may cover, such as, the circumstances as to the variation of contracts, details about rights of entry to, and inspection of, practice premises in connection with, for example health and safety legislation, and the dispute resolution procedure. *Section 28O(4)* requires regulations to make provision as to the right of patients to choose from whom they are to receive services.
368. *Section 28P(1)* and *(2)* provide for regulations concerning the resolution of pre-contractual disputes to be made. In particular, the regulations may provide for the Secretary of State or the Assembly or a person appointed by him or it to determine the terms on which any GDS contract may be entered into. Section 4(4) of the National Health Service and Community Care Act 1990 makes similar provision in relation to NHS contracts to be entered into by health service bodies².
369. *Section 28P(3)* to *(5)* allows GDS contractors to be treated as health service bodies for contracting purposes. The effect is that the contract is treated as a health service contract under section 4 of the 1990 Act, and any disputes arising under the GDS contract once it has been entered into will be determined by the Secretary of State or his appointee. *Subsection (5)* provides for regulations to make payments relating to NHS contracts enforceable through the courts. No GDS contractor will be forced to have health service body status (and therefore an NHS contract). If a contractor is not a health service body, then the contract is enforceable as an ordinary legal contract before the courts unless the contract itself sets out an alternative route for resolution of disputes.
370. *Section 28P(4)* allows regulations under *subsection (3)* to make provision about the effect of a change in the partnership of a GDS contractor. The purpose would be to ensure that a change in the partnership should not affect the health service status of the contractor.
371. *Section 172(2)* provides for the repeal of sections 35 and 36 of the 1977 Act. As stated above the new GDS contract will replace the existing statutory arrangements for the provision of general dental services.

Section 173: General dental services: transitional

372. *Subsection (1)* requires the Secretary of State or the Assembly to make an Order in respect of dentists who are providing GDS under section 35 of the 1977 Act immediately prior to the coming into force of *section 173*. An Order may require a PCT to enter into a new GDS contract with such a person (*subsection (2)*). Alternatively, it may require a PCT to enter into some other kind of contract for the provision of dental services (*subsection (3)*), which may be appropriate where it has not been possible to enter into a GDS contract before the coming into force of *section 172*. An Order may prescribe the circumstances in which a PCT or LHB must enter into a contract, the terms of the contract, remuneration and the resolution of any disputes.

² Section 4(1) of the 1990 Act defines an “NHS contract” and section 4(2) defines by way of a list “health service body”.