

---

STATUTORY INSTRUMENTS

---

**2006 No. 562**

**The General Dental Services, Personal Dental Services and Abolition of the Dental Practice Board Transitional and Consequential Provisions Order 2006**

**PART 4**

**TRANSITIONAL ARRANGEMENTS: THE NATIONAL HEALTH SERVICE (SERVICE COMMITTEES AND TRIBUNAL) REGULATIONS 1992**

**Interpretation**

**31.**—(1) In this Part—

“the Service Committees Regulations” means the National Health Service (Service Committees and Tribunal) Regulations 1992(1);

“amendments” in respect of any regulation or regulations in the Service Committees Regulations means amendments made to that regulation or those regulations by paragraph 3 of Schedule 1 to this Order;

“appropriate PCT” has the same meaning as in the Service Committees Regulations;

“contracting PCT” means a Primary Care Trust that has entered into—

- (a) a general dental services contract with—
  - (i) a dentist who is the subject of the allegation,
  - (ii) a partnership, where a dentist who is the subject of the allegation is a partner, or
  - (iii) a dental corporation, where a dentist who is the subject of the allegation is a director, chief executive or secretary of that corporation; or
- (b) a personal dental services agreement with—
  - (i) a dentist who is the subject of the allegation, or
  - (ii) a qualifying body, where a dentist who is the subject of the allegation is a director, chief executive or secretary of that body;

“dentist” has the same meaning as in the Service Committees Regulations;

“the Performers List PCT” means the Primary Care Trust in whose dental performers list the dentist’s name appears on 1st April 2006;

“Performers Lists Regulations” means the National Health Service (Performers Lists) Regulations 2004(2);

“relevant contractor” means a party to a general dental services contract or personal dental services agreement with a contracting PCT, where that contractor is—

---

(1) S.I. 1992/664 as amended by S.I. 1996/703, 1998/674, 2002/2469 and 2003/1397.

(2) S.I. 2004/585; as amended by S.I. 2004/2694 and 2005/502, 893 and 3491.

- (a) a dentist who is the subject of the allegation;
  - (b) a partnership, where a dentist who is or was the subject of the allegation is a partner in that partnership; or
  - (c) a dental corporation or qualifying body, where a dentist who is or was the subject of the allegation is a director, chief executive or secretary of that corporation or body; and
- “relevant date” means 1st April 2006.
- (2) Unless the context otherwise requires, any reference in this Part to—
- (a) a numbered regulation is to the regulation bearing that number in the Service Committees Regulations; and
  - (b) a numbered Schedule is to the Schedule to the Service Committees Regulations bearing that number.

**Cases where no decision has been made before the relevant date as to whether disciplinary action should be taken (regulation 4)**

**32.**—(1) Where, before the relevant date, or on or after the relevant date in respect of a matter that occurred before the relevant date, a Primary Care Trust receives, or has received, information that could amount to an allegation that a dentist had failed to comply with his terms of service and—

- (a) that Trust, or its reference committee, has not taken a final decision pursuant to regulation 4(1) before the relevant date as to whether it will take no action or take one or both of the courses of action set out in regulation 4(2); and
- (b) any time limit specified in regulation 6 has not expired,

paragraph (2) shall apply.

- (2) Where this paragraph applies, the Primary Care Trust shall—
- (a) if it is the appropriate PCT, continue to be the appropriate PCT for the purposes of the Service Committees Regulations, and consider and take such action as it sees fit pursuant to the Service Committees Regulations, subject to article 35, as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect; or
  - (b) if it is not the appropriate PCT, forward the information to that Trust as soon as is reasonably practicable, and that Trust shall consider the information received and take such action as it sees fit pursuant to the Service Committees Regulations, subject to the time limits specified in the Service Committees Regulations, and article 35, as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect.
- (3) If the appropriate PCT, or its reference committee, decides, pursuant to paragraph (2)(a) or (2)(b), to refer the matter to the discipline committee of another Primary Care Trust (B) in accordance with regulation 4(2)(a) or (7)—
- (a) that Primary Care Trust (B) shall investigate the matter and report to the appropriate PCT as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect; and
  - (b) the appropriate PCT shall be entitled, subject to article 35, to take any action it could have taken pursuant to the Service Committees Regulations as if those amendments had not taken effect.

**Referrals to investigating discipline committees before the relevant date (regulation 5)**

**33.** Where a Primary Care Trust (A) has, before the relevant date, referred a matter in respect of a dentist to another Primary Care Trust (B) in accordance with regulation 4(2)(a) or (7) and—

- (a) that matter has not been finally determined by the discipline committee of that Primary Care Trust (B) before the relevant date—
  - (i) the discipline committee of that Primary Care Trust (B) shall investigate the matter and report to the Primary Care Trust (A) as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect, and
  - (ii) the Primary Care Trust (A) shall be entitled to take any action it could have taken pursuant to the Service Committees Regulations as if those amendments had not taken effect, subject to article 35; or
- (b) that Primary Care Trust (A) has received the report of the discipline committee of the Primary Care Trust (B) but has not yet determined what (if any) action to take as a result of the report, the Primary Care Trust (A) shall be entitled to take any action it could have taken pursuant to the Service Committees Regulations as if the amendments to regulations 2 to 8 had not taken effect, subject to article 35.

**Determination of a Primary Care Trust or the Secretary of State made before the relevant date (regulations 8, 9, 10 and 11)**

**34.**—(1) Where, before the relevant date, a Primary Care Trust (or where relevant, the Secretary of State) has determined pursuant to regulation 8(5)(a), regulation 9(3) or regulation 11 that an amount should be recovered from the dentist, in so far as any of that amount has not been recovered before the relevant date, it shall continue to be recoverable by the Primary Care Trust that was the appropriate PCT for the purposes of the Service Committees Regulations in respect of that matter, and it shall be treated as a debt owed by that dentist to that Trust.

(2) Where a contracting PCT has record of, or receives notification of, an adverse determination made before the relevant date pursuant to regulation 8, 9, 10, 11 or 12 in respect of a dentist (where, in the case of a determination under regulation 8, such a determination was not overturned on appeal), paragraph (3) shall apply without prejudice to any other rights the contracting PCT may have to take action against the relevant contractor pursuant to any term of the general dental services contract or personal dental services agreement.

(3) Where this paragraph applies, the contracting PCT—

- (a) may take into account that adverse determination in relation to a relevant contractor if it is considering, pursuant to a term of the general dental services contract that gives effect to paragraph 73(7) of Schedule 3 to the GDS Contracts Regulations or the personal dental services agreement that gives effect to paragraph 71(7) of Schedule 3 to the PDS Agreements Regulations, whether the cumulative effect of breaches under that contract or agreement is such that to allow the contract or agreement to continue would be prejudicial to the efficiency of the services provided under that contract or agreement; but
- (b) shall not, pursuant to sub-paragraph (a), take into account any adverse determination that was made that occurred more than 6 years prior to the date upon which the contracting PCT is considering terminating the general dental services contract or personal dental services agreement.

(4) Where a Performers List PCT has record of, or receives notification of, an adverse determination pursuant to regulation 8, 9, 10, 11 or 12 made before the relevant date in respect of a dentist (where, in the case of a determination under regulation 8, such a determination was not overturned on appeal) it may take that determination into account in determining what (if any) action it should take in respect of that dentist pursuant to its powers under the Performers Lists Regulations.

### **Determination of a Primary Care Trust made on or after the relevant date (regulation 8)**

**35.**—(1) Where, on or after the relevant date, an appropriate PCT is determining what (if any) action to take pursuant to regulation 8 in accordance with provision made in this Part, it shall make such a determination in accordance with such limitation and modifications to that regulation as are specified in this article.

(2) The appropriate PCT may—

- (a) pursuant to regulation 8(1)(c)(i), determine that no further action should be taken;
- (b) pursuant to regulation 8(5)(a), determine that an amount shall be recovered from the dentist;
- (c) pursuant to regulation 8(5)(b), determine that it would have determined that the dentist should be required to submit estimates for the prior approval of the Board in respect of such treatment and during such period as the appropriate PCT specifies; or
- (d) pursuant to regulation 8(5)(c), determine that it would have warned the dentist to comply more closely with his terms of service in future, if those terms of service were still applicable,

and if it makes any one or more of the decisions specified in sub-paragraphs (b) to (d), it shall, after the period specified in regulation 8(11)(a) or (b) (as applicable) has expired, notify in writing the contracting PCT and the Performers List PCT (if any) of its decision and the reasons for it, if either one is a different Primary Care Trust to the appropriate PCT.

(3) Where, pursuant to paragraph (2)(b), the appropriate PCT determines that an amount should be recovered from the dentist, regulation 8(9) shall not apply and that amount shall be recoverable by the appropriate PCT and it shall be treated as a debt owed by that dentist to the appropriate PCT.

(4) Where the appropriate PCT has notified the contracting PCT that it has made any of the determinations specified in paragraph (2)(b) to (2)(d), or where the appropriate PCT is the contracting PCT, paragraph (5) shall apply without prejudice to any other rights the contracting PCT may have to take action against the relevant contractor pursuant to any term of the general dental services contract or personal dental services agreement.

(5) Where this paragraph applies, the contracting PCT—

- (a) may, in relation to a relevant contractor, take into account the determination of the appropriate PCT if it is considering, pursuant to a term of the general dental services contract that gives effect to paragraph 73(7) of Schedule 3 to the GDS Contracts Regulations or the personal dental services agreement that gives effect to paragraph 71(7) of Schedule 3 to the PDS Agreements Regulations, whether the cumulative effect of breaches under that contract or agreement is such that to allow the contract or agreement to continue would be prejudicial to the efficiency of the services provided under that contract or agreement; but
- (b) shall not, pursuant to sub-paragraph (a), take into account any determination of an appropriate PCT that was made more than 6 years prior to the date upon which the contracting PCT is considering terminating the general dental services contract or personal dental services agreement.

(6) Where—

- (a) a Performers List PCT has received notification from an appropriate PCT pursuant to paragraph (2); or
- (b) where an appropriate PCT that has taken a decision pursuant to paragraph (2) is also the Performers List PCT,

it shall consider what (if any) action it should take in respect of that dentist pursuant to its powers under the Performers Lists Regulations.

## **Appeals to the Secretary of State against determinations of Primary Care Trusts (regulations 9, 10 and 11)**

36.—(1) Where—

- (a) a dentist has appealed against a determination of a Primary Care Trust in accordance with regulation 9 before the relevant date, but that appeal has not been finally determined before that date; or
- (b) in respect of a determination made by a Primary Care Trust in accordance with regulation 8 before the relevant date, the time limit specified in regulation 9(2) for appealing that determination has not expired before the relevant date, and the dentist serves a notice of appeal on or after the relevant date but within the time limit specified in regulation 9(2),

that appeal shall be determined pursuant to regulations 9, 10, 11 and 12, as if the amendments to those regulations and Schedule 5 had not taken effect.

(2) Where an appropriate PCT has made a determination in respect of a dentist on or after the relevant date pursuant to this Part—

- (a) the dentist shall be entitled to appeal against that determination in accordance with regulation 9; and
- (b) that appeal shall be determined pursuant to regulations 9, 10, 11 and 12,

as if the amendments to those regulations and to Schedule 5 had not taken effect.

(3) Where, on or after the relevant date, the Secretary of State is determining pursuant to regulation 9, 10, 11 or 12 what (if any) action to take in respect of a dentist, she shall make a determination pursuant to those regulations as if the amendments to those regulations and to Schedule 5 had not taken effect and that determination shall have effect in accordance with this article.

(4) If, in accordance with paragraph (3), the Secretary of State determines pursuant to—

- (a) regulation 9(3)(d), that there has been an overpayment and, if so, what amount;
- (b) regulation 8(5)(a) and 9(3) or 11, that an amount shall be recovered from the dentist;
- (c) regulation 8(5)(c) and 9(3), that she would have warned the dentist to comply more closely with his terms of service in future, if those terms of service were still applicable; or
- (d) regulation 12, that she would have imposed a prior approval requirement on the dentist,

she shall, in addition to the persons specified in regulation 10(14), notify the Primary Care Trust specified in paragraph (5).

(5) The Secretary of State shall, pursuant to paragraph (4)(a) to (4)(d), notify the contracting PCT and the Performers List PCT (if any) of her determination if those Primary Care Trusts are different to the Primary Care Trust referred to in regulation 10(14).

(6) Where, pursuant to regulation 8(5)(a), 9(3) or 11, the Secretary of State has determined that an amount shall be recovered from a dentist she shall direct the appropriate PCT, to recover that amount from the dentist and that amount shall be a debt owed to that appropriate PCT.

(7) Where, pursuant to paragraph (5), the Secretary of State has notified the contracting PCT that she has taken any of the decisions specified in paragraph (4)(a) to (4)(d), whether or not the contracting PCT is also the appropriate PCT, paragraph (8) shall apply without prejudice to any other right the contracting PCT may have to take action against the relevant contractor pursuant to any term of the general dental services contract or personal dental services agreement.

(8) Where this paragraph applies, the contracting PCT may, in relation to a relevant contractor, take into account the determination of the Secretary of State if it is considering, pursuant to a term of the general dental services contract that gives effect to paragraph 73(7) of Schedule 3 to the GDS Contracts Regulations or the personal dental services agreement that gives effect to paragraph 71(7)

of Schedule 3 to the PDS Agreements Regulations whether the cumulative effect of breaches under that contract or agreement is such that to allow the contract or agreement to continue would be prejudicial to the efficiency of the services provided under that contract or agreement.

(9) The contracting PCT shall not, pursuant to paragraph (8), take into account any notification received that relates to a determination that was made by the Secretary of State that occurred more than 6 years prior to the date upon which the contracting PCT is considering the matter pursuant to paragraph (8).

(10) Where a Performers List PCT has received notification from the Secretary of State pursuant to paragraph (4) or (5), whether or not the Performers List PCT is also the appropriate PCT, it shall consider what (if any) action it should take in respect of that dentist pursuant to its powers under the Performers Lists Regulations.

### **Functions of Local Dental Committees**

**37.** Where—

- (a) a Local Dental Committee has, before the relevant date had any matter referred to it for its consideration that it had not finally determined before the relevant date; and
- (b) pursuant to this Part, that matter is to be determined by the Local Dental Committee on or after the relevant date,

the Local Dental Committee that is recognised by a Primary Care Trust pursuant to section 45B of the 1977 Act<sup>(3)</sup> (local dental committees) shall be the Committee to consider or determine the matter.

---

(3) Section 45B is inserted into the 1977 Act by the 2003 Act, Schedule 11, paragraph 23.