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WELSH STATUTORY INSTRUMENTS

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**2006 No. 490**

**The National Health Service (General Dental Services Contracts) (Wales) Regulations 2006**

**PART 1**

**GENERAL**

**Title, commencement and application**

1.—(1) The title of these Regulations is the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006 which come into force on 1 March 2006.

(2) These Regulations apply in relation to Wales.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the National Health Service Act 1977;

“Assembly” means the National Assembly for Wales;

“the 1990 Act” means the National Health Service and Community Care Act 1990;

“additional services” means one or more of—

- (a) advanced mandatory services;
- (b) dental public health services;
- (c) domiciliary services;
- (d) orthodontic services; and
- (e) sedation services;

“adjudicator” means the Assembly or a person or persons appointed by the Assembly under section 4(5) of the 1990 Act (NHS contracts) or paragraph 55(4) of Schedule 3 (NHS dispute resolution procedure);

“advanced mandatory services” means any primary dental service that would fall within the services described in regulation 14 (mandatory services), but by virtue of the high level of facilities, experience or expertise required in respect of a particular patient, the service is provided as a referral service;

“Band 1 course of treatment” means a course of treatment, including a course of treatment consisting of urgent treatment, provided to a patient in respect of which a Band 1 NHS Charge is payable pursuant to the NHS Charges Regulations, or would be payable if the patient was not an exempt person;

“Band 2 course of treatment” means a course of treatment provided to a patient in respect of which a Band 2 NHS Charge is payable pursuant to the NHS Charges Regulations, or would be payable if the patient was not an exempt person;

“Band 3 course of treatment” means a course of treatment provided to a patient in respect of which a Band 3 NHS Charge is payable pursuant to the NHS Charges Regulations, or would be payable if the patient was not an exempt person;

“banded course of treatment” means a Band 1, Band 2 or Band 3 course of treatment;

“bank holiday” means any day that is specified or proclaimed as a bank holiday in Wales pursuant to section 1 of the Banking and Financial Dealings Act 1971(1);

“bridge” means a fixed or removable bridge which takes the place of any teeth;

“case assessment”, in respect of an orthodontic course of treatment, means a clinical examination of the patient, including the taking of such radiographs, colour photographs and models as are required in order to determine what orthodontic treatment (if any) is to be provided to the patient;

“charge exempt course of treatment” means a course of treatment that involves the examination and assessment of a patient leading to—

- (a) the issue of a prescription;
- (b) the repair of a dental appliance;
- (c) the arrest of bleeding; or
- (d) the removal of sutures,

which, by virtue of regulation 3(2)(d) or (f) of the NHS Charges Regulations, is provided free of charge to the patient;

“charity trustee” means one of the persons having the general control and management of the administration of a charity;

“child” means a person who has not attained the age of 16 years;

“complete”, in relation to—

- (a) a course of treatment, means that—
  - (i) where no treatment plan has to be provided in respect of a course of treatment pursuant to paragraph 7(5) of Schedule 3 (treatment plans), all the treatment recommended to, and agreed with, the patient by the contractor at the initial examination and assessment of that patient has been provided to the patient; or
  - (ii) where a treatment plan has to be provided to the patient pursuant to paragraph 7 of Schedule 3, all the treatment specified on that plan by the contractor (or that plan as revised in accordance with that paragraph 7(3) of that Schedule) has been provided to the patient; and
- (b) an orthodontic course of treatment, means that—
  - (i) where the contractor determines in accordance with paragraph 4(3) of Schedule 1 (patients to whom orthodontic services may be provided) that no orthodontic treatment should be provided following the case assessment, the completion of the case assessment; or
  - (ii) where the contractor has determined that orthodontic treatment should be provided following the case assessment, all of the orthodontic treatment specified on the orthodontic treatment plan by the contractor pursuant to paragraph 6 of Schedule 1 (orthodontic treatment plans) (or that plan as revised in accordance with paragraph 6(3) of that Schedule) has been provided to the patient,

and “completed” will be construed accordingly;

“contract” means, except where the context otherwise requires, a general dental services contract under section 28K of the Act<sup>(2)</sup> (general dental services contracts: introductory);

“course of treatment” means—

- (a) an examination of a patient, an assessment of his or her oral health, and the planning of any treatment to be provided to that patient as a result of that examination and assessment; and
- (b) the provision of any planned treatment (including any treatment planned at a time other than the time of the initial examination) to that patient,

provided by, except where expressly provided otherwise, one or more providers of primary dental services, but it does not include the provision of any orthodontic services or dental public health services;

“dental appliance” means a denture or bridge and for the purposes of this definition, a denture includes an obturator;

“dental care professional” means a person whose name is included in the register of dental care professionals or on the appropriate roll for dental auxiliaries established in accordance with Part II of the Dental Auxiliaries Regulations 1986<sup>(3)</sup>;

“dental corporation” means a body corporate carrying on the business of dentistry in accordance with the Dentists Act;

“dental performers list” means a list of dental practitioners prepared in accordance with regulations made under section 28X of the Act<sup>(4)</sup> (persons performing primary medical and dental services);

“dental public health services” means services provided by the contractor by virtue of section 16CB<sup>(5)</sup>(c) of the Act <sup>(5)</sup> (dental public health);

“Dentists Act” means the Dentists Act 1984<sup>(6)</sup>;

“Dentists Act Order” means the Dentists Act 1984 (Amendment) Order 2005<sup>(7)</sup>;

“Dentists Register” means the register maintained by the General Dental Council pursuant to section 14 of the Dentists Act<sup>(8)</sup> (the dentists register and the registrar);

“domiciliary services” means a course of treatment, or part of a course of treatment, provided at a location other than—

- (a) the practice premises of any provider of primary dental services;
- (b) a mobile surgery of any provider of primary dental services; or
- (c) a prison;

“exempt person” means a person who is, by virtue of either Schedule 12ZA to the Act<sup>(9)</sup> (dental charging: exemptions) or the NHS Charges Regulations, exempt from the need to pay an NHS Charge in respect of the services he or she has received under the contract;

“family member” means—

- (a) a spouse;
- (b) a civil partner;

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(2) Section 28K was inserted into the Act by section 172(1) of the 2003 Act.

(3) [S.I. 1986/887](#); relevant amending instruments are [S.I. 1999/3460](#), [2003/3105](#) and [2002/1671](#).

(4) Section 28X was inserted into the Act by section 179(1) of the 2003 Act.

(5) Section 16CB was inserted into the Act by section 171(1) of the 2003 Act.

(6) [1984 c. 24](#).

(7) [S.I. 2005/2011](#).

(8) Section 14 of the Dentists Act is prospectively substituted by article 6 of the Dentists Act Order.

(9) Schedule 12ZA was inserted into the Act by section 183(2) of the 2003 Act.

- (c) a person whose relationship with the registered patient has the characteristics of the relationship between husband and wife or civil partners;
- (d) a parent or step-parent;
- (e) a son;
- (f) a daughter;
- (g) a child of whom the person is—
  - (i) the guardian; or
  - (ii) the carer duly authorised by the local authority to whose care the child has been committed under the Children Act 1989<sup>(10)</sup>; or
- (h) a grandparent;

“FHSAA” means the Family Health Services Appeal Authority constituted under section 49S of the Act<sup>(11)</sup> (the Family Health Services Appeal Authority);

“financial year” means a period of 12 months ending with 31 March in any year;

“health care professional” has the same meaning as in section 28M of the Act <sup>(12)</sup>(persons eligible to enter into GDS contracts) and “health care profession” will be construed accordingly;

“health service body” has, unless the context otherwise requires, the meaning given to it in section 4(2) of the 1990 Act<sup>(13)</sup> (NHS contracts);

“licensing body” means any body that licenses or regulates any profession;

“listed”, in relation to drugs, medicines or appliances, means such drugs, medicines or appliances as are included in a list for the time being approved by the Assembly for the purposes of section 41 of the Act<sup>(14)</sup> (arrangements for pharmaceutical services);

“Local Health Board” means, unless the context otherwise requires, the Local Health Board which is a party, or a prospective party, to the contract;

“mandatory services” means the services described in regulation 14;

“mobile surgery”, except where expressly provided otherwise in these Regulations, means any vehicle in which services under the contract are to be provided;

“national disqualification” means—

- (a) a decision made by the FHSAA under section 49N of the Act or under regulations corresponding to that section made under section 28X(4) of the Act<sup>(15)</sup> (national disqualifications);
- (b) a decision under provisions in force in Scotland or Northern Ireland corresponding to section 49N of the Act; or
- (c) a decision by the NHS Tribunal which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001<sup>(16)</sup> or regulation 6(4)

<sup>(10)</sup> 1989 c. 41.

<sup>(11)</sup> Section 49S was inserted into the Act by section 27(1) of the 2001 Act.

<sup>(12)</sup> Section 28M was inserted into the Act by section 172(1) of the 2003 Act.

<sup>(13)</sup> 1990 c. 19.

<sup>(14)</sup> Section 41 of the Act was substituted by the 2001 Act, section 42(1) and amended by the 2002 Act, section 2(5) and Schedule 2, paragraphs 1 and 13, by the 2003 Act, section 184 and Schedule 11, paragraphs 7 and 18(1) and (2), and (3) and by S.I. 2003/1590, article 3 and the Schedule, paragraph 3.

<sup>(15)</sup> Section 49N was inserted into the Act by section 25 of the 2001 Act. Section 28X was inserted in to the Act by section 179(1) of the 2003 Act.

<sup>(16)</sup> S.I. 2001/3744 amended by S.I. 2002/2469.

(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002(17);

“NHS Charge” means a charge made to the patient for provision of services pursuant to the NHS Charges Regulations;

“NHS Charges Regulations” means the National Health Service (Dental Charges) (Wales) Regulations 2006(18);

“NHS contract” has the meaning assigned to it in section 4(1) of the 1990 Act;

“NHS dispute resolution procedure” means the procedure for disputes specified in paragraphs 55 and 56 of Schedule 3;

“NHS Tribunal” means the Tribunal constituted under section 46 of the Act(19) for England and Wales, and which, except for prescribed cases, had effect in relation to England only until 14 December 2001 and in relation to Wales only until 26 August 2002(20);

“normal surgery hours” means the times at which the contractor has agreed with the Local Health Board (and specified in the contract) that the surgery will be open to patients for the provision of services;

“NPSA” means the National Patient Safety Agency established as a Special Health Authority by the National Patient Safety Agency (Establishment and Constitution) Order 2001(21));

“orthodontic appliance” means a device used in the mouth to move or immobilise the teeth in order to correct or prevent malocclusion;

“orthodontic course of treatment” means—

- (a) a case assessment of a patient, and
- (b) the provision of any orthodontic treatment that the contractor determines should be provided to the patient in accordance with Part 2 of Schedule 1 (orthodontic services);

“orthodontic services” means the provision of orthodontic courses of treatment or the services referred to in paragraph 5(2) of Schedule 1 (repairs);

“orthodontic treatment” means treatment of, or treatment to prevent, malocclusion of the teeth and jaws, and irregularities of the teeth;

“parent” , in relation to any child, means a parent or other person who has parental responsibility for that child;

“patient” means, unless the context otherwise requires, a person to whom the contractor is providing services under the contract;

“patient record” means a form supplied by a Local Health Board for the purpose of maintaining a record of treatment;

“practice” means the business operated by the contractor for the purpose of delivering services under the contract;

“practice premises”, except where expressly provided otherwise in these Regulations, means an address specified in the contract as one at which services are to be provided under the contract but does not include a mobile surgery;

“prescriber” means a dental practitioner who is either engaged or employed by the contractor or is a party to the contract;

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(17) [S.I. 2002/1920](#).

(18) [S.I. 2006/ \(W. \)](#) .

(19) Section 46 was revoked by the 2001 Act, section 67, Schedule 5, paragraph 5 and Schedule 6, Part 1.

(20) See [S.I. 2001/3738](#), article 2(5) and (6)(b), which sets out the prescribed cases for England and [S.I. 2002/1919](#), article 2(2) and (3)(b), which sets out the prescribed cases for Wales.

(21) [S.I. 2001/1743](#).

“primary care list” means—

- (a) a list of persons performing primary medical or dental services under section 28X of the Act<sup>(22)</sup>;
- (b) a list of persons undertaking to provide general ophthalmic services or, as the case may be, pharmaceutical services prepared in accordance with regulations made under sections 39, 42 or 43 of the Act;
- (c) a list of persons approved for the purposes of assisting in the provision of any services mentioned in paragraph (b) or (d) prepared in accordance with regulations made under section 43D of the Act<sup>(23)</sup>;
- (d) a list of persons who undertook to provide general medical services or general dental services prepared in accordance with regulations made under sections 29 and 36 of the Act<sup>(24)</sup>;
- (e) a services list which fell within the meaning of section 8ZA of the National Health Service (Primary Care) Act 1997<sup>(25)</sup>;
- (f) a list corresponding to a services list prepared by virtue of regulations made under section 41 of the Health and Social Care Act 2001<sup>(26)</sup>; or
- (g) a list corresponding to any of the above lists in Scotland or Northern Ireland;

“prison” includes a young offender institution but not a secure training centre or a naval, military or air force prison, and for the purposes of this definition—

- (a) “secure training centre” means a place in which offenders subject to detention and training orders under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000<sup>(27)</sup> (offenders under 18: detention and training orders) may be detained and given training and education and prepared for their release, and
- (b) “young offender institution” means a place for the detention of offenders sentenced to detention in a young offender institution or to detention in a young offender institution as part of a longer custodial sentence, including custody for life;

“private”, in the context of services or treatment, means otherwise than under the contract or Part 1 of the Act, and “privately” will be construed accordingly;

“professional registration number” means the number against a dental practitioner’s name in the Dentists Register;

“referral notice” means the notice referred to in paragraph 9(2)(a) of Schedule 3 (referral to another contractor, a hospital or other relevant service provider for advanced mandatory, domiciliary or sedation services);

“referral service” means one or more of advanced mandatory services, domiciliary services or sedation services provided by the contractor to a patient who has, during a course of treatment, been referred to the contractor by—

- (a) another contractor, or
  - (b) another provider of primary dental services under Part 1 of the Act,
- for the provision of one or more of those services as part of that course of treatment;

(22) Section 28X was inserted into the Act by section 179(1) of the 2003 Act.

(23) Section 43D was inserted into the Act by section 24 of the 2001 Act.

(24) Sections 29 and 36 were repealed by sections 175(2) and 196 of, and Schedule 14 Part 4 to the 2003 Act.

(25) 1997 c. 46 (“the 1997 Act”). Section 8ZA was inserted into the 1997 Act by section 26(2) of the 2001 Act and repealed by section 196 of, and Schedule 14 Part 4 to, the 2003 Act.

(26) 2001 c. 15.

(27) 2000 c. 6.

“referral treatment plan” means a treatment plan provided pursuant to paragraph 2(1) of Schedule 1 or that plan as varied in accordance with paragraph 2(3) of that Schedule;

“register of dental care professionals” means the register maintained by the General Dental Council under section 36B of the Dentists Act(28) (the dental care professionals register);

“sedation services” means a course of treatment provided to a patient during which the contractor administers one or more drugs to a patient, which produce a state of depression of the central nervous system to enable treatment to be carried out, and during and in respect of that period of sedation—

- (a) the drugs and techniques used to provide the sedation are deployed by the contractor in a manner that ensures loss of consciousness is rendered unlikely; and
- (b) verbal contact with the patient is maintained in so far as is reasonably possible;

“trauma” means damage to teeth, gingival tissues or alveoli caused by a force arising outside the mouth, resulting in mobility, luxation, subluxation or fracture of the hard tissues or injury to the soft tissues;

“unit of dental activity” means the unit of activity which is in the contract used to—

- (a) express the amount of; and
- (b) measure in accordance with Part 1 of Schedule 2 the provision of, mandatory services and advanced mandatory services provided under the contract;

“unit of orthodontic activity” means the unit of activity which is in the contract used to—

- (a) express the amount of; and
- (b) measure in accordance with Part 2 of Schedule 2 the provision of, orthodontic services provided under the contract;

“urgent treatment” means a course of treatment that consists of one or more of the treatments listed in Schedule 4 to the NHS Charges Regulations (urgent treatment under Band 1 charge) that are provided to a person in circumstances where—

- (a) a prompt course of treatment is provided because, in the opinion of the contractor, that person’s oral health is likely to deteriorate significantly, or the person is in severe pain by reason of his or her oral condition; and
- (b) treatment is provided only to the extent that is necessary to prevent that significant deterioration or address that severe pain; and

“working day” means any day apart from Saturday, Sunday, Christmas Day, Good Friday or a bank holiday.

(2) In these Regulations—

- (a) the use of the term it in relation to the contractor will be deemed to include a reference to a contractor that is an individual dental practitioner or two or more individuals practising in partnership and related expressions will be construed accordingly;
- (b) references to forms supplied by the Local Health Board to contractors includes electronic forms and forms which are generated electronically, but does not include prescription forms; and
- (c) unless the context otherwise requires, any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations and any reference in a regulation to a numbered Schedule is a reference to the Schedule to these Regulations bearing that number.

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(28) Section 36B is prospectively inserted into the Dentists Act by the Dentists Act Order, article 29.

## PART 2

### CONTRACTORS

#### Conditions: introductory

3. Subject to the provisions of any order made by the Assembly under section 173 of the Health and Social Care (Community Health and Standards) Act 2003<sup>(29)</sup> (general dental services: transitional), a Local Health Board may only enter into a contract if the conditions set out in—

- (a) regulation 4; and
- (b) in the case of a contract to be entered into with a dental corporation on or after the coming into force for all purposes of article 39 of the Dentists Act Order (substitution of sections 43 and 44), regulation 5,

are met.

#### General prescribed conditions relating to all contracts

4.—(1) For the purposes of section 28M of the Act (conditions upon which a general dental services contract may be entered into) the prescribed condition is that a person must not fall within paragraph (3).

(2) The reference to person in paragraph (1) includes any director, chief executive or secretary of a dental corporation.

(3) A person falls within this paragraph if—

- (a) he, she or it is the subject of a national disqualification;
- (b) subject to paragraph(4), he, she or it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;
- (c) within the period of five years prior to the date the contract is to be commenced or, if earlier, the date on which the contract is to be signed—
  - (i) he or she has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body, unless he or she has subsequently been employed by that health service body or another health service body and paragraph (5) applies to him or her or that dismissal was the subject of a finding of unfair dismissal by any competent tribunal or court; or
  - (ii) he, she or it has been removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 49F(2), (3) and (4) of the Act respectively<sup>(30)</sup>) unless his, her or its name has subsequently been included in such a list;
- (d) he or she has been convicted in the United Kingdom of—
  - (i) murder; or
  - (ii) a criminal offence other than murder, committed on or after 26 August 2002, and has been sentenced to a term of imprisonment of over six months;
- (e) subject to paragraph (6), he or she has been convicted outside the United Kingdom of an offence—
  - (i) which would, if committed in England and Wales, constitute murder; or

<sup>(29)</sup> 2003 c. 43.

<sup>(30)</sup> Section 49F was inserted into the Act by section 25 of the 2001 Act.



- (ii) committed on or after 26 August 2002, which would if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
  - (f) he or she has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933**(31)** (offences against children and young persons with respect to which special provisions of this Act apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995**(32)** (offences against children under the age of 17 years to which special provisions apply) committed on or after 1 April 2006;
  - (g) he, she or it has—
    - (i) been adjudged bankrupt or had sequestration of his or her estate awarded unless (in either case) he or she has been discharged or the bankruptcy order has been annulled;
    - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986**(33)** unless that order has ceased to have effect or has been annulled; or
    - (iii) made a composition or arrangement with, or granted a trust deed for, his, her or its creditors unless he, she or it has been discharged in respect of it;
  - (h) an administrator, administrative receiver or receiver is appointed in respect of it;
  - (i) he or she has within the period of five years prior to the date the contract is to be commenced or, if earlier, the date on which the contract is to be signed—
    - (i) been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he or she was responsible or to which he or she was privy, or which he or she by his or her conduct contributed to or facilitated; or
    - (ii) been removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990**(34)** (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body; or
  - (j) he or she is subject to a disqualification order under the Company Directors Disqualification Act 1986**(35)**, the Companies (Northern Ireland) Order 1986**(36)** or to an order made under section 429(2)(b) of the Insolvency Act 1986**(37)** (failure to pay under county court administration order).
- (4) A person does not fall within paragraph (3)(b) where the Local Health Board is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and it does not make the person unsuitable to be—
- (a) a contractor **(38)**;
  - (b) a director, chief executive or secretary of a corporation entering into a contract, in the case of a contract with a dental corporation,

as the case may be.

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**(31)** 1933 c. 12 as amended by the Domestic Violence, crime and Victims Act 2004 (c. 28), section 58(1), Schedule 10, paragraph 2, the Sexual Offences Act 2003 (c. 42), section 139 and Schedule 6, paragraph 7, the Criminal Justice Act 1988 (c. 33), section 170 and Schedule 15, paragraph 8 and Schedule 16, paragraph 16 and the Sexual Offences Act 1956 (c. 69), sections 48 and 51 and Schedules 3 and 4; and modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9.

**(32)** 1995 c. 46.

**(33)** 1986 c. 45. Schedule 4A was inserted by section 257 of, and Schedule 20 to, the Enterprise Act 2002 (c. 40).

**(34)** 1990 c. 40.

**(35)** 1986 c. 46 as amended by the Insolvency Act 2000 (c. 39).

**(36)** S.I. 1986/1032 (N.I. 6).

**(37)** 1986 c. 45.

**(38)** The term “contractor” is defined in section 28K of the Act.

(5) Where a person has been employed as a member of a health care profession any subsequent employment must also be as a member of that profession.

(6) A person does not fall within paragraph (3)(e) where the Local Health Board is satisfied that the conviction does not make the person unsuitable to be—

(a) a contractor;

(b) a director, chief executive or secretary of the corporation entering into a contract, in the case of a contract with a dental corporation,

as the case may be.

#### **Additional prescribed conditions relating to contracts with dental corporations**

5.—(1) Subject to paragraph (2), it is a condition in the case of a contract to be entered into with a dental corporation on or after the date of the coming into force for all purposes of article 39 of the Dentists Act Order that no—

(a) offence has been or is being committed under section 43 of the Dentists Act; or

(b) financial penalty has been imposed under section 43B or 44 of the Dentists Act .

(2) Paragraph (1) will not apply if the Local Health Board is satisfied that any offence under section 43 or penalty imposed under section 43B or 44 of the Dentists Act does not make the dental corporation unsuitable to be a contractor, whether by virtue of the time that has elapsed since any conviction or penalty was imposed, or otherwise.

#### **Reasons**

6.—(1) Where a Local Health Board is of the view that the conditions in regulation 4 or 5 for entering into a contract are not met it will notify in writing the person or persons intending to enter into the contract of its view and its reasons for that view and of his, her, its, or their right of appeal under regulation 7.

(2) The Local Health Board will also notify in writing of its view and its reasons for that view, a director, chief executive or secretary of a dental corporation that is notified under paragraph (1) where its reason for the decision relates to that person or those persons.

#### **Appeal**

7. A person who has been served with a notice under regulation 6(1) may appeal to the FHSAA against the decision of the Local Health Board that the conditions in regulation 4 or 5 are not met by giving notice in writing to the FHSAA within the period of 28 days beginning on the day that the Local Health Board served its notice.

## **PART 3**

### **PRE-CONTRACT DISPUTE RESOLUTION**

#### **Pre-contract disputes**

8.—(1) Subject to paragraphs (2) and (3), if, in the course of negotiations intending to lead to a contract, the prospective contracting parties are unable to agree on a particular term of the contract, either party may refer the dispute to the Assembly to consider and determine the matter in accordance with the procedure provided for in paragraphs 55(2) and (3) of Schedule 3.

(2) Paragraph (1) does not apply in the case where both parties to the prospective contract are health service bodies (in which case section 4(4) of the 1990 Act (NHS contracts) applies).

(3) Before referring the dispute for consideration and determination under paragraph (1), both parties to the prospective contract must make every reasonable effort to communicate and co-operate with each other with a view to resolving it.

(4) Disputes referred to the Assembly in accordance with paragraph (1), or section 4(4) of the 1990 Act, will be considered and determined in accordance with the provisions of paragraphs 55(4) to 55(13) and 56(1) of Schedule 3, and paragraph (5) (where it applies) of this regulation.

- (5) In the case of a dispute referred to the Assembly under paragraph (1), the determination—
- (a) may specify terms to be included in the proposed contract;
  - (b) may require the Local Health Board to proceed with the proposed contract, but may not require the proposed contractor to proceed with the proposed contract; and
  - (c) will be binding upon the prospective parties to the contract.

## **PART 4**

### **HEALTH SERVICE BODY STATUS**

#### **Health service body status**

**9.—**(1) Where a proposed contractor elects in a written notice served on the Local Health Board at any time prior to the contract being entered into to be regarded as a health service body for the purposes of section 4 of the 1990 Act, it will be so regarded from the date on which the contract is entered into.

(2) If, in accordance with paragraph (1) or (5), a contractor is to be regarded as a health service body, that fact will not affect the nature of, or any rights or liabilities arising under, any other contract with a health service body entered into by that contractor before the date on which the contractor is to be so regarded.

(3) Where a contract is made with an individual dental practitioner or two or more persons practising in partnership, and that individual, or that partnership is to be regarded as a health service body in accordance with paragraph (1) or (5), the contractor will, subject to paragraph (4), continue to be regarded as a health service body for the purposes of section 4 of the 1990 Act for as long as that contract continues and irrespective of any change in—

- (a) the partners comprising the partnership;
- (b) the status of the contractor from that of an individual dental practitioner to that of a partnership; or
- (c) the status of the contractor from that of a partnership to that of an individual dental practitioner.

(4) A contractor may at any time request a variation of the contract to include or remove provision from the contract that the contract is an NHS contract, and if it does so—

- (a) the Local Health Board will agree to the variation; and
- (b) the procedure in paragraph 60(1) of Schedule 3 will apply (variation of a contract: general).

(5) Where, pursuant to paragraph (4), the Local Health Board agrees to a variation of the contract, the contractor will—

- (a) be regarded; or
- (b) subject to paragraph (7), cease to be regarded,

as a health service body for the purposes of section 4 of the 1990 Act from the date that variation takes effect pursuant to paragraph 60(1) of Schedule 3.

(6) Subject to paragraph (7), a contractor will cease to be regarded as a health service body for the purposes of section 4 of the 1990 Act if the contract is terminated.

(7) Where a contractor ceases to be a health service body pursuant to—

- (a) paragraph (5) or (6), it will continue to be regarded as a health service body for the purposes of being a party to any other NHS contract entered into after it became a health service body but before the date on which the contractor ceased to be a health service body (for which purposes it ceases to be such a body on the termination of that NHS contract);
- (b) paragraph (5), it will, if it or the Local Health Board has referred any matter to the NHS dispute resolution procedure before it ceases to be a health service body, be bound by the determination of the adjudicator as if the dispute had been referred pursuant to paragraph 54 of Schedule 3 (dispute resolution: non-NHS contracts); or
- (c) paragraph (6), it will continue to be regarded as a health service body for the purposes of the NHS dispute resolution procedure where that procedure has been commenced—
  - (i) before the termination of the contract, or
  - (ii) after the termination of the contract, whether in connection with or arising out of the termination of the contract or otherwise,
 for which purposes it ceases to be such a body on the conclusion of that procedure.

## **PART 5**

### **CONTRACTS: REQUIRED TERMS**

#### **Parties to the contract**

**10.** A contract must specify—

- (a) the names of the parties;
- (b) in the case of a partnership—
  - (i) whether or not it is a limited partnership, and
  - (ii) the names of the partners and, in the case of a limited partnership, their status as a general or limited partner; and
- (c) in the case of each party, the postal address to which official correspondence and notices should be sent.

#### **NHS contracts**

**11.** In the case of a contractor who is to be regarded as a health service body pursuant to regulation 9, the contract must state that it is an NHS contract.

#### **Contracts with individuals practising in partnership**

**12.—(1)** Where the contract is with two or more individuals practising in partnership, the contract will be treated as made with the partnership as it is from time to time constituted, and the contract will make specific provision to this effect.

(2) Where the contract is with two or more individuals practising in partnership, the contractor must be required by the terms of the contract to ensure that any person who becomes a member of

the partnership after the contract has come into force is bound automatically by the contract whether by virtue of a partnership deed or otherwise.

### **Duration**

**13.**—(1) Except in the circumstances specified in paragraph (2), a contract must provide for it to subsist until it is terminated in accordance with the terms of the contract or the general law.

(2) The circumstances referred to in paragraph (1) are that the Local Health Board has terminated the contract of another provider of primary dental services, and as a result of that termination, it wishes to enter into a temporary contract for a period specified in the contract for the provision of services.

(3) Where a contract is entered into pursuant to paragraph (2)—

- (a) paragraph 66 (termination by the contractor) of Schedule 3 will not apply to the contract; and
- (b) the parties to the temporary contract may include such terms as to termination by notice as they may agree.

### **Mandatory services**

**14.**—(1) For the purposes of section 28L of the Act<sup>(39)</sup> (requirement to provide certain primary dental services), the services which must be provided under a general dental services contract (“mandatory services”) are described in paragraphs (2) to (4).

(2) A contractor must provide to its patients, during the period specified in paragraph (3), all proper and necessary dental care and treatment which includes—

- (a) the care which a dental practitioner usually undertakes for a patient and which the patient is willing to undergo;
- (b) treatment, including urgent treatment; and
- (c) where appropriate, the referral of the patient for advanced mandatory services, domiciliary services, sedation services or other relevant services provided under Part 1 of the Act.

(3) A contractor must provide—

- (a) urgent treatment; and
- (b) all other services described in paragraph (2),

that are necessary to meet the reasonable needs of its patients during normal surgery hours.

(4) The dental care and treatment referred to in paragraph (2) includes—

- (a) examination;
- (b) diagnosis;
- (c) advice and planning of treatment;
- (d) preventative care and treatment;
- (e) periodontal treatment;
- (f) conservative treatment;
- (g) surgical treatment;
- (h) supply and repair of dental appliances;
- (i) the taking of radiographs;
- (j) the supply of listed drugs and listed appliances; and

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<sup>(39)</sup> Section 28L was inserted into the Act by section 172(1) of the 2003 Act.

(k) the issue of prescriptions,  
but it does not include additional services.

#### **Additional services**

**15.** In the case where a contract includes the provision of additional services, that contract must contain, in relation to each such service as is included in the contract, terms that have the same effect as those specified in Schedule 1 in so far as they are relevant to that service.

#### **Services: general**

**16.—(1)** A contract must specify—

- (a) the services to be provided by the contractor;
- (b) the address of each of the premises to be used by the contractor or any sub-contractor for the provision of such services, or, if the contractor is to provide services from a mobile surgery, that fact; and
- (c) the hours during which services that are not mandatory services are to be provided.

(2) The reference to premises in paragraph (1)(b) does not include any place in which a patient is residing.

#### **Units of dental activity**

**17.—(1)** The contract must specify the number of units of dental activity to be provided by the contractor—

- (a) where the contract begins on 1 April, in each financial year; or
- (b) where the contract begins on a date other than 1 April, in the remainder of the financial year in which the contract begins, and in each financial year thereafter.

(2) A contract must contain terms which have the effect of those specified in Part 1 of Schedule 2 in relation to the calculation of the number of units of dental activity that the contractor will provide under the contract.

#### **Units of orthodontic activity**

**18.—(1)** Where a contract includes the provision of orthodontic services, the contract must specify the number of units of orthodontic activity to be provided by the contractor—

- (a) where the contract begins on 1 April, in each financial year; or
- (b) where the contract begins on a date other than 1 April, in the remainder of the financial year in which the contract begins, and in each financial year thereafter.

(2) Where paragraph (1) applies, the contract must also contain terms which have the effect of those provisions specified in Part 2 of Schedule 2 in relation to the calculation of the number of units of orthodontic activity that the contractor will provide under the contract.

#### **Under provision of units of dental activity or units of orthodontic activity**

**19.—(1)** The contract will provide that the Local Health Board will not pursuant to Part 9 of Schedule 3 (variation and termination of contracts) be entitled to take any action for breach of a term of the contract giving effect to regulation 17 or 18 (including termination of the contract) where paragraph (2) applies.

(2) Subject to paragraph (4), this paragraph applies where the contractor has failed to provide—

- (a) the number of units of dental activity; or
- (b) the number of units of orthodontic activity,

it is contracted to provide pursuant to a term of the contract giving effect to regulation 17 or 18 (as the case may be) where—

- (i) that failure amounts to 5 per cent or less of the total number of units of dental activity or units of orthodontic activity (as the case may be) that ought to have been provided during a financial year, and
- (ii) the contractor agrees to provide and does so provide the units it has failed to provide within such time period as the Local Health Board specifies in writing, such period to consist of not less than 60 days.

(3) Paragraphs (1) and (2) will not prevent the Local Health Board from taking action under Part 9 of Schedule 3 for breach of contract (including terminating the contract) on other grounds.

(4) In the case of a temporary contract the reference to a period of not less than 60 days in paragraph (2)(ii) may not apply if the Local Health Board considers it not appropriate or considers another period of less than 60 days should apply.

#### **Domiciliary services and sedation services**

**20.** Where a contract includes the provision of domiciliary services or sedation services, the contract must specify the number of courses of treatment that the contractor is—

- (a) to provide; or
- (b) to contribute to where provided as a referral service,

that involve the provision of domiciliary services or sedation services—

- (i) where the contract begins on 1 April, in each financial year; or
- (ii) where the contract begins on a date other than 1 April, in the remainder of the financial year in which the contract begins, and in each financial year thereafter.

#### **Finance**

**21.—**(1) The contract must contain a term which has the effect of requiring—

- (a) the Local Health Board to make payments to the contractor under the contract promptly and in accordance with both the terms of the contract and any other conditions relating to the payment contained in directions given by the Assembly under section 28N of the Act<sup>(40)</sup> (GDS contracts: payments); and
- (b) the contractor to make payments promptly to the Local Health Board and in accordance with both the terms of the contract and any other conditions relating to payment contained in directions given by the Assembly under section 28N of the Act.

(2) The obligation referred to in paragraph (1) is subject to any right the Local Health Board has to set off against an amount payable to the contractor an amount that—

- (a) is owed by the contractor to the Local Health Board under the contract;
- (b) has been paid to the contractor owing to an error or in circumstances when it was not due; or
- (c) the Local Health Board may withhold from the contractor in accordance with the terms of the contract or any other applicable provisions contained in directions given by the Assembly under section 28N of the Act.

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<sup>(40)</sup> Section 28N was inserted into the Act by section 172(1) of the 2003 Act.

(3) The contract must contain a term to the effect that where, pursuant to directions under section 16BB(4)(41) (Local Health Boards: Functions) or 28N of the Act, a Local Health Board is required to make a payment to a contractor under a contract but subject to conditions, those conditions are to be a term of the contract.

### **Fees, charges and financial interests of the contractor**

**22.**—(1) The contract must contain terms relating to fees, charges and financial interests which have the same effect as those set out in paragraphs (2) to (4).

(2) The contractor will not, either itself or through any other person, demand or accept a fee or other remuneration for its own or another’s benefit from—

- (a) any patient of its for the provision of any treatment under the contract, except as otherwise provided in the NHS Charges Regulations; and
- (b) any person who has requested services under the contract for himself or herself or a family member, as a prerequisite to providing services under the contract to that person or his or her family member.

(3) The contract must contain a term that—

- (a) only permits the contractor to collect from any patient of its any charge that that patient is required to pay by virtue of the NHS Charges Regulations, in accordance with the requirements of those Regulations; and
- (b) provides for obligations imposed on the contractor by virtue of the NHS Charges Regulations to be terms of the contract.

(4) The contract must contain a term that requires the contractor in making a decision—

- (a) as to what services to recommend or provide to a patient who has sought services under the contract; or
- (b) to refer a patient for other services by another contractor, hospital or other relevant service provider under Part 1 of the Act,

to do so without regard to its own financial interests.

(5) The term “patient” in paragraph (3) will have the same meaning as in regulation 2(1) of the NHS Charges Regulations.

### **Arrangements on termination**

**23.** A contract will make suitable provision for arrangements on termination of a contract including the consequences (whether financial or otherwise) of the contract ending.

### **Other contractual terms**

**24.**—(1) A contract must, unless it is of a type or nature to which a particular provision does not apply, contain other terms which have the same effect as those specified in Schedule 3 except paragraphs 55(4) to 55(13) and 56.

(2) The paragraphs specified in paragraph (1) will have effect in relation to the matters set out in those paragraphs.

(3) Where a contract does not commence on 1 April in any financial year, there must be a contractual term—

- (a) specifying the date and periods for the purposes of a mid-year review of the services provided; and

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(41) Section 16BB was inserted into the Act by section 6(1) of the 2002 Act.



- (b) which, other than as to the date and periods, have similar effect as those specified in paragraphs 58(3) to (8) and 59 of Schedule 3 in respect of the requirement and procedure for carrying out mid-year reviews.

## **PART 6**

### **TRANSITIONAL PROVISION**

#### **Commencement of contract**

**25.** The contract will provide for services to be provided under it from any date after 31 March 2006.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(42)

28 February 2006

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