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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 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>(1)</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),

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<sup>(1)</sup> 2003 c. 43.

- (3) and (4) of the Act respectively<sup>(2)</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
  - (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<sup>(3)</sup> (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<sup>(4)</sup> (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<sup>(5)</sup> 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<sup>(6)</sup> (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<sup>(7)</sup>, the Companies (Northern Ireland) Order 1986<sup>(8)</sup> or to an

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<sup>(2)</sup> Section 49F was inserted into the Act by section 25 of the 2001 Act.

<sup>(3)</sup> 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.

<sup>(4)</sup> 1995 c. 46.

<sup>(5)</sup> 1986 c. 45. Schedule 4A was inserted by section 257 of, and Schedule 20 to, the Enterprise Act 2002 (c. 40).

<sup>(6)</sup> 1990 c. 40.

<sup>(7)</sup> 1986 c. 46 as amended by the Insolvency Act 2000 (c. 39).

<sup>(8)</sup> S.I. 1986/1032 (N.I. 6).

order made under section 429(2)(b) of the Insolvency Act 1986<sup>(9)</sup> (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 **(10)**;

(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.

(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.

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(9) 1986 c. 45.

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

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**Status:** *This is the original version (as it was originally made).*

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