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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 137**

**NATIONAL HEALTH SERVICE**

**The National Health Service (General Dental Services) (Scotland) Amendment Regulations 2006**

<i>Made</i>	- - - -	<i>9th March 2006</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>10th March 2006</i>
<i>Coming into force</i>	- -	<i>1st April 2006</i>

The Scottish Ministers, in exercise of the powers conferred by sections 25(1) and (2), 28A, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (General Dental Services) (Scotland) Amendment Regulations 2006 and shall come into force on 1st April 2006.

(2) In these Regulations, “the principal Regulations” means the National Health Service (General Dental Services) (Scotland) Regulations 1996(2).

**Amendment of the principal Regulations**

2.—(1) The principal Regulations are amended as follows.

(2) In regulation 2(1) (interpretation)(3)–

(a) omit the definition of “approved trainer”;

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- (1) 1978 c. 29. Section 25(2) was extended by the Health and Medicines Act 1988 (c. 49), section 17 and amended by the National Health Service and Community Care Act 1990 (c. 19), section 40(2) and Schedule 9, paragraph 19(6), by the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 43 and Schedule 3 and by the Health Act 1999 (c. 8), section 56(3); section 28A was inserted by the Health and Social Security Act 1984 (c. 48), section 7(2) and 27(1); section 105(7), which contains provisions relevant to the making of regulations, was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
- (2) S.I.1996/177. Relevant amending instruments are S.I. 1996/841, 1996/2060, 1998/1663 and 1999/724 and S.S.I. 1999/51, 2000/188 and 352, 2001/368, 2002/99 and 268, 2003/131 and 422, 2004/292 and 2005/95.
- (3) Regulation 2(1) was amended by S.I. 1998/1663 and 1999/724 and S.S.I. 1999/51, 2000/188 and 352, 2001/368, 2003/131 and 2004/292.

- (b) after the definition of “continuing care arrangement” insert–  
 ““corresponding decision” has the same meaning as in section 32D of the Act;”;
- (c) after the definition of “dental officer” insert–  
 ““dental student” means a person studying for a qualification in dentistry, dental therapy or dental hygiene;”;
- (d) after the definition of “an emergency” insert–  
 ““equivalent body” means, in England, a Primary Care Trust, in Wales, a Local Health Board or, in Northern Ireland, a Health and Social Services Board, and in relation to any time prior to 1st October 2002 a Health Authority in England, and in relation to any time prior to 1st April 2003 a Health Authority in Wales, or any successor body;  
 “equivalent list” means a list kept by an equivalent body;”;
- (e) after the definition of “estimate” insert–  
 ““the General Dental Council’s Specialist List” means the specialist lists in distinctive branches of dentistry maintained by the General Dental Council;”;
- (f) after the definition of “oral health” insert–  
 ““orthodontic treatment” means treatment provided under, and in association with section VIII (orthodontic treatment) of the Scale of Fees;  
 “orthodontist” means a dentist who is on the General Dental Council’s Specialists List of Orthodontists;”; and
- (g) omit the definition of “voluntary vocational training certificate”.
- (3) In regulation 4 (dental list)–
- (a) in paragraph (1A) (4)–
- (i) in sub-paragraph (a)–  
 (aa) omit “31(1)(b)” and “or 32D(2)”; and  
 (bb) insert “or” before “32B(1)”; and
- (ii) in sub-paragraph (d) for “regulation 26(1)(5) (practitioners subject to inquiry in a fraud case)” substitute “regulation 26 (practitioners subject to inquiry)”; and
- (b) in paragraph (1B)(a)(6)–  
 (i) omit “31(1)(b)” and “or 32D(2)”; and  
 (ii) insert “or” before “32B(1)”; and
- (c) after paragraph (1B) insert–  
 “(1C) A Health Board shall not include the name of any dentist in its dental list, and shall remove the name of any dentist from its dental list, if any decision has been made in England, Wales or Northern Ireland to deal with that dentist in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under sections 29B(2), 30(2) or (5) or 32B(1) of the Act, for so long as that decision is in force.  
 (1D) Where any corresponding decision is made in England, Wales or Northern Ireland by an equivalent body that–  
 (a) a person is to be included in an equivalent list subject to conditions;  
 (b) a person is to be removed from an equivalent list contingent on conditions;

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(4) Regulation 4(1A) was inserted by [S.S.I. 2000/188](#) and amended by [S.S.I. 2004/37](#).

(5) [S.S.I. 2004/38](#). Regulation 26 was amended by [S.S.I. 2004/122](#) and [2006/122](#).

(6) Regulation 4(1B) was inserted by [S.S.I. 2000/188](#) and amended by [S.S.I. 2004/37](#).

- (c) a person is to be disqualified from an equivalent list subject to conditions; or
- (d) any conditions so imposed are varied,

a Health Board shall impose those conditions in relation to the provision, by that person of general dental services in the area of the Health Board referred to in paragraph (1D).

(1E) The Health Board may make such modifications of the conditions as it considers necessary for them to have the like effect in relation to Scotland as they do in relation to England, Wales or (as the case may be) Northern Ireland, but only if the Health Board has previously given the person concerned written notice of the proposed modifications and an opportunity to make representations about them.”.

- (4) In regulation 22 (Statement of Dental Remuneration)(7)–
  - (a) in paragraph (1) in the Table(8), at the end of column 1 and 2 respectively insert “XVI” and “Deprived area allowance”.
  - (b) after “Remuneration” in paragraph (3) insert– “; and
    - (4) A determination or an amendment to a determination shall be in respect of a period beginning on or after a date specified in that determination or amendment, which may be the date of that determination or amendment or an earlier or later date, but may be an earlier date only if it, taking the determination as a whole, it is not detrimental to persons to whose remuneration it relates;” and
- (5) In regulation 23(4)(b) (approval of payments)(9) for “XIV and XV” substitute “XIV, XV and XVI”.
- (6) In regulation 32 (payments to dentists suspended by direction of the Tribunal)(10) omit paragraph (5).
- (7) In regulation 34 (surveys) after “services” insert–

“at no less than six monthly intervals and when requested to do so by the Board, a dentist shall provide within a timescale specified by the Board, for the purpose of such surveys or other research, to the Board information of his provision of general dental services”.
- (8) In regulation 34A(7)(c) (appeals from decisions of the Board)(11)–
  - (a) in head (i) after “3 dentists” insert “, and where such an appeal is made in connection with orthodontic treatment, one of the dentists shall be an orthodontist”; and
  - (b) after “2 dentists” in head (ii) insert–

“, and where such an appeal is made in connection with orthodontic treatment, one of the dentists shall be an orthodontist; and

    - (iii) a chairperson who is not a dentist and who may be legally qualified.”.
- (9) In Schedule 1 (terms of service for dentists)–
  - (a) in paragraph 8(1) (duration and extension of a continuing care arrangement)(12) for “16” substitute “36”;
  - (b) in paragraph 9(1) (duration and extension of a capitation arrangement)(13) for “16” substitute “36”;

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(7) Regulation 22 was amended by S.S.I. 2000/352, 2002/99 and 268, 2003/131 and 422 and 2005/95.

(8) The Table was amended by S.I. 2000/352, 2001/368, 2002/99 and 268, 2003/131 and 422 and 2005/95.

(9) Regulation 23 was amended by S.I. 1998/2224 and 1999/724 and S.S.I. 1999/51, 2000/352 and 394, 2003/131 and 2005/95.

(10) Regulation 32 was amended by S.I. 1999/724.

(11) Regulation 34A was inserted by S.I. 1996/841 and amended by S.S.I. 1999/51 and 2000/188.

(12) Schedule 1, paragraph 8(1) was amended by S.I. 1996/2060 and S.S.I. 1999/51.

(13) Schedule 1, paragraph 9(1) was amended by S.I. 1996/2060 and S.S.I. 1999/51.

- (c) in paragraph 11(3) (termination of a continuing care arrangement or a capitation arrangement)(14) for “notify” substitute “give to” and for “accordingly” substitute “3 months' notice in writing”;
- (d) after paragraph 12 insert–

**“Referral to dental students**

**12A.**—(1) Where the conditions laid down in sub paragraph (2) are met, and where the dentist considers it suitable to do so, the dentist may refer a patient for care and treatment by a dental student.

(2) The conditions referred to in sub paragraph (1) are–

- (a) that the patient has been informed that the referral is for care and treatment by a dental student and the patient has consented to that referral; and
- (b) that the dental student who will provide the care and treatment shall be a dental student under the supervision of a dentist.”;

(e) in paragraph 19 (remuneration)(15)–

- (i) in sub paragraph (c) omit “or”; and
- (ii) in sub paragraph (d) omit “.” and insert–

“;

- (da) claim a fee, solicit or accept payment of any fee or other consideration, on his behalf or on behalf of another person, as a prerequisite to providing, or agreeing to provide, general dental services, except such fee or other consideration as may be prescribed in the Statement of Remuneration, the National Health Service (Dental Charges) (Scotland) Regulations 2003(16) or the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989(17); or”; and

(f) in paragraph 35(11)(b) (deputies and assistants) omit “, other than in a case falling within section 32B(3) of the Act”.

**Transitional provisions**

**3.**—(1) Appeals made under regulation 34A of the National Health Service (General Dental Services) (Scotland) Regulations 1996 before 1st April 2006 shall be treated on and after that date as if regulation 2(8) of these Regulations had not come into force.

(2) A continuing care arrangement or a capitation arrangement entered into before 1st April 2006 but still current on that date shall continue to have effect as if regulation 2(9)(a) and (b) of these Regulations had not come into force, until such time as the arrangement lapses, is terminated or is extended.

(3) Where a dentist gives notice under Schedule 1, paragraph 11(3), to the National Health Service (General Dental Services) (Scotland) Regulations 1996 before 1st April 2006 such notice shall be treated on and after that date as if regulation 2(9)(c) of these Regulations had not come into force.

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(14) Schedule 1, paragraph 7 was amended by S.I. 1998/1663 and S.S.I. 1999/51.

(15) Schedule 1, paragraph 19 was amended by S.S.I. 2000/188.

(16) S.S.I. 2003/158 as amended by S.S.I. 2004/101 and 2005/121.

(17) S.I. 1989/364 as amended by S.I. 1992/411, 1994/1770 and 1998/251 and S.S.I. 2004/369 and 2006/1386.

St Andrew's House,  
Edinburgh  
9th March 2006

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

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

These Regulations amend the National Health Service (General Dental Services) (Scotland) Regulations 1996 (“the Regulations”), which make arrangements under which dentists provide general dental services under the National Health Service (Scotland) Act 1978 (“the Act”).

Regulation 2(2) amends the definitions in the Regulations.

Regulation 2(3) makes consequential amendments to regulations 4 of the Regulations arising from amendments to the Act made by section 26 of the Smoking, Health and Social Care Act (Scotland) 2005 (“the 2005 Act”) regarding the effect to be given in Scotland to decisions of bodies in England, Wales and Northern Ireland corresponding to the decisions which can be made by the NHS Tribunal in Scotland.

Regulation 2(4)(a) amends regulation 22 to add a new matter to the table of matters that are to be provided for in determinations and published in the Statement of Dental Remuneration. It adds a Determination XVI, which is to make provision for a deprived area allowance.

Regulation 2(4)(b) amends regulation 22 of the Regulations by inserting paragraph (4) which provides for the period of determinations or amendments to determinations.

Regulation 2(5) amends regulation 23(4)(b) to provide that remuneration in accordance with Determination XVI shall be paid to dentists by the Common Services Agency for the Scottish Health Service.

Regulation 2(6) makes consequential amendments to regulations 32 of the Regulations arising from amendments to the Act made by section 26 of the 2005 Act regarding the effect to be given in Scotland to decisions of bodies in England, Wales and Northern Ireland corresponding to the decisions which can be made by the NHS Tribunal in Scotland.

Regulation 2(7) amends regulation 34 of the Regulations to require dentists to provide to Health Boards when requested, information regarding their provision of general dental services.

Regulation 2(8) amends regulation 34A(7)(c) of the Regulations which provide for appeals from decisions of the Scottish Dental Practice Board to be made to referees appointed by the Health Board. The amendment provides for the appointment of an orthodontist on the General Dental Council’s Specialist List where such appeals are made in connection with orthodontic treatment and a chairperson who is not a dentist.

Regulation 2(9)(a) and (b) amends paragraphs 8(1) and 9(1) of Schedule 1 of the Regulations by extending the time at which a continuing care or a capitalisation arrangement shall lapse from the end of the 16th month to the end of the 36th months in which (a) the patient was first accepted by the dentist under the continuing care arrangement or (b) the continuing care or a capitalisation arrangement was extended.

Regulation 2(9)(c) amends paragraph 11(3) of Schedule 1 to the Regulations by specifying the period of notice to be given to Health Boards by a dentist terminating a continuing care arrangement or a capitation arrangement.

Regulation 2(9)(d) inserts paragraph 12A in Schedule 1 to the Regulations provides for the referral of patients from dentists to dental students for treatment when certain conditions are met.

Regulation 2(9)(e) amends paragraph 19 of Schedule 1 to the Regulations by inserting sub paragraph (da) which provides that dentists shall not claim a fee or accept payment of a fee as a prerequisite to providing general dental services.

Regulation 2(9)(f) makes consequential amendments to paragraph 35(11)(b) of Schedule 1 to the Regulations arising from amendments to the Act made by section 26 of the 2005 Act regarding the effect to be given in Scotland to decisions of bodies in England, Wales and Northern Ireland corresponding to the decisions which can be made by the NHS Tribunal in Scotland.

Regulation 3 contains transitional provisions. Regulation 3(1) ensures that appeals made under regulation 34A of the Regulations before 1st April 2006 shall be treated on or after that date as if regulation 2(8) of these Regulations had not come into force. Regulation 3(2) ensures that a continuing care arrangement or a capitation arrangement entered into before 1st April 2006 shall have effect as if regulation 2(9)(a) and (b) of these Regulations had not come into force. Regulation 3(3) ensures that where a notice is given under Schedule 1, paragraph 11(3), to the Regulations before 1st April 2006 such a notice shall be treated on and after that date as if regulation 2(9)(c) of these Regulations had not come into force