

**EXPLANATORY MEMORANDUM TO THE
DENTISTS ACT 1984 (AMENDMENT) ORDER 2005**

2005 No.2011

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

Description

2. The Order, made under section 60 of the Health Act, 1999, amends the Dentists Act 1984. The 1984 Act provides for the regulation of Dentists by the General Dental Council (GDC). The amendments deal, among other matters, with: giving the GDC broader powers to deal with impaired fitness to practise, increasing competition and choice by removing restrictions on dental bodies corporate; regulating professionals complementary to dentistry: introducing a system to deal with non-NHS complaints: and requiring registrants by law to have indemnity cover before registration.

Matters of special interest to the Joint Committee on Statutory Instruments

3. There are none.

Legislative Background

4. This Order in Council is made under the powers given to Her Majesty under sections 60 and 62(4) of the Health Act 1999. Section 62(9) requires that the Order be laid before, and approved by resolution of, both Houses of Parliament before any recommendation is made to Her Majesty to make the Order. Under Schedule 3, paragraph 9 to the Health Act 1999, the Secretary of State is required to publish a draft of the Order at least 3 months before the Order (which may be modified as he sees fit) is laid in draft before both Houses of Parliament. The Secretary of State must lay with the Order a report about the consultation that he is required to carry out. The draft Order was published on 30 July 2004 and the period of consultation ended on 30 October 2004.

The purpose of the Order is to give effect to Government policies described in section 7.

Extent

5. This Instrument applies to all of the United Kingdom.

European Convention on Human Rights

6. The Minister of State at the Department of Health, Rosie Winterton MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Dentists Act 1984 (Amendment) Order 2005 are compatible with the Convention rights. “

Policy background:

7. The policy intention is to strengthen the statutory regulation of Dentists and Professions Complementary to Dentistry (PCD) in line with Government goals for the regulation of all health care professions.

In addition, the Office of Fair Trading Report on private dentistry made a number of recommendations for improving consumer information, procedures for dealing with complaints and other regulatory changes which were complementary to the Government's broader health objectives.

The 1984 Act already requires a person practising as a dentist, or one of two classes of dental auxiliary, dental therapists and dental hygienists, to register with the GDC. It imposes educational requirements for registration and gives the GDC powers to remove or suspend a dentist's or registered dental auxiliary's registration for misconduct. An appeal against such decisions exists to the High Court.

Fitness to Practise: The amendments in the Order would give the GDC broader powers to deal with impaired fitness to practise, in common with other regulators. In addition to misconduct and impaired health, action could be taken on deficient professional performance, and the findings of other regulators and courts could be used more effectively. The GDC would gain powers to place conditions on a dentist's or PCD's registration where fitness to practise proceedings found impaired fitness to practise.

PCD Regulation: The Order will bring the regulation of PCDs on to a comparable footing with the regulation of dentists themselves. In addition to raising the status of the two groups, dental therapists and dental hygienists, which are already regulated, the Order will allow the GDC, with Government approval, to bring other groups into regulation including dental nurses, dental technicians, clinical dental technicians, and orthodontic therapists.

Restriction on the Practise of Dentistry: A medical task under new subsection(1A) of section 37 means a task carried out as part of the delivery of clinical care for example assisting in an operating theatre or making a prosthesis.

Dental Bodies Corporate: Other amendments would give the GDC powers to increase competition and choice by removing restrictions on dental bodies corporate (DBC). The Dentists Act currently contains restrictions on DBCs dating back to 1921. The Order will remove the restriction on the number of DBCs who may practise dentistry. This provision together with the changes to regulation of PCDs will open up the market to new providers, and increase competition and choice for patients.

There is a fee raising provision in Article 39A like that for registration or retention of individual dentists or dental care professionals. The fee is paid at the time that the Dental Body Corporate provides the information required under this provision.

Non-NHS Complaints: There is currently no formal independent body to undertake the investigation, adjudication and resolution of complaints about non-NHS dentistry. The Order will extend the GDC's powers to establish an arm's length body to match the arrangements for handling complaints about NHS primary care practitioner services.

Indemnity: Dentists and PCDs are not required by law to have indemnity cover before they can be registered. The Order will require dentists and PCDs to have indemnity cover before registration. This may make it less likely that a practitioner who harmed a patient would turn out to be uninsured and unable to pay compensation.

Consultation on the draft Order took place via the document *Strengthening the General Council* which was published in July 2004. The responses to the consultation exercise are summarised in the report on consultation which is also laid before Parliament with the Order. The consultation produced 71 responses the majority of which were strongly supportive of the proposed changes.

Impact

8. A Regulatory Impact Assessment has not been prepared for this instrument as there is a negligible impact on business, charities or voluntary bodies.

Contact

9. The contact for further information on the Order is:

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