

EXPLANATORY MEMORANDUM TO
THE FUNCTIONS OF PRIMARY CARE TRUSTS (DENTAL PUBLIC
HEALTH) (ENGLAND) REGULATIONS 2006

2006 No. 185

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006 (“the 2006 Regulations”) are part of the legislative reform programme for NHS dentistry. Their purpose is to strengthen the public health function in England by prescribing Primary Care Trusts new functions in relation to dental public health. The main aim of the policy is to educate and support members of the public about ways in which they may improve their oral health.
 - 2.2 The oral health promotion function is supported by additional functions in relation to oral inspection of school children and epidemiological surveys to assess local oral health needs and monitor health improvement.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None
4. **Legislative Background**
 - 4.1 The 2006 Regulations are the first Regulations made under new section 16CB(1) of the 1977 Act.
5. **Extent**

This instrument applies to England only.
6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**
 - 7.1 The Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”) inserts new section 16CA into the National Health Service Act 1977 (“the 1977 Act”) which gives Primary Care Trusts (PCTs) new responsibilities for the provision of NHS dental services in their area and also provides the legislative framework for the establishment of primary dental services to meet those responsibilities. The 2003 Act also inserts new section

16CB into the 1977 Act which gives power to confer on PCTs' dental public health functions.

- 7.2 The National Health Service (General Dental Services Contracts) Regulations 2005 came into force on 1 January 2006 for the purpose of making contracts for the provision of dental services (GDS contracts). They replaced the NHS (General Dental Services) Regulations 1992 (SI 1992/661) which provided for general dental services under section 35 of the 1977 Act.
- 7.3 The National Health Service (Personal Dental Services Agreements) Regulations 2005 also came into force for making agreements on 1 January 2006 (PDS) and will replace the PDS piloting regime under the National Health Service (Primary Care) Act 1997. The policy intention is to "mainstream" the successful piloting of local contracts as a permanent part of NHS contracting.
- 7.4 From 1 April 2006 it is intended to establish GDS contracts and PDS agreements for high street dentists to provide primary dental services. The new contractual arrangements move away from the general dental services item of service remuneration to an annual payment no longer directly related to the dentists activity. This will enable dentists to spend more time with their patients and adopt a more preventive approach to oral healthcare.
- 7.5 The contracting arrangements will contribute to dentists more preventive approach to oral healthcare by enabling contractors to provide dental public health services under a GDS contract or PDS agreement as additional services. In this way dentists will be able to participate in PCT led oral health promotion functions under the 2006 Regulations.
- 7.6 The 2003 Act also inserts new section 16CB into the 1977 Act which gives power to confer on PCTs dental public health functions. The existing duty for dental treatment and dental education in schools (section 5(1A) of the 1977) will cease to have effect. Section 5(1A) is prospectively repealed by the 2003 Act as from 1 April 2006 (regulation 4(3)(c) of S.I. 2005/2925). Functions prescribed under section 16CB(1) include school screening as well as oral health promotion and local oral health surveys to help plan services. PCTs may involve other agencies in discharging dental public health functions, such as independent contractors or dental practices. For example, a PCT might wish to involve a dental practice in providing an oral health promotion or smoking cessation programme as described in paragraph 7.5 above.
- 7.7 The Community Dental Service (CDS) is provided mainly by Primary Care Trusts (some commissioned from NHS Trusts) to ensure that people who may not otherwise seek or get care within the general dental services, such as patients with special needs, can receive NHS dentistry. The CDS also has a dental public health function.
- 7.8 The CDS functions are set out in guidance issued in 1997, HSG(97)4, there is no statutory basis for these functions. The dental public health functions include dental health promotion, oral screening for children in state funded schools and epidemiological field work for use in planning local services.

- 7.9 Dental health promotion and oral screening for children in state funded schools are currently provided under section 5(1A) of the 1977 Act. Other public health functions are either provided as part of the Secretary of State's general duty under section 3 of the 1977 Act which has been delegated to PCTs or under section 5(2)(d) of the 1977 Act in relation to epidemiological field work for use in planning local services. New section 16CB provides for these dental public health functions to be directly conferred on PCTs.
- 7.10 The three functions to be conferred are:
- oral health promotion
 - oral screening for children in state funded schools
 - epidemiological field work for use in planning services.
- 7.11 To enable general dental practitioners to participate in dental public health programmes and adopt a more preventive approach, both the National Health Service (General Dental Services Contracts) Regulations 2005 and the National Health Service (Personal Dental Services Agreements) Regulations 2005 provide for "dental public health services" within the definition of "additional services" to make clear these services may be included in both types of local contract.

8. Impact

- 8.1 A full Regulatory Impact Assessment is attached to this memorandum.
- 8.2 The 2006 Regulations give PCTs new responsibilities under section 16CB of the 1977 act for the functions in relation to dental public health they currently provide under sections 3(1)(c) and 5(1)(a) or 5(1A) of the 1977 Act

9. Contact

Chris Audrey
Department of Health
New King's Beam House
20 Upper Ground
London SE1 9BW
Tel 020 7633 4149
GTN 396 34149
Chris.Audrey@dh.gsi.gov.uk

can answer any queries regarding the instrument.

FULL REGULATORY IMPACT ASSESSMENT

1. Title of proposal

Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006

2. Purpose and intended effect of the measure

(i) The objective

The Government objective is to strengthen the public health function in England by giving Primary Care Trusts new functions in relation to dental public health so as to educate and support members of the public about ways in which they may improve their oral health.

(i) The background

Published by the Department of Health in 1994, the last *National Oral Health Strategy* incorporated targets for the oral health of 5 and 12-year-old children and adults in England by 2003.

Modernising NHS Dentistry: Implementing the Plan published in 2000 flagged up the importance of developing a preventive focus within dentistry and gave a commitment to tackle oral health inequalities. *NHS Dentistry – Options for Change* published in 2002 identified a key function for a modernised NHS dental service allowing general dental practitioners “for the first time, to focus on preventive measures to combat dental disease and to tackle the serious oral health inequalities particularly in children”.

The Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”) legislated for far-reaching reform of NHS dental services to deliver the *Options for Change* objectives. Section 171 of the 2003 Act inserted new section 16CB (dental public health) into the National Health Service Act 1977 (“the 1977 Act”). To meet their new responsibilities for dental services under the 2003 Act, PCTs will assess local oral health needs in order to tackle long standing oral health inequalities.

(iii) Rationale for Government intervention

The Community Dental Service (CDS) is provided mainly by Primary Care Trusts (some commissioned from NHS Trusts) to ensure that people who may not otherwise seek or get care within the general dental services, such as patients with special needs, can receive NHS dentistry. The CDS also has a dental public health function.

The CDS functions are set out in guidance issued in 1997, HSG(97)4, there is no statutory basis for these functions. The dental public health functions include dental health promotion, oral screening for children in state funded schools and epidemiological field work for use in planning local services.

Dental health promotion and oral screening for children in state funded schools are currently provided under section 5(1A) of the 1977 Act. Other public health functions are either provided as part of the Secretary of States general duty under section 3 of the 1977 Act which has been delegated to PCTs or under section 5(2)(d) in relation

to epidemiological field work for use in planning local services. New section 16CB provides for these dental public health functions to be directly conferred on PCTs.

The three functions to be conferred are:

- oral health promotion
- oral screening for children in state funded schools
- epidemiological field work for use in planning services.

To enable general dental practitioners to participate in dental public health programmes and adopt a more preventive approach to oral healthcare, both the National Health Service (General Dental Services Contracts) Regulations 2005 and the National Health Service (Personal Dental Services Agreements) Regulations 2005 provide for “dental public health services” within the definition of “additional services” to make clear these services may be included in both types of local contract.

3. Consultation

i) Within government

The Secretary of State has new powers pursuant to the amendments made to the 1977 Act by the 2003 Act to make regulations providing for prescribed functions of PCTs in relation to dental public health.

ii) Public Consultation

The proposal is not new policy and there has therefore been no public consultations.

4. Options

The following 2 options were considered:

- Option 1 Leave things unchanged. The dental public health functions would not be conferred on PCTs and remain the subject of guidance.
- Option 2 Introduce subordinate legislation under new section 16CB of the 1977 Act to establish prescribed functions for PCTs in relation to dental public health.

5. Costs and Benefits

(i) Sectors and groups affected

The 1997 guidance affects:

- PCTs or NHS Trusts providing Community Dental Services
- Persons and groups receiving the services.

Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006 will affect similar groups and the work undertaken by the same NHS staff.

Administration of the new arrangements will continue to be the responsibility of PCTs. Both option 1 and option 2 have similar affect on administration by these NHS bodies.

(ii) Analysis of costs and benefits

Option 1

Economic impacts

Provision of the services would remain the financial responsibility of the PCT or Trust and the costs met from their NHS allocations.

Social impacts

The same groups of people would continue to benefit from the health promotion programmes and advice.

Environmental impacts

There are no environmental impacts from continuing with the current dental public health arrangements.

Option 2

Economic impacts

Option 2 means similar services provided to similar groups of people in the PCT area. The services will be provided by the same staff groups as at present and employed by the NHS.

Social impacts

By virtue of Regulation 2, PCTs will have a direct responsibility for improving the oral health in its area, undertaking dental inspections of school children and undertaking epidemiological local dental services.

Environmental impacts

There are no environmental impacts from this measure.

Summary of Costs and Benefits

Option	Total benefit : economic, environmental, social and administrative	Total cost per annum: economic, environmental, social and administrative
Option 1	CDS continue to provide a	Current staffing costs of

Do nothing	dental public health programme in the PCT area to assess local oral health need and provide oral health promotion.	CDS in England (treatment and dental public health functions) are in the order of £100 million.
Option 2 Implement new dental public health arrangements	PCTs have direct responsibilities to assess local oral health needs and better information from epidemiological surveys to plan services to improve oral health in the area	Similar costs to option 1. Administrative burden similar to option 1

6. Small Firms Impact Test

The measures have no impact on small businesses.

7. Competition Assessment

These regulations will have no impact on competition.

8. Enforcement, Sanctions and Monitoring

It is planned to issue Secretary of State directions under section 17 of the 1977 Act in relation to survey protocols to ensure comparability between successive surveys. PCTs are subject to performance management by the relevant Strategic Health Authority in line with the performance management framework.

9. Post-implementation review

The epidemiological surveys of children, coordinated by the British Association for the Study of Community Dentistry, and DH surveys sponsored under section 5(2)(d) of the 1977 Act will provide a national overview of the oral health of the population.

Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed: Rosie Winterton

Date: 26th January 2006

Minister of State, Department of Health.

Contact point

Chris Audrey
Dental & Ophthalmic Services Division
New King's Beam House

020 7633 4149

Annex

Implementation and Delivery Plan for Dental Reform Programme

Option 2

Following approval of the National Health Service (Dental Charges) Regulations 2005, by a resolution of each House of Parliament, they will be published on the Department of Health website <http://www.dh.gov.uk> and the NHS Primary care Contracting website <http://www.primarycarecontracting.nhs.uk> for the information of stakeholders. It is hoped that the Regulations will have been approved by both Houses and made by the end of December. The Regulations will come into force on 1 April 2006, which will amount to more than a 3 month period in which preparations can be undertaken for implementation.

The NHS (General Dental Services Contracts) Regulations 2005, and the NHS (Personal Dental Services Agreements) Regulations 2005 are both constructed on the basis of the provision of courses of treatment weighted by complexity. The categories of course of treatment and weightings, to be known as units of activity, are derived from the banded charging regime. These Regulations will come into force early in January 2006 for the purpose of agreeing contracts and for provision of services from April 2006. This provides a three month preparatory period.

Publication of the finalised NHS (Dental Charges) Regulations 2005 will enable the DPB to provide definitive information to dentists on their contract values for 2006-07 and the number of units of dental activity (UDAs), and where appropriate, the number of units of orthodontic activity (UOAs) they are to provide in relation to the contract value. This will be sent to dentists and their PCTs early in December 2005 to enable contracts for 2006-07 to be finalised

Publication of the NHS (Dental Charges) Regulations 2005 will also enable the DPB to finalise new payment systems for payments to contractors and the validation of patient charges raised for dental services provided under contracts. Similarly the dental software systems suppliers will finalise the dental practice based software systems to run the new contracting arrangements. The Department has worked closely both with the DPB and the dental systems suppliers to ensure a smooth transition from the current arrangements to the new regime.

The implementation timetable for option 2 is:

Information for dentists, PCTs, system suppliers	end November 2005
GDS Contracts regulations	laid December 2005
	in force January 2006
PDS Agreements Regulations	laid December 2005
	In force January 2006
Statement of Financial Entitlements	December 2005
Transitional Provisions Order	December 2005
Performers Lists Regulations	January 2006