
WELSH STATUTORY INSTRUMENTS

2006 No. 946

**The General Dental Services and Personal Dental Services
Transitional and Consequential Provisions (Wales) Order 2006**

PART 4

**TRANSITIONAL ARRANGEMENTS: THE NATIONAL HEALTH SERVICE
(SERVICE COMMITTEES AND TRIBUNAL) REGULATIONS 1992**

Interpretation

31. –

(1) In this Part—

“the Service Committees Regulations” means the National Health Service (Service Committees and Tribunal) Regulations 1992⁽¹⁾;

“amendments” in respect of any regulation or regulations in the Service Committees Regulations means amendments made to that regulation or those regulations by paragraph 3 of Schedule 1 to this Order;

“appropriate LHB” has the same meaning as “appropriate Health Authority” in the Service Committees Regulations;

“contracting LHB” means a Local Health Board that has entered into—

(a) a general dental services contract with—

- (i) a dentist who is the subject of the allegation,
- (ii) a partnership, where a dentist who is the subject of the allegation is a partner, or
- (iii) a dental corporation, where a dentist who is the subject of the allegation is a director, chief executive or secretary of that corporation; or

(b) a personal dental services agreement with—

- (i) a dentist who is the subject of the allegation, or
- (ii) a qualifying body, where a dentist who is the subject of the allegation is a director, chief executive or secretary of that body;

“dentist” has the same meaning as in the Service Committees Regulations;

“the Performers List LHB” means the Local Health Board in whose dental performers list the dentist’s name appears on 1 April 2006;

“Performers Lists Regulations” means the National Health Service (Performers Lists) (Wales) Regulations 2004⁽²⁾;

“relevant contractor” means a party to a general dental services contract or personal dental services agreement with a contracting LHB, where that contractor is—

(1) S.I. 1992/664.

(2) S.I. 2004/1020 (W.117).

- (a) a dentist who is the subject of the allegation;
- (b) a partnership, where a dentist who is or was the subject of the allegation is a partner in that partnership; or
- (c) a dental corporation or qualifying body, where a dentist who is or was the subject of the allegation is a director, chief executive or secretary of that corporation or body; and

“relevant date” means 1 April 2006.

- (2) Unless the context otherwise requires, any reference in this Part to—
 - (a) a numbered regulation is to the regulation bearing that number in the Service Committees Regulations; and
 - (b) a numbered Schedule is to the Schedule to the Service Committees Regulations bearing that number.

Cases where no decision has been made before the relevant date as to whether disciplinary action should be taken (regulation 4)

32. –

(1) Where, before the relevant date, or on or after the relevant date in respect of a matter that occurred before the relevant date, a Local Health Board receives, or has received, information that could amount to an allegation that a dentist had failed to comply with his or her terms of service and—

- (a) that Board, or its reference committee, has not taken a final decision pursuant to regulation 4(1) before the relevant date as to whether it will take no action or take one or both of the courses of action set out in regulation 4(2); and
- (b) any time limit specified in regulation 6 has not expired,

paragraph (2) will apply.

(2) Where this paragraph applies, the Local Health Board will—

- (a) if it is the appropriate LHB, continue to be the appropriate LHB for the purposes of the Service Committees Regulations, and consider and take such action as it sees fit pursuant to the Service Committees Regulations, subject to article 35, as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect; or
- (b) if it is not the appropriate LHB, forward the information to that Board as soon as is reasonably practicable, and that Board will consider the information received and take such action as it sees fit pursuant to the Service Committees Regulations, subject to the time limits specified in the Service Committees Regulations, and article 35, as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect.

(3) If the appropriate LHB, or its reference committee, decides, pursuant to paragraph (2)(a) or (2)(b), to refer the matter to the discipline committee of another Local Health Board (B) in accordance with regulation 4(2)(a) or (7)—

- (a) that Local Health Board (B) will investigate the matter and report to the appropriate LHB as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect; and
- (b) the appropriate LHB will be entitled, subject to article 35, to take any action it could have taken pursuant to the Service Committees Regulations as if those amendments had not taken effect.

Referrals to investigating discipline committees before the relevant date (regulation 5)

33. Where a Local Health Board (A) has, before the relevant date, referred a matter in respect of a dentist to another Local Health Board (B) in accordance with regulation 4(2)(a) or (7) and—

- (a) that matter has not been finally determined by the discipline committee of that Local Health Board (B) before the relevant date—
 - (i) the discipline committee of that Local Health Board (B) will investigate the matter and report to the Local Health Board (A) as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect, and
 - (ii) the Local Health Board (A) will be entitled to take any action it could have taken pursuant to the Service Committees Regulations as if those amendments had not taken effect, subject to article 35; or
- (b) that Local Health Board (A) has received the report of the discipline committee of the Local Health Board (B) but has not yet determined what (if any) action to take as a result of the report, the Local Health Board (A) will be entitled to take any action it could have taken pursuant to the Service Committees Regulations as if the amendments to regulations 2 to 8 had not taken effect, subject to article 35.

Determination of a Local Health Board or the National Assembly for Wales made before the relevant date (regulations 8, 9, 10 and 11)

34. –

(1) Where, before the relevant date, a Local Health Board (or where relevant, the National Assembly for Wales) has determined pursuant to regulation 8(5)(a), regulation 9(3) or regulation 11 that an amount should be recovered from the dentist, in so far as any of that amount has not been recovered before the relevant date, it will continue to be recoverable by the Local Health Board that was the appropriate LHB for the purposes of the Service Committees Regulations in respect of that matter, and it will be treated as a debt owed by that dentist to that Board.

(2) Where a contracting LHB has record of, or receives notification of, an adverse determination made before the relevant date pursuant to regulation 8, 9, 10, 11 or 12 in respect of a dentist (where, in the case of a determination under regulation 8, such a determination was not overturned on appeal), paragraph (3) will apply without prejudice to any other rights the contracting LHB may have to take action against the relevant contractor pursuant to any term of the general dental services contract or personal dental services agreement.

(3) Where this paragraph applies, the contracting LHB—

- (a) may take into account that adverse determination in relation to a relevant contractor if it is considering, pursuant to a term of the general dental services contract that gives effect to paragraph 73(7) of Schedule 3 to the GDS Contracts Regulations or the personal dental services agreement that gives effect to paragraph 71(7) of Schedule 3 to the PDS Agreements Regulations, whether the cumulative effect of breaches under that contract or agreement is such that to allow the contract or agreement to continue would be prejudicial to the efficiency of the services provided under that contract or agreement; but
- (b) will not, pursuant to sub-paragraph (a), take into account any adverse determination that was made that occurred more than 6 years prior to the date upon which the contracting LHB is considering terminating the general dental services contract or personal dental services agreement.

(4) Where a Performers List LHB has record of, or receives notification of, an adverse determination pursuant to regulation 8, 9, 10, 11 or 12 made before the relevant date in respect of a dentist (where, in the case of a determination under regulation 8, such a determination was not

overturned on appeal) it may take that determination into account in determining what (if any) action it should take in respect of that dentist pursuant to its powers under the Performers Lists Regulations.

Determination of a Local Health Board made on or after the relevant date (regulation 8)

35. –

(1) Where, on or after the relevant date, an appropriate LHB is determining what (if any) action to take pursuant to regulation 8 in accordance with provision made in this Part, it will make such a determination in accordance with such limitation and modifications to that regulation as are specified in this article.

(2) The appropriate LHB may—

- (a) pursuant to regulation 8(1)(c)(i), determine that no further action should be taken;
- (b) pursuant to regulation 8(5)(a), determine that an amount will be recovered from the dentist;
- (c) pursuant to regulation 8(5)(b), determine that it would have determined that the dentist should be required to submit estimates for the prior approval of the Board in respect of such treatment and during such period as the appropriate LHB specifies; or
- (d) pursuant to regulation 8(5)(c), determine that it would have warned the dentist to comply more closely with his or her terms of service in future, if those terms of service were still applicable,

and if it makes any one or more of the decisions specified in sub-paragraphs (b) to (d), it will, after the period specified in regulation 8(11)(a) or (b) (as applicable) has expired, notify in writing the contracting LHB and the Performers List LHB (if any) of its decision and the reasons for it, if either one is a different Local Health Board to the appropriate LHB.

(3) Where, pursuant to paragraph (2)(b), the appropriate LHB determines that an amount should be recovered from the dentist, regulation 8(9) will not apply and that amount will be recoverable by the appropriate LHB and it will be treated as a debt owed by that dentist to the appropriate LHB.

(4) Where the appropriate LHB has notified the contracting LHB that it has made any of the determinations specified in paragraph (2)(b) to (2)(d), or where the appropriate LHB is the contracting LHB, paragraph (5) will apply without prejudice to any other rights the contracting LHB may have to take action against the relevant contractor pursuant to any term of the general dental services contract or personal dental services agreement.

(5) Where this paragraph applies, the contracting LHB—

- (a) may, in relation to a relevant contractor, take into account the determination of the appropriate LHB if it is considering, pursuant to a term of the general dental services contract that gives effect to paragraph 73(7) of Schedule 3 to the GDS Contracts Regulations or the personal dental services agreement that gives effect to paragraph 71(7) of Schedule 3 to the PDS Agreements Regulations, whether the cumulative effect of breaches under that contract or agreement is such that to allow the contract or agreement to continue would be prejudicial to the efficiency of the services provided under that contract or agreement; but
- (b) will not, pursuant to sub-paragraph (a), take into account any determination of an appropriate LHB that was made more than 6 years prior to the date upon which the contracting LHB is considering terminating the general dental services contract or personal dental services agreement.

(6) Where—

- (a) a Performers List LHB has received notification from an appropriate LHB pursuant to paragraph (2); or

- (b) where an appropriate LHB that has taken a decision pursuant to paragraph (2) is also the Performers List LHB,

it will consider what (if any) action it should take in respect of that dentist pursuant to its powers under the Performers Lists Regulations.

Appeals to the National Assembly for Wales against determinations of Local Health Boards (regulations 9, 10 and 11)

36. –

(1) Where—

- (a) a dentist has appealed against a determination of a Local Health Board in accordance with regulation 9 before the relevant date, but that appeal has not been finally determined before that date; or
- (b) in respect of a determination made by a Local Health Board in accordance with regulation 8 before the relevant date, the time limit specified in regulation 9(2) for appealing that determination has not expired before the relevant date, and the dentist serves a notice of appeal on or after the relevant date but within the time limit specified in regulation 9(2),

that appeal will be determined pursuant to regulations 9, 10, 11 and 12, as if the amendments to those regulations and Schedule 5 had not taken effect.

(2) Where an appropriate LHB has made a determination in respect of a dentist on or after the relevant date pursuant to this Part—

- (a) the dentist will be entitled to appeal against that determination in accordance with regulation 9; and
- (b) that appeal will be determined pursuant to regulations 9, 10, 11 and 12,

as if the amendments to those regulations and to Schedule 5 had not taken effect.

(3) Where, on or after the relevant date, the National Assembly for Wales is determining pursuant to regulation 9, 10, 11 or 12 what (if any) action to take in respect of a dentist, it will make a determination pursuant to those regulations as if the amendments to those regulations and to Schedule 5 had not taken effect and that determination will have effect in accordance with this article.

(4) If, in accordance with paragraph (3), the National Assembly for Wales determines pursuant to—

- (a) regulation 9(3)(d), that there has been an overpayment and, if so, what amount;
- (b) regulation 8(5)(a) and 9(3) or 11, that an amount will be recovered from the dentist;
- (c) regulation 8(5)(c) and 9(3), that it would have warned the dentist to comply more closely with his or her terms of service in future, if those terms of service were still applicable; or
- (d) regulation 12, that it would have imposed a prior approval requirement on the dentist,

it will, in addition to the persons specified in regulation 10(14), notify the Local Health Board specified in paragraph (5).

(5) The National Assembly for Wales will, pursuant to paragraph (4)(a) to (4)(d), notify the contracting LHB and the Performers List LHB (if any) of its determination if those Local Health Boards are different to the Local Health Board referred to in regulation 10(14).

(6) Where, pursuant to regulation 8(5)(a), 9(3) or 11, the National Assembly for Wales has determined that an amount will be recovered from a dentist it will direct the appropriate LHB, to recover that amount from the dentist and that amount will be a debt owed to that appropriate LHB.

(7) Where, pursuant to paragraph (5), the National Assembly for Wales has notified the contracting LHB that it has taken any of the decisions specified in paragraph (4)(a) to (4)(d), whether or not the contracting LHB is also the appropriate LHB, paragraph (8) will apply without prejudice to

any other right the contracting LHB may have to take action against the relevant contractor pursuant to any term of the general dental services contract or personal dental services agreement.

(8) Where this paragraph applies, the contracting LHB may, in relation to a relevant contractor, take into account the determination of the National Assembly for Wales if it is considering, pursuant to a term of the general dental services contract that gives effect to paragraph 73(7) of Schedule 3 to the GDS Contracts Regulations or the personal dental services agreement that gives effect to paragraph 71(7) of Schedule 3 to the PDS Agreements Regulations whether the cumulative effect of breaches under that contract or agreement is such that to allow the contract or agreement to continue would be prejudicial to the efficiency of the services provided under that contract or agreement.

(9) The contracting LHB will not, pursuant to paragraph (8), take into account any notification received that relates to a determination that was made by the National Assembly for Wales that occurred more than 6 years prior to the date upon which the contracting LHB is considering the matter pursuant to paragraph (8).

(10) Where a Performers List LHB has received notification from the National Assembly for Wales pursuant to paragraph (4) or (5), whether or not the Performers List LHB is also the appropriate LHB, it will consider what (if any) action it should take in respect of that dentist pursuant to its powers under the Performers Lists Regulations.

Functions of Local Dental Committees

37. Where—

- (a) a Local Dental Committee has, before the relevant date had any matter referred to it for its consideration that it had not finally determined before the relevant date; and
- (b) pursuant to this Part, that matter is to be determined by the Local Dental Committee on or after the relevant date,

the Local Dental Committee that is recognised by a Local Health Board pursuant to section 45B of the 1977 Act⁽³⁾ (local dental committees) will be the Committee to consider or determine the matter.

(3) Section 45B is inserted into the 1977 Act by the 2003 Act, Schedule 11, paragraph 23.