NATIONAL ASSEMBLY FOR WALES

S T A T U T O R Y I N S T R U M E N T S

2006 No. (W.)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (General Dental Services Contracts) (Wales) Regulations 2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out, for Wales, the framework for general dental services contracts under section 28K of the National Health Service Act 1977 ("the Act").

Part 2 of the Regulations prescribes the conditions which, in accordance with section 28M of the Act, must be met by a contractor before the Local Health Board may enter into a general dental services contract with it.

Part 3 of the Regulations prescribes the procedure for pre-contract dispute resolution, in accordance with section 28P(1) of the Act. Part 3 applies to cases where the contractor is not a health service body. In cases where the contractor is such a body, the procedure for dealing with pre-contract disputes is set out in section 4 of the National Health Service and Community Care Act 1990.

Part 4 of the Regulations sets out the procedures, in accordance with section 28P(3) of the Act, by which the contractor may obtain health service body status.

Part 5 of (and Schedules 1 to 3 to) the Regulations prescribe the terms which, in accordance with sections 28O and 28P of the Act, must be included in a general dental services contract (in addition to those contained in the Act). It includes, in regulation 14, a description of the services which must be provided to patients under a general dental services contract pursuant to section 28L of the Act.

The prescribed terms include terms relating to —

(a) the type and duration of the contract (regulations 10 to 12);

(b) the services to be provided and the manner in which they are to be provided (regulations 13 to 19 and Schedules 1 and 2 and Parts 1 and 2 of Schedule 3);

(c) finance, fees and charges (regulations 21 and 21(3));

(d) prescribing of drugs and appliances (Schedule 3, Part 3);

(e) the conditions to be met by those who perform services or are employed or engaged by the contractor (Schedule 3, Part 4);

(f) patient records, the provision of information and rights of entry and inspection (Schedule 3, Part 5 and Schedule 4);

(g) complaints (Schedule 3, Part 6);

(h) procedures for dispute resolution (Schedule 3, Part 7);

(i) procedure for a mid-year review of activity under the contract (Schedule 3, Part 8); and

(j) procedures for variation and termination of contracts (Schedule 3, Part 9).

Part 6 of the Regulations makes transitional provision.

[A Regulatory Appraisal has been prepared for these Regulations and a copy has been placed in the library of the National Assembly for Wales. Copies of the Regulatory Appraisal can be obtained from [ ]

S T A T U T O R Y I N S T R U M E N T S

2006 No. (W.)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (General Dental Services Contracts) (Wales) Regulations 2006

Made - - - - *[14 February 2006]*

Coming into force - - *[19 February 2006]*

ARRANGEMENT OF REGULATIONS

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred by sections 28L, 28M, 28O, 28P and 126(4) of the National Health Service Act 1977(**1**) and section 4(5) of the National Health Service and Community Care Act 1990(**2**).

PART 1

GENERAL

Title, commencement and application

1.—(1) The title of these Regulations is the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006 which come into force on [19 February 2006]**.**

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations —

"the Act" *(" ")* means the National Health Service Act 1977;

"Assembly" *(" ")* means the National Assembly for Wales;

"the 1990 Act" *(" ")* means the National Health Service and Community Care Act 1990;

"additional services" *(" ")* means one or more of—

(a) advanced mandatory services;

(b) dental public health services;

(c) domiciliary services;

(d) orthodontic services; and

(e) sedation services;

"adjudicator" *(" ")* means the Assembly or a person or persons appointed by the Assembly under section 4(5) of the 1990 Act (NHS contracts) or paragraph 55(4) of Schedule 3 (NHS dispute resolution procedure);

"advanced mandatory services" *(" ")* means any primary dental service that would fall within the services described in regulation 14 (mandatory services), but by virtue of the high level of facilities, experience or expertise required in respect of a particular patient, the service is provided as a referral service;

"Band 1 course of treatment" *(" ")* means a course of treatment, including a course of treatment consisting of urgent treatment, provided to a patient in respect of which a Band 1 NHS Charge is payable pursuant to the NHS Charges Regulations, or would be payable if the patient was not an exempt person;

"Band 2 course of treatment" *(" ")* means a course of treatment provided to a patient in respect of which a Band 2 NHS Charge is payable pursuant to the NHS Charges Regulations, or would be payable if the patient was not an exempt person;

(**1**) 1977 c.49; sections 28L, 28M, 28O and 28P were inserted into the Act by section 172(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c.43) ("the 2003 Act")**;** section 126(4) was amended by section 65(2) of the National Health Service and Community Care Act 1990 (c.19) ("the 1990 Act"), the Health Act 1999 (c.8) ("the 1999 Act"), Schedule 4, paragraph 37(6) and the Health and Social Care Act 2001 (c. 15) ("the 2001 Act"), Schedule 5, paragraph 5(13)(b). *See* section 128(1) of the Act as amended by the 1990 Act, section 26(2)(g) and (i), for the definitions of "prescribed" and "regulations". As regards Wales, the functions of the Secretary of State under sections 28L, 28M, 28O, 28P and 126(4) of the Act and section 4 of the 1990 Act were transferred to Wales under S.I. 1999/672, article 2 and Schedule 1, as amended by the 1999 Act, section 66(5) and as read with section 40(1) of the National Health Service Reform and Health Care Professions Act 2002 (c.17) ("the 2002 Act") and section 197(1) of the 2003 Act.

(**2**) 1990 c.19.

"Band 3 course of treatment" *(" ")* means a course of treatment provided to a patient in respect of which a Band 3 NHS Charge is payable pursuant to the NHS Charges Regulations, or would be payable if the patient was not an exempt person;

"banded course of treatment" *(" ")* means a Band 1, Band 2 or Band 3 course of treatment;

"bank holiday" *(" ")* means any day that is specified or proclaimed as a bank holiday in Wales pursuant to section 1 of the Banking and Financial Dealings Act 1971(**1**);

"bridge" *(" ")* means a fixed or removable bridge which takes the place of any teeth;

"case assessment" *(" ")*, in respect of an orthodontic course of treatment, means a clinical examination of the patient, including the taking of such radiographs, colour photographs and models as are required in order to determine what orthodontic treatment (if any) is to be provided to the patient;

"charge exempt course of treatment" *(" ")* means a course of treatment that involves the examination and assessment of a patient leading to—

(a) the issue of a prescription;

(b) the repair of a dental appliance;

(c) the arrest of bleeding; or

(d) the removal of sutures,

which, by virtue of regulation 3(2)(d) or (f) of the NHS Charges Regulations, is provided free of charge to the patient; [DN need to think about amending this definition and Schedule 2 part 1 to reflect regulation 3 (2) (e) of the charges Regs.]

"charity trustee" *(" ")* means one of the persons having the general control and management of the administration of a charity;

"child" *(" ")* means a person who has not attained the age of 16 years;

"complete", *(" ")* in relation to—

(a) a course of treatment, means that—

(i) where no treatment plan has to be provided in respect of a course of treatment pursuant to paragraph 7(5) of Schedule 3 (treatment plans), all the treatment recommended to, and agreed with the patient by the contractor at the initial examination and assessment of that patient has been provided to the patient; or

(ii) where a treatment plan has to be provided to the patient pursuant to paragraph 7 of Schedule 3, all the treatment specified on that plan by the contractor (or that plan as revised in accordance with that paragraph) has been provided to the patient; and

(b) an orthodontic course of treatment, means that—

(i) where the contractor determines in accordance with paragraph 4(3) of Schedule 1 (patients to whom orthodontic treatment may be provided) that no orthodontic treatment should be provided following the case assessment, the completion of the case assessment; or

(ii) where the contractor has determined that orthodontic treatment should be provided following the case assessment, all of the orthodontic treatment specified on the orthodontic treatment plan by the contractor pursuant to paragraph 6 of Schedule 1 (orthodontic treatment plans) (or that plan as revised in accordance with paragraph 6 of Schedule 1) has been provided to the patient,

and "completed" will be construed accordingly;

"contract" *(" ")* means, except where the context otherwise requires, a general dental services contract under section 28K of the Act(**2**) (general dental services contracts: introductory);

"course of treatment" *(" ")* means—

(**1**) 1971 c.80.
(**2**) Section 28K was inserted into the Act by section 172(1) of the 2003 Act.

(a) an examination of a patient, an assessment of his or her oral health, and the planning of any treatment to be provided to that patient as a result of that examination and assessment; and

(b) the provision of any planned treatment (including any treatment planned at a time other than the time of the initial examination) to that patient,

provided by, except where expressly provided otherwise, one or more providers of primary dental services, but it does not include the provision of any orthodontic services or dental public health services;

"dental appliance" *(" ")* means a denture or bridge and for the purposes of this definition, a denture includes an obturator;

"dental corporation" *(" ")* means a body corporate carrying on the business of dentistry in accordance with the Dentist Act;

"dental care professional" *(" ")* means a person whose name is included in the register of dental care professionals maintained by the General Dental Council under section 36B of the Dentists Act(**1**) (the dental care professionals register);

"dental performers list" *(" ")* means a list of dental practitioners prepared in accordance with regulations made under section 28X of the Act(**2**) (persons performing primary medical and dental services);

"dental public health services" *(" ")* means services provided by the contractor by virtue of section 16CB(5)(c) of the Act (dental public health)(**3**);

"Dentists Act" *(" ")* means the Dentists Act 1984(**4**);

"Dentists Act Order" *(" ")* means the Dentists Act 1984 (Amendment) Order 2005(**5**);

"Dentists Register" *(" ")* means the register maintained by the General Dental Council pursuant to section 14 of the Dentists Act(**6**) (the dentists register and the registrar);

"domiciliary services" *(" ")* means a course of treatment, or part of a course of treatment, provided at a location other than—

(a) the practice premises of any provider of primary dental services;

(b) a mobile surgery of any provider of primary dental services; or

(c) a prison;

"exempt person" *(" ")* means a person who is, by virtue of either Schedule 12ZA to the Act(**7**) (dental charging: exemptions) or the NHS Charges Regulations, exempt from the need to pay an NHS Charge in respect of the services he or she has received under the contract;

"family member" *(" ")* means—

(a) a spouse;

(b) a civil partner;

(c) a person whose relationship with the registered patient has the characteristics of the relationship between husband and wife or civil partners;

(d) a parent or step-parent;

(e) a son;

(f) a daughter;

(g) a child of whom the person is—

(i) the guardian; or

(**1**) Section 36B is prospectively inserted into the Dentists Act by article 24 of the Dentists Act Order.
(**2**) Section 28X was inserted into the Act by section 179(1) of the 2003 Act.
(**3**) Section 16CB was inserted into the Act by section 171(1) of the 2003 Act.
(**4**) 1984 c.24.
(**5**) S.I. 2005/ 2011.
(**6**) Section 14 of the Dentists Act is prospectively substituted by article 6 of the Dentists Act Order.
(**7**) Schedule 12ZA was inserted into the Act by section 183 of the 2003 Act.

(ii) the carer duly authorised by the local authority to whose care the child has been committed under the Children Act 1989(**1**); or

(h) a grandparent;

"FHSAA" *(" ")* means the Family Health Services Appeal Authority constituted under section 49S of the Act(**2**) (the Family Health Services Appeal Authority);

"financial year" *(" ")* means a period of 12 months ending with 31st March in any year;

"health care professional" *(" ")* has the same meaning as in section 28M of the Act (**3**)(persons eligible to enter into GDS contracts) and "health care profession" will be construed accordingly;

"health service body" *(" ")* has, unless the context otherwise requires, the meaning given to it in section 4(2) of the 1990 Act (NHS contracts)(**4**);

"licensing body" *(" ")* means any body that licenses or regulates any profession;

"listed" *(" ")*, in relation to drugs, medicines or appliances, means such drugs, medicines or appliances as are included in a list for the time being approved by the Assembly for the purposes of section 41 of the Act(**5**) (arrangements for pharmaceutical services);

"Local Health Board" *(" ")* means unless the context otherwise requires, the Local Health Board which is a party, or a prospective party, to the contract;

"mandatory services" *(" ")* means the services described in regulation 14;

"mobile surgery" *(" ")*, except where expressly provided otherwise in these Regulations, means any vehicle in which services under the contract are to be provided;

"national disqualification" *(" ")* means—

(a) a decision made by the FHSAA under section 49N of the Act(**6**) (national disqualifications);

(b) a decision under provisions in force in Scotland or Northern Ireland corresponding to section 49N of the Act; or

(c) a decision by the NHS Tribunal which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001(**7**) or regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002(**8**);

"NHS Charge" *(" ")* means a charge made to the patient for provision of services pursuant to the NHS Charges Regulations;

"NHS Charges Regulations" *(" ")* means the National Health Service (Dental Charges) (Wales) Regulations 2006(**9**);

"NHS contract" *(" ")* has the meaning assigned to it in section 4 of the 1990 Act;

"NHS dispute resolution procedure" *(" ")* means the procedure for disputes specified in paragraphs 55 and 56 of Schedule 3;

"NHS Tribunal" *(" ")* means the Tribunal constituted under section 46 of the Act(**10**) for England and Wales, and which, except for prescribed cases, had effect in relation to England only until 14th

---

(**1**) 1989 c.41.
(**2**) Section 49S was inserted into the Act by section 27(1) of the 2001 Act.
(**3**) Section 28M was inserted into the Act by section 172(1) of the 2003 Act.
(**4**) 1990 c.19.
(**5**) Section 41 of the Act was substituted by the 2001 Act, section 42(1) and amended by the 2002 Act, section 2(5) and Schedule 2, paragraphs 1 and 13, by the 2003 Act, section 184 and Schedule 11, paragraphs 7 and 18(1) and (2), and (3) and by S.I. 2003/1590, article 3 and the Schedule, paragraph 3.
(**6**) Section 49N was inserted into the Act by section 25 of the 2001 Act.
(**7**) S.I. 2001/3744 amended by S.I. 2002/2469.
(**8**) S.I. 2002/1920.
(**9**) S.I. 2006/ .
(**10**) Section 46 was revoked by the 2001 Act, section 67, Schedule 5, paragraph 5 and Schedule 6, Part 1.

December 2001 and in relation to Wales only until 26th August 2002(**1**);

"normal surgery hours" *(" ")* means the times at which the surgery is open to patients for the provision of services;

["NPSA" *(" ")* means the National Patient Safety Agency established as a Special Health Authority by the National Patient Safety Agency (Establishment and Constitution) Order 2001(**2**) - **NB: NPSA is an England only SHA - see Reg 30(b)**];

"orthodontic appliance" *(" ")* means a device used in the mouth to move or immobilise the teeth in order to correct or prevent malocclusion;

"orthodontic course of treatment" *(" ")* means—

(a) a case assessment of a patient, and

(b) the provision of any orthodontic treatment that the contractor determines should be provided to the patient in accordance with Part 2 of Schedule 1 (orthodontic services);

"orthodontic services" *(" ")* means the provision of orthodontic courses of treatment or the services referred to in paragraph 5(2) of Schedule 1 (repairs);

"orthodontic treatment" *(" ")* means treatment of, or treatment to prevent, malocclusion of the teeth and jaws, and irregularities of the teeth;

"parent" *(" ")*, in relation to any child, means a parent or other person who has parental responsibility for that child;

"patient" *(" ")* means a person to whom the contractor is providing services under the contract;

"patient record" *(" ")* means a form supplied by a Local Health Board for the purpose of maintaining a record of treatment;

"practice" *(" ")* means the business operated by the contractor for the purpose of delivering services under the contract;

"practice premises" *(" ")*, except where expressly provided otherwise in these Regulations, means an address specified in the contract as one at which services are to be provided under the contract but does not include a mobile surgery;

"prescriber" *(" ")* means a dental practitioner who is either engaged or employed by the contractor or is a party to the contract;

"primary care list" *(" ")* means—

(a) a list of persons performing primary medical or dental services under section 28X of the Act(**3**);

(b) a list of persons undertaking to provide general medical services, general dental services, general ophthalmic services or, as the case may be, pharmaceutical services prepared in accordance with regulations made under sections 39, 42 or 43 of the Act;

(c) a list of persons approved for the purposes of assisting in the provision of any services mentioned in paragraph (b) prepared in accordance with regulations made under section 43D of the Act(**4**);

(d) a list of persons who undertook to provide general medical services, general dental services prepared in accordance with regulations made under sections 29 and [35/36] of the Act(**5**);

(e) a services list which fell within the meaning of section 8ZA of the National Health Service (Primary Care) Act 1997(**6**);

(f) a list corresponding to a services list prepared by virtue of regulations made under section 41 of the Health and Social Care Act 2001(**1**); or

---

(**1**) *See* S.I. 2001/3738, article 2(5) and (6)(b), which sets out the prescribed cases for England and S.I. 2002/1919, article 2(2) and (3)(b), which sets out the prescribed cases for Wales.
(**2**) S.I. 2001/1743.
(**3**) Section 28X was inserted into the Act by section 179(1) of the 2003 Act.
(**4**) Section 43D was inserted into the Act by section 24 of the 2001 Act.
(**5**) Sections 29 and [35/36] were repealed by sections 175(2) and 196 of, and Schedule 14 Part 4 to the 2003 Act.
(**6**) 1997 c.46. Section 8ZA was inserted into the Act by section 26(2) of the 2001 Act and repealed by section 196 of and Schedule 14 Part 4 to the 2003 Act.

(g) a list corresponding to any of the above lists in Scotland or Northern Ireland;

"prison" *(" ")* includes a young offender institution but not a secure training centre or a naval, military or air force prison, and for the purposes of this definition—

(a) "secure training centre" means a place in which offenders subject to detention and training orders under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (offenders under 18: detention and training orders) may be detained and given training and education and prepared for their release, and

(b) "young offender institution" means a place for the detention of offenders sentenced to detention in a young offender institution or to custody for life;

"private" *(" ")*, in the context of services or treatment, means otherwise than under the contract or Part 1 of the Act, and "privately" will be construed accordingly;

"professional registration number" *(" ")* means the number against a dental practitioner's name in the Dentists Register;

"referral notice" *(" ")* means the notice referred to in paragraph 9(2)(a) of Schedule 3 (referral to another contractor, a hospital or other relevant service provider for advanced mandatory, domiciliary or sedation services);

"referral service" *(" ")* means one or more of advanced mandatory services, domiciliary services or sedation services provided by the contractor to a patient who has, during a course of treatment, been referred to the contractor by—

(a) another contractor, or

(b) another provider of primary dental services under Part 1 of the Act,

for the provision of one or more of those services as part of that course of treatment;

"referral treatment plan" *(" ")* means a treatment plan provided pursuant to paragraph 2 of Schedule 1;

"register of dental care professionals" *(" ")* means the register maintained by the General Dental Council under section 36B of the Dentists Act(**2**) (the dental care professionals register);

"sedation services" *(" ")* means a course of treatment provided to a patient during which the contractor administers one or more drugs to a patient, which produce a state of depression of the central nervous system to enable treatment to be carried out, and during and in respect of that period of sedation—

(a) the drugs and techniques used to provide the sedation are deployed by the contractor in a manner that ensures loss of consciousness is rendered unlikely; and

(b) verbal contact with the patient is maintained insofar as is reasonably possible;

"trauma" *(" ")* means damage to teeth, gingival tissues or alveoli caused by a force arising outside the mouth, resulting in mobility, luxation, subluxation or fracture of the hard tissues or injury to the soft tissues;

"unit of dental activity" *(" ")* means the unit of activity which is in the contract used to—

(a) express the amount of; and

(b) measure in accordance with Part 1 of Schedule 2 the provision of,

mandatory services and advanced mandatory services provided under the contract;

"unit of orthodontic activity" *(" ")* means the unit of activity which is in the contract used to—

(a) express the amount of; and

(b) measure in accordance with Part 2 of Schedule 2 the provision of,

(c) orthodontic services provided under the contract;

"urgent treatment" *(" ")* means a course of treatment that consists of one or more of the treatments listed in Schedule 4 to the NHS Charges Regulations (urgent treatment under Band 1 charge) that are provided to a person in circumstances where—

(**1**) 2001 c.15.
(**2**) Section 36B is prospectively inserted into the Dentists Act 1984 by the Dentists Act Order, article 24.

(a) a prompt course of treatment is provided because, in the opinion of the contractor, that person's oral health is likely to deteriorate significantly, or the person is in severe pain by reason of his or her oral condition; and

(b) treatment is provided only to the extent that is necessary to prevent that significant deterioration or address that severe pain; and

"working day" *(" ")* means any day apart from Saturday, Sunday, Christmas Day, Good Friday or a bank holiday.

(2) In these Regulations —

(a) the use of the term "it" in relation to the contractor will be deemed to include a reference to a contractor that is an individual dental practitioner or two or more individuals practising in partnership and related expressions will be construed accordingly; and

(b) references to forms supplied by the Local Health Board to contractors includes electronic forms and forms which are generated electronically, but does not include prescription forms.

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 (general dental services: transitional)(**1**), 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;

(**1**) 2003 c.43.

(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), (3) and (4) of the Act respectively(**1**)) 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(**2**) (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(**3**) (offences against children under the age of 17 years to which special provisions apply) committed on or after 1st 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(**4**) 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(**5**) (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(**6**), the Companies (Northern Ireland) Order 1986(**7**) or to an order made under section 429(2)(b) of the Insolvency Act 1986(**8**) (failure to pay under county court administration order).

(**1**) Section 49F was inserted into the Act by section 25 of the 2001 Act.
(**2**) 1933 c.12 as amended by the Domestic Violence, crime and Victims Act 2004 (c.), section 58(1), Schedule 10, paragraph 2, the Sexual Offences Acct 2003 (c.) 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 as modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9.
(**3**) 1995 c.46.
(**4**) 1986 c.45. Schedule 4A was inserted by section 257 of and Schedule 20 to the Enterprise Act 2002 (c.40).
(**5**) 1990 c.40.
(**6**) 1986 c.46 as amended by the Insolvency Act 2000 (c.39).
(**7**) S.I. 1986/1032 (N.I. 6).
(**8**) 1986 c.45.

(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 (**1**);

(b) a director, chief executive or secretary of the corporation, 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, 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 article 39 of the Dentists Act Order that no —

(a) offence has been or is being committed under section 43 of the Dentist Act; or

(b) financial penalty has been imposed under section 43B of the Dentist 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 43 of the Dentist 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.

(**1**) The term “contractor” is defined in section 28K of the 1977 Act.

PART 3

PRE-CONTRACT DISPUTE RESOLUTION

Pre-contract disputes

8.—(1) Subject to paragraphs (2) and (3), if, in the course of negotiations intending to lead to a contract, the prospective contracting parties are unable to agree on a particular term of the contract, either party may refer the dispute to the Assembly to consider and determine the matter in accordance with the procedure provided for in paragraphs 55(2) and (3) of Schedule 3.

(2) Paragraph (1) does not apply in the case where both parties to the prospective contract are health service bodies (in which case section 4(4) of the 1990 Act (NHS contracts) applies).

(3) Before referring the dispute for consideration and determination under paragraph (1), both parties to the prospective contract must make every reasonable effort to communicate and cooperate with each other with a view to resolving a dispute arising during the course of negotiations.

(4) Disputes referred to the Assembly in accordance with paragraph (1), or section 4(4) of the 1990 Act, will be considered and determined in accordance with the provisions of paragraphs 55(4) to 55(13) and 56(1) of Schedule 3, and paragraph (5) (where it applies) of this regulation.

(5) In the case of a dispute referred to the Assembly under paragraph (1), the determination—

(a) may specify terms to be included in the proposed contract;

(b) may require the Local Health Board to proceed with the proposed contract, but may not require the proposed contractor to proceed with the proposed contract; and

(c) will be binding upon the prospective parties to the contract.

PART 4

HEALTH SERVICE BODY STATUS

Health service body status

9.—(1) Where a proposed contractor elects in a written notice served on the Local Health Board at any time prior to the contract being entered into to be regarded as a health service body for the purposes of section 4 of the 1990 Act, it will be so regarded from the date on which the contract is entered into.

(2) If, in accordance with paragraph (1) or (5), a contractor is to be regarded as a health service body, that fact will not affect the nature of, or any rights or liabilities arising under, any other contract with a health service body entered into by that contractor before the date on which the contractor is to be so regarded.

(3) Where a contract is made with an individual dental practitioner or two or more persons practising in partnership, and that individual, or that partnership is to be regarded as a health service body in accordance with paragraph (1) or (5), the contractor will, subject to paragraph (4), continue to be regarded as a health service body for the purposes of section 4 of the 1990 Act for as long as that contract continues and irrespective of any change in—

(a) the partners comprising the partnership;

(b) the status of the contractor from that of an individual dental practitioner to that of a partnership; or

(c) the status of the contractor from that of a partnership to that of an individual dental practitioner.

(4) A contractor may at any time request a variation of the contract to include or remove provision from the contract that the contract is an NHS contract, and if it does so—

(a) the Local Health Board will agree to the variation; and

(b) the procedure in paragraph 60(1)of Schedule 3 will apply (variation of a contract: general).

(5) Where, pursuant to paragraph (4), the Local Health Board agrees to a variation of the contract, the contractor will—

(a) be regarded; or

(b) subject to paragraph (7), cease to be regarded,

as a health service body for the purposes of section 4 of the 1990 Act from the date that variation takes effect pursuant to paragraph 60(1)of Schedule 3.

(6) Subject to paragraph (7), a contractor will cease to be regarded as a health service body for the purposes of section 4 of the 1990 Act if the contract terminates.

(7) Where a contractor ceases to be a health service body pursuant to—

(a) paragraph (5) or (6), it will continue to be regarded as a health service body for the purposes of being a party to any other NHS contract entered into after it became a health service body but before the date on which the contractor ceased to be a health service body (for which purposes it ceases to be such a body on the termination of that NHS contract);

(b) paragraph (5), it will, if it or the Local Health Board has referred any matter to the NHS dispute resolution procedure before it ceases to be a health service body, be bound by the determination of the adjudicator as if the dispute had been referred pursuant to paragraph 54 of Schedule 3 (dispute resolution: non-NHS contracts);

(c) paragraph (6), it will continue to be regarded as a health service body for the purposes of the NHS dispute resolution procedure where that procedure has been commenced—

(i) before the termination of the contract, or

(ii) after the termination of the contract, whether in connection with or arising out of the termination of the contract or otherwise,

for which purposes it ceases to be such a body on the conclusion of that procedure.

PART 5

CONTRACTS: REQUIRED TERMS

Parties to the contract

10. A contract must specify—

(a) the names of the parties;

(b) in the case of a partnership—

(i) whether or not it is a limited partnership, and

(ii) the names of the partners and, in the case of a limited partnership, their status as a general or limited partner; and

(c) in the case of each party, the postal address to which official correspondence and notices should be sent.

NHS contracts

11. In the case of a contractor who is to be regarded as a health service body pursuant to regulation 9, the contract must state that it is an NHS contract.

Contracts with individuals practising in partnership

12.—(1) Where the contract is with two or more individuals practising in partnership, the contract will be treated as made with the partnership as it is from time to time constituted, and the contract will make specific provision to this effect.

(2) Where the contract is with two or more individuals practising in partnership, the contractor must be required by the terms of the contract to ensure that any person who becomes a member of the

partnership after the contract has come into force is bound automatically by the contract whether by virtue of a partnership deed or otherwise.

Duration

13.—(1) Except in the circumstances specified in paragraph (2), a contract must provide for it to subsist until it is terminated in accordance with the terms of the contract or the general law.

(2) The circumstances referred to in paragraph (1) are that the Local Health Board has terminated the contract of another provider of primary dental services, and as a result of that termination, it wishes to enter into a temporary contract for a period specified in the contract for the provision of services.

(3) Where a contract is entered into pursuant to paragraph (2)—

(a) paragraph 66 (termination by the contractor) of Schedule 3 will not apply to the contract; and

(b) the parties to the temporary contract may include such terms as to termination by notice as they may agree.

Mandatory services

14.—(1) For the purposes of section 28L of the Act(**1**) (requirement to provide certain primary dental services), the services which must be provided under a general dental services contract ("mandatory services") are described in paragraphs (2) to (4).

(2) A contractor must provide to its patients, during the period specified in paragraph (3), all proper and necessary dental care and treatment which includes—

(a) the care which a dental practitioner usually undertakes for a patient and which the patient is willing to undergo;

(b) treatment, including urgent treatment; and

(c) where appropriate, the referral of the patient for advanced mandatory services, domiciliary services, sedation services or other relevant services provided under Part 1 of the Act.

(3) A contractor must provide—

(a) urgent treatment; and

(b) all other services described in paragraph (2), that is necessary to meet the reasonable needs of its patients,

at such times as agreed with the Local Health Board and specified in the contract ("normal surgery hours").

(4) The dental care and treatment referred to in paragraph (2) includes—

(a) examination;

(b) diagnosis;

(c) advice and planning of treatment;

(d) preventative care and treatment;

(e) periodontal treatment;

(f) conservative treatment;

(g) surgical treatment;

(h) supply and repair of dental appliances;

(i) the taking of radiographs;

(j) the supply of listed drugs and listed appliances; and

(k) the issue of prescriptions,

but it does not include additional services.

(**1**) Section 28L was inserted into the Act by section 172(1) of the 2003 Act.

Additional services

15. In the case where a contract includes the provision of additional services, that contract must contain, in relation to each such service as is included in the contract, terms that have the same effect as those specified in Schedule 1 in so far as they are relevant to that service.

Services: general

16.—(1) A contract must specify—

(a) subject to regulations 17 to 20, the services to be provided by the contractor;

(b) the address of each of the premises to be used by the contractor or any sub-contractor for the provision of such services, or, if the contractor is to provide services from a mobile surgery, that fact; and

(c) the hours during which services that are not mandatory services are to be provided.

(2) The reference to premises in paragraph (1)(b) does not include any place in which a patient is residing and the contract must so specify.

Units of dental activity

17.—(1) The contract must specify the number of units of dental activity to be provided by the contractor—

(a) where the contract begins on 1st April, in each financial year; or

(b) where the contract begins on a date other than 1st April, in the remainder of the financial year in which the contract begins, and in each financial year thereafter.

(2) A contract must contain terms which have the effect of those specified in Part 1 of Schedule 2 in relation to the calculation of the number of units of dental activity that the contractor has provided under the contract.

Units of orthodontic activity

18.—(1) Where a contract includes the provision of orthodontic services, the contract must specify the number of units of orthodontic activity to be provided by the contractor—

(a) where the contract begins on 1st April, in each financial year; or

(b) where the contract begins on a date other than 1st April, in the remainder of the financial year in which the contract begins, and in each financial year thereafter.

(2) Where paragraph (1) applies, the contract must also contain terms which have the effect of those provisions specified in Part 2 of Schedule 2 in relation to the calculation of how many units of orthodontic activity a contractor has provided under the contract.

Under provision of units of dental activity or units of orthodontic activity

19.—(1) The contract will provide that the Local Health Board will not pursuant to Part 9 of Schedule 3 (variation and termination of agreements) be entitled to take any action for breach of a term of the contract giving effect to regulation 17 or 18 (including termination of the contract) where paragraph (2) applies.

(2) This paragraph applies where the contractor has failed to provide—

(a) the number of units of dental activity; or

(b) the number of units of orthodontic activity,

it is contracted to provide pursuant to a term of the contract giving effect to regulation 17 or 18 (as the case may be) where—

(i) that failure amounts to **5 per cent or less** of the total number of units of dental activity or units of orthodontic activity (as the case may be) that ought to have been provided during a financial year, and

(ii) the contractor agrees to provide and does so provide the units it has failed to provide within such time period as the Local Health Board specifies in writing, such period to consist of not less than 60 days.

(3) Paragraphs (1) and (2) will not prevent the Local Health Board from taking action under Part 9 of Schedule 3 for breach of contract (including terminating the contract) on other grounds.

Domiciliary services and sedation services

20. Where a contract includes the provision of domiciliary services or sedation services, the contract must specify the number of courses of treatment that the contractor is—

(a) to provide; or

(b) contribute to where provided as a referral service,

that involve the provision of domiciliary services or sedation services—

(i) where the contract begins on 1st April, in each financial year; or

(ii) where the contract begins on a date other than 1st April, in the remainder of the financial year in which the contract begins, and in each financial year thereafter.

Finance

21.—(1) The contract must contain a term which has the effect of requiring the Local Health Board to make payments to the contractor under the contract promptly and in accordance with both the terms of the contract and any other conditions relating to the payment contained in directions given by the Assembly under section 28N of the Act(**1**) (GDS contracts: payments).

(2) The obligation referred to in paragraph (1) is subject to any right the Local Health Board has to set off against an amount payable to the contractor an amount that—

(a) is owed by the contractor to the Local Health Board under the contract;

(b) has been paid to the contractor owing to an error or in circumstances when it was not due; or

(c) the Local Health Board may withhold from the contractor in accordance with the terms of the contract or any other applicable provisions contained in directions given by the Assembly under section 28N of the Act.

(3) The contract must contain a term to the effect that where, pursuant to directions under section 16BB(4) (Local Health Boards: Functions)(**2**) or 28N of the Act, a Local Health Board is required to make a payment to a contractor under a contract but subject to conditions, those conditions are to be a term of the contract.

Fees, charges and financial interests of the contractor

22.—(1) The contract must contain terms relating to fees and charges which have the same effect as those set out in paragraphs (2) to (4).

(2) The contractor will not, either itself or through any other person, demand or accept a fee or other remuneration for its own or another's benefit from—

(a) any patient of its for the provision of any treatment under the contract, except as otherwise provided in the NHS Charges Regulations; and

(b) any person who has requested services under the contract for himself or herself or a family member, as a prerequisite to providing services under the contract to that person or his or her family member.

(3) The contract must contain a term that—

(**1**) Section 28N was inserted into the Act by section 172(1) of the 2003 Act.
(**2**) Section 16BB was inserted into the Act by section 6(1) of the 2002 Act.

(a) only permits the contractor to collect from any patient of its any charge that that patient is required to pay by virtue of the NHS Charges Regulations, in accordance with the requirements of those Regulations; and

(b) provides for obligations imposed on the contractor by virtue of the NHS Charges Regulations to be terms of the contract.

(4) The contract must contain a term that requires the contractor in making a decision—

(a) as to what services to recommend or provide to a patient who has sought services under the contract; or

(b) to refer a patient for other services by another contractor, hospital or other relevant service provider under Part 1 of the Act,

to do so without regard to its own financial interests.

Arrangements on termination

23. A contract will make suitable provision for arrangements on termination of a contract including the consequences (whether financial or otherwise) of the contract ending.

Other contractual terms

24.—(1) A contract must, unless it is of a type or nature to which a particular provision does not apply, contain other terms which have the same effect as those specified in Schedule 3 except paragraphs 55(4) to 55(13) and 56.

(2) The paragraphs specified in paragraph (1) will have effect in relation to the matters set out in those paragraphs.

(3) Where a contract does not commence on 1st April in any financial year, there must be a contractual term –

(a) specifying the date and periods for the purposes of a mid year review of the services provided; and

(b) which, other than the date and periods, have similar effect as those specified in paragraphs 58(3) to (8) and 59 of Schedule 3 in respect of the requirement and procedure for carrying out mid year reviews.

PART 6

TRANSITIONAL PROVISION

Commencement of contract

25. The contract will provide for services to be provided under it from any date after 31st March 2006.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(**1**)

Date

The Presiding Officer of the National Assembly

(**1**) 1998 c.38.

SCHEDULE 1

ADDITIONAL SERVICES

PART 1

ADVANCED MANDATORY SERVICES, DOMICILIARY SERVICES AND SEDATION SERVICES

Provision of advanced mandatory services, domiciliary services and sedation services by the contractor

1.—(1) A contractor who provides domiciliary services or sedation services under the contract may only provide those services—

(a) to a person to whom it is providing an entire course of treatment, during that course of treatment; or

(b) as a referral service.

(2) A contractor may only provide advanced mandatory services under the contract as a referral service.

In this paragraph, "entire course of treatment" means a course of treatment provided by only the contractor.

Referral services

2.—(1) A contractor who provides one or more of the additional services specified in paragraph 1 as a referral service will, at the time of the first examination of the patient, ensure that the patient is provided with a referral treatment plan on a form supplied for that purpose by the Local Health Board which will specify—

(a) the name of the patient;

(b) the name of the contractor;

(c) the particulars of the places where the patient will receive the referral service to be provided to him or her by the contractor;

(d) the telephone number at which the contractor may be contacted during its normal surgery hours;

(e) details of the services which are at the date of that examination considered to be necessary for the contractor to provide having regard to the reason for the referral; and

(f) any proposals the contractor may have for private services as an alternative to the services proposed under the contract, including particulars of the cost to the patient if he or she were to accept the provision of private services.

(2) If the patient having considered the referral treatment plan provided in accordance with sub-paragraph (1), decides to accept the provision of private services in place of all or part of services under the contract, the contractor will ensure that the patient signs that plan in the appropriate place to indicate that he or she has understood the nature of private services to be provided and his or her acceptance of those services.

(3) Where the services included in the referral treatment plan need to be varied for clinical reasons, the contractor will provide the patient with a revised referral treatment plan in accordance with sub-paragraph (1).

(4) The contractor will, subject to the termination of, or being unable to complete a course of treatment in accordance with paragraph 6(5) or (6) of Schedule 3 (course of treatment), provide the services which are detailed in the referral treatment plan, or where a revised treatment plan is provided pursuant to sub-paragraph (3), pursuant to that revised treatment plan.

(5) This paragraph will not apply where a patient has been referred to the contractor for advanced mandatory services limited only to examination and advice, and the contractor only provides examination and advice in respect of that patient.

Sedation services

3. The contractor will only provide sedation services to a patient in accordance with the recommendations contained in the [**report of the Standing Dental Advisory Committee entitled "Conscious Sedation in the Provision of Dental Care"(**1**),**] insofar as those recommendations and guidelines are relevant to—

(a) the type of sedation being administered; and

(b) the patient to whom the sedation is being administered.

PART 2

ORTHODONTIC SERVICES

Patients to whom orthodontic services may be provided

4.—(1) A contract that includes the provision of orthodontic services will specify that orthodontic services may be provided to—

(a) only persons who are under the age of 18 at the time of the case assessment;

(b) only persons who have attained or are over the age of 18 years at the time of the case assessment; or

(c) persons falling within paragraph (a) or (b).

(2) Where a contract specifies the matters referred to in sub-paragraph (1)(b) or (1)(c), it will in addition specify the circumstances in which orthodontic services may be provided to a person over the age of 18 years at the time of a case assessment.

(3) Subject to sub-paragraph 4, the contractor will only provide orthodontic treatment to a person who is assessed by the contractor following a case assessment as having a treatment need in—

(a) **[grade 4 or 5 of the Dental Health Component of the Index of Orthodontic Treatment Need(**2**); or**

(b) **grade 3 of the Dental Health Component of that Index with an Aesthetic Component of 6 or above,]**

unless the contractor is of the opinion, and has reasonable grounds for its opinion, that orthodontic treatment should be provided to a person who does not have such a treatment need by virtue of the exceptional circumstances of the dental and oral condition of the person concerned.

(4) In a case where a person does not have a treatment need but the contractor has reasonable grounds for its opinion that orthodontic treatment should be provided to that person because of the exceptional circumstances of the dental and oral condition of that person, such treatment as is referred to in sub-paragraph (3) may be provided.

(**1**) **The Standing Dental Advisory Committee is a statutory body established under section 6 of the Act. A copy of the Report can be obtained at [ ].**

(**2**) *The Development of an Index for Orthodontic Treatment Priority*: European Journal of Orthodontics 11, p309-332, 1989 Brooke, P.H. and Shaw W.C. The article is available at **[*insert website address*].**

Orthodontic course of treatment

5.—(1) Subject to sub-paragraph (2), the contractor will provide orthodontic services to a patient by providing to that patient an orthodontic course of treatment.

(2) The contractor may provide orthodontic services that are not provided by virtue of an orthodontic course of treatment where—

(a) it provides a repair to an orthodontic appliance of a person; and

(b) the orthodontic course of treatment in which that orthodontic appliance was provided is being provided by another contractor, hospital or relevant service provider under Part 1 of the Act.

(3) The contractor will use its best endeavours to ensure that an orthodontic course of treatment is completed within a reasonable time from the date on which the orthodontic treatment plan was written in accordance with paragraph 6(1).

(4) If an orthodontic course of treatment is—

(a) terminated before it has been completed; or

(b) otherwise not completed within a reasonable time,

any further orthodontic services to be provided to that patient under the contract must be provided as a new orthodontic course of treatment.

(5) An orthodontic course of treatment may only be terminated by—

(a) the contractor —

(i) when the circumstances referred to in paragraph 3(1)(a) and (b) of Schedule 3 (violent patients) occur and notice that it will no longer provide services has been given to the Local Health Board;

(ii) where the patient has refused to pay a charge in the circumstances referred to in paragraph 4 of Schedule 3 (refusal to pay NHS Charges during treatment); or

(iii) where, in the reasonable opinion of the contractor, there has been an irrevocable breakdown in the relationship between the patient and that contractor and, notice of such a breakdown has been given to the patient and the Local Health Board;

(b) the patient; or

(c) a person specified in paragraph 1(2) of Schedule 3 acting on the patient's behalf.

Orthodontic treatment plans

6.—(1) Where the contractor has, following a case assessment, determined that orthodontic treatment should be provided to a patient, it will, at the time of that case assessment, ensure that the patient is provided with an orthodontic treatment plan on a form supplied for that purpose by the Local Health Board which will specify—

(a) the name of the patient;

(b) the name of the contractor;

(c) particulars of the places where the patient will receive orthodontic treatment;

(d) the telephone number at which the contractor may be contacted during normal surgery hours;

(e) details of the orthodontic treatment which is, at the date of the examination, considered necessary to secure the oral health of the patient;

(f) the NHS charge, if any, in respect of those services if provided pursuant to the contract; and

(g) subject to paragraph 10(3)(a) of Schedule 3 (mixing of services provided under the contract with private services), any proposals the contractor may have for private services as an alternative to the services proposed under the contract, including particulars of the cost to the patient if he or she were to accept the provision of private services.

(2) If the patient, having considered the treatment plan provided pursuant to sub-paragraph (1), decides to accept the provision of private services in place of orthodontic services under the contract, the contractor will ensure that the patient signs the treatment plan in the appropriate place to indicate that he

or she has understood the nature of private services to be provided and his or her acceptance of those private services.

(3) Where, for clinical reasons, the services included in the orthodontic treatment plan under sub-paragraph (1) need to be varied, the contractor will provide the patient with a revised orthodontic treatment plan in accordance with that sub-paragraph.

(4) Subject to paragraph 5(3) and (5), the contractor will provide the orthodontic services which are detailed in the orthodontic treatment plan provided pursuant to sub-paragraph (1) or, where the orthodontic treatment plan is revised, pursuant to the revised orthodontic treatment plan.

Monitoring outcomes

7.—(1) The contract will require the contractor to monitor, in accordance with this paragraph, the outcome of the orthodontic treatment it provides.

(2) The contractor will, in respect of orthodontic courses of treatment it provides in which orthodontic treatment is provided following the case assessment, monitor the outcome of that orthodontic treatment in accordance with sub-paragraph (3).

(3) The contractor will monitor the outcome of orthodontic treatment in accordance with "Methods to determine outcome of orthodontic treatment in terms of improvement and standards"(**1**) in respect of —

(a) subject to sub-paragraph (b), 50 cases of the orthodontic courses of treatment it provides; or

(b) where the total number of orthodontic courses of treatment provided is greater than 50, 10 per cent of the orthodontic courses it provides.

(4) The contract will specify the period of time which is relevant for calculating the number of orthodontic courses of treatment that need to be monitored in accordance with this paragraph.

(5) Without prejudice to the generality of sub-paragraph (2), the contractor will, in respect of the patients whose courses of treatment are monitored for the purposes of that sub-paragraph, calculate a Peer Assessment Rating of the patient's study casts—

(a) taken at or after the case assessment but prior to the commencement of orthodontic treatment; and

(b) taken at the completion of the orthodontic course of treatment,

using either the Clinical Outcome Monitoring Program software(**2**) or by applying the methodology set out in "*An introduction to Occlusal Indices*"(**3**).

(6) In sub-paragraph (5), "Peer Assessment Rating" means an index of treatment standards in which individual scores for the components of alignment and occlusion are summed to calculate an overall score comparing pre and post treatment(**4**).

Completion of orthodontic courses of treatment

8.—(1) The contractor will indicate on the form supplied to the Local Health Board pursuant to paragraph 38 of Schedule 3 (notification of a course of treatment) whether or not the orthodontic course of treatment was completed.

(2) If the Local Health Board requests in writing that the contractor provides reasons for the failure to complete one or more orthodontic courses of treatment, the contractor will, within such time period as the Local Health Board may specify, provide the reason or reasons for the failure to complete that course of treatment or those courses of treatment.

[(**1**) European Journal of Orthodontics 14, p125-139, 1992 Richmond S., Shaw W.C., Anderson M. and Roberts C.T. The article is available at [*website address to be inserted*].

(**2**) Clinical Outcome Monitoring Program – Version 3.1 for Windows 98, XP and 2000. See also Weerakone S and Dhopatkar "A: Clinical Outcome Monitoring Program (COMP): a new application for use in orthodontic audits and research", American Journal of Orthodontics and Dentofacial Orthopaedics 2003;123:503-511.

(**3**) Richmond, O'Brien, Buchanan and Burden, 1992, Victoria, University of Manchester, ISBN 1-898922-00-4.

(**4**) A description of this methodology can be found in the European Journal or Orthodontics 14, p180-187, 1992, Richmond S, Shaw WC, Roberts CT and Andrews M: "Methods to determine the outcome of orthodontic treatment in terms of improvement and standards".

(3) Without prejudice to the generality of paragraph 73 of Schedule 3 (termination by the Local Health Board: remedial notices and breach notices), if the Local Health Board—

(a) determines that the number of orthodontic courses of treatment provided by the contractor which have not been completed is excessive; and

(b) does not consider that the reasons given by the contractor for the failure to complete the orthodontic courses of treatment are satisfactory,

it will be entitled to exercise its powers under that paragraph on the grounds that the contractor is not, pursuant to paragraph 5(3) of this Schedule, using its best endeavours to ensure orthodontic courses of treatment are completed.

SCHEDULE 2

PROVISION OF SERVICES: UNITS OF DENTAL ACTIVITY AND UNITS OF ORTHODONTIC ACTIVITY

PART 1

UNITS OF DENTAL ACTIVITY

1. Where the contractor provides a banded course of treatment, the contractor provides the number of units of dental activity specified in the appropriate row of Table A.

2. Where the contractor provides a charge exempt course of treatment, the contractor provides the number of units of dental activity specified in the appropriate row of Table B.

3. Where a banded course of treatment is commenced but not completed for whatever reason, the appropriate number of units of dental activity provided will be calculated on the basis of the components of the course of the treatment which has been –

(a) completed; and

(b) commenced but not completed.

Table A

Units of dental activity provided under the contract in respect of banded courses of treatment

Type of course of treatment	*Units of dental activity provided*
Band 1 course of treatment (excluding urgent treatment)	1.0
Band 1 course of treatment (urgent treatment only)	1.2
Band 2 course of treatment	3.0
Band 3 course of treatment	12.0

Table B

Units of dental activity provided under the contract in respect of charge exempt courses of treatment

Type of charge exempt course of treatment	*Units of dental activity provided*
Issue of a prescription	0.75
Repair of a dental appliance (denture)	1.0
Repair of a dental appliance (bridge)	1.2

Removal of sutures	1.0
Arrest of bleeding	1.2

PART 2

UNITS OF ORTHODONTIC ACTIVITY

4.—(1) Where the contractor provides an orthodontic course of treatment to a patient that solely consist of a case assessment, the contractor provides 1.0 units of orthodontic activity.

(2) Where the contractor provides an orthodontic course of treatment to a patient aged under 10 years that consists of —

(a) a case assessment; and

(b) the provision of orthodontic treatment following the case assessment,

the contractor provides 3.0 units of orthodontic activity.

(3) Where the contractor provides an orthodontic course of treatment to a patient aged between 10 and 17 years of age that consists of—

(a) a case assessment; and

(b) the provision of orthodontic treatment following the case assessment,

the contractor provides 21.0 units of orthodontic activity.

(4) Where the contractor provides an orthodontic course of treatment to a patient who is aged 18 years or over that consists of—

(a) a case assessment; and

(b) the provision of orthodontic treatment following the case assessment,

the contractor provides 23.0 units of orthodontic activity.

(5) Where the contractor—

(a) provides a repair to an orthodontic appliance of a patient; and

(b) the orthodontic course of treatment in which that orthodontic appliance was provided is being provided by another contractor, hospital or relevant service provider under Part 1 of the Act,

the contractor provides 0.8 units of orthodontic activity.

SCHEDULE 3

OTHER CONTRACTUAL TERMS

PART 1

PATIENTS

Persons to whom mandatory services or additional services are to be provided

1.—(1) Subject to sub-paragraph (3), the contractor may agree to provide mandatory or additional services under the contract to any person if a request is made for such services by—

(a) the person who requires the services;

(b) a person specified in sub-paragraph (2), on behalf of the person who requires those services.

(2) For the purposes of sub-paragraph (1), a request for services may be made—

(a) on behalf of any child—

(i) by either parent, or in the absence of both parents, the guardian or other adult who has care of the child,

(ii) by a person duly authorised by a local authority to whose care the child has been committed under the Children Act 1989(**1**), or

(iii) by a person duly authorised by a voluntary organisation by which the child is being accommodated under the provisions of that Act; or

(b) on behalf of any adult who is incapable of making such an application, or authorising such an application to be made on their behalf, by a relative or the primary carer of that person.

(3) The contractor may refuse to provide mandatory or additional services in relation to a person falling outside a specified group of persons only where the contract provides for the contractor to provide such services to a specified group.

(4) The contractor will only refuse to provide services under the contract to a person if it has reasonable grounds for doing so which do not relate to—

(a) a person's race, gender, social class, age, religion, sexual orientation, appearance, disability, medical or dental condition; or

(b) a person's decision or intended decision to accept private services in respect of himself or herself or a family member.

(5) Sub-paragraph (1) does not apply—

(a) where the contractor is providing mandatory or additional services in a prison; or

(b) in any event to dental public health services.

Patient preference of practitioner

2.—(1) Where the contractor has agreed to provide services to a patient pursuant to paragraph 1, it will—

(a) inform the patient (or, in the case of a child or incapable adult, the person who made the application on their behalf) of the patient's right to express a preference to receive services from a particular performer; and

(b) record in writing any such preference expressed by or on behalf of the patient.

(2) The contractor will endeavour to comply with any reasonable preference expressed under sub-paragraph (1) but need not do so if the preferred performer—

(a) has reasonable grounds for refusing to provide services to the patient; or

(b) does not routinely perform the services required by the patient within the practice.

(3) This paragraph does not apply—

(a) where the contractor is providing mandatory or additional services in a prison; or

(b) in any event to dental public health services.

Violent patients

3.—(1) Where—

(a) a patient of the contractor has committed an act of violence or behaved in such a way against any of the persons specified in sub-paragraph (2) as a consequence of which that person has feared for his or her safety; and

(b) the contractor has reported the incident to the police,

the contractor may notify the Local Health Board that it will no longer provide services to that patient under the contract.

(**1**) 1989 c.41.

(2) The reference to person in sub-paragraph (1) means —

(a) the contractor where it is an individual dental practitioner;

(b) in the case of a contract with two or more individuals practising in partnership, a partner in that partnership;

(c) in the case of a contract with a dental corporation, a director, chief executive, secretary or member of, or a legal and beneficial owner of shares in, that corporation;

(d) a member of the contractor's staff;

(e) a person engaged by the contractor to perform or assist in the performance of services under the contract; or

(f) any other person present—

(i) on the practice premises; or

(ii) in the place where services were provided to the patient under the contract.

(3) Notification under sub-paragraph (1) may be given by any means including telephone or fax but if not given in writing will subsequently be confirmed in writing within seven days (and for this purpose a faxed notification is not a written one).

(4) The time at which the contractor notifies the Local Health Board will be the time at which it makes the telephone call or sends or delivers the notification to the Local Health Board.

(5) The Local Health Board will—

(a) acknowledge in writing receipt of the notice from the contractor under sub-paragraph (1); and

(b) take all reasonable steps to inform the patient concerned as soon as is reasonably practicable.

Patients who refuse to pay NHS charges prior to the commencement of, or during, treatment

4.—(1) The contractor may—

(a) refuse to begin a course of treatment or an orthodontic course of treatment; or

(b) terminate a course of treatment or orthodontic course of treatment prior to its completion,

if the contractor has, in accordance with the NHS Charges Regulations, requested that the patient pay a charge in respect of that course of treatment or orthodontic course of treatment, and that patient has failed to pay that charge.

Irrevocable breakdown in relationship between contractor and patient

5. Where –

(a) in the reasonable opinion of the contractor, there has been an irrevocable breakdown in the relationship between the patient and that contactor; and

(b) notice of such a breakdown has been given to the patient by the contractor,

the contractor may notify the Local Health Board that it will no longer provide services to that patient under the contract.

PART 2

PROVISION OF SERVICES

Course of treatment

6.—(1) Except in the case of orthodontic services and dental public health services, the contractor will provide mandatory and additional services to a patient by providing to that patient a course of treatment.

(2) The contractor will use its best endeavours to ensure that a course of treatment is completed within a reasonable time from the date on which—

(a) the treatment plan was written in accordance with paragraph 7(1); or

(b) where a treatment plan is not required pursuant to that paragraph, the initial examination and assessment of the patient took place.

(3) Where a contractor provides urgent treatment to a patient, the urgent treatment provided will constitute a course of treatment and no other services will be provided during that course of treatment.

(4) If a course of treatment is—

(a) terminated before it has been completed; or

(b) otherwise not completed within a reasonable time,

any further services to be provided to that patient under the contract must be provided as a new course of treatment.

(5) A course of treatment may only be terminated by—

(a) the contractor —

(i) when the circumstances referred to in paragraph 3(1)(a) and (b) of this Schedule (violent patients) occur and notice that it will no longer provide services has been given to the Local Health Board;

(ii) where the patient has refused to pay a charge in the circumstances referred to in paragraph 4 of this Schedule (refusal to pay NHS Charges during treatment); or

(iii) where, in the reasonable opinion of the contractor, there has been an irrevocable breakdown in the relationship between the patient and the contractor and notice of such a breakdown has been given to the patient and the Local Health Board;

(b) the patient; or

(c) a person specified in paragraph 1(2) of this Schedule acting on the patient's behalf.

(6) If the contractor is unable to complete the course of the treatment which has been commenced for reasons beyond his or her control, he or she shall give notice to the Local Health Board of the extent of the treatment so provided and the reason for his or her inability to complete the remainder.

Treatment plans

7.—(1) Subject to sub-paragraph (5), where the contractor agrees to provide a course of treatment to a patient, it will, at the time of the initial examination and assessment of that patient, ensure that the patient is provided with a treatment plan on a form supplied for that purpose by the Local Health Board which will specify—

(a) the name of the patient;

(b) the name of the contractor;

(c) particulars of the places where the patient will receive services;

(d) the telephone number at which the contractor may be contacted during normal surgery hours;

(e) details of the services (if any) which are, at the date of the examination, considered necessary to secure the oral health of the patient;

(f) the NHS charge, if any, in respect of those services if provided pursuant to the contract; and

(g) any proposals the contractor may have for private services as an alternative to the services proposed under the contract, including particulars of the cost to the patient if he or she were to accept the provision of private services.

(2) If the patient, having considered the treatment plan provided pursuant to sub-paragraph (1), decides to accept the provision of private services in place of all or part of services under the contract, the contractor will ensure that the patient signs the treatment plan in the appropriate place to indicate that he or she has understood the nature of the private services to be provided and his or her acceptance of those services.

(3) Where the services included in the treatment plan under this paragraph need to be varied, the contractor will provide the patient with a revised treatment plan in accordance with sub-paragraph (1).

(4) Subject to paragraph 6(5), the contractor will provide the services which are detailed in the treatment plan, or where the treatment plan is revised, the revised treatment plan.

(5) The obligation to provide a treatment plan under this paragraph will not apply to a Band 1 course of treatment or a charge exempt course of treatment unless—

(a) the contractor is providing privately any part of that course of treatment pursuant to paragraph 10; or

(b) the patient has requested that he or she be provided with written details of the course of treatment to be provided or that has been provided to him or her, whether or not he or she specifically requests a treatment plan.

(6) Where a patient requests the contractor to provide him or her with a summary of the care and treatment provided under the treatment plan because he or she intends to receive services from another contractor, the contractor will provide him or her with such a summary as he or she considers appropriate (including details of the care and treatment which could not easily be observed on visual examination).

(7) The summary referred to in sub-paragraph (6) will be supplied to the patient on a form supplied for that purpose by the Local Health Board within 28 days of that request.

Completion of courses of treatment

8.—(1) The contractor will indicate on the form supplied to the Local Health Board pursuant to paragraph 38 whether the course of treatment was completed, and if the course of treatment was not completed, provide the reason for the failure to complete the course of treatment.

(2) Without prejudice to the generality of paragraph 73, if the Local Health Board—

(a) determines that the number of courses of treatment provided by the contractor which have not being completed is excessive; and

(b) does not consider that the reasons given by the contractor for the failure to complete the courses of treatment are satisfactory,

it will be entitled to exercise its powers under that paragraph on the grounds that the contractor is not, pursuant to paragraph 6(2) of this Schedule, using its best endeavours to ensure courses of treatment are completed.

Referral to another contractor, a hospital or other relevant service provider for advanced mandatory, domiciliary or sedation services

9.—(1) Where a patient requires advanced mandatory services, domiciliary services or sedation services that are not provided under the contract by the contractor, it will, if the patient agrees, refer that patient in accordance with sub-paragraph (2) for the provision of a referral service by an alternative contractor, a hospital or other relevant service provider under Part 1 of the Act.

(2) In referring a patient pursuant to sub-paragraph (1), the contractor will provide—

(a) to the patient being referred, a referral notice on a form supplied for that purpose by the Local Health Board which will specify the services detailed on the treatment plan which will be carried out by the alternative contractor, hospital or other relevant service provider; and

(b) to the alternative contractor, hospital or other relevant service provider, either at the time of referral or as soon as reasonably practicable thereafter—

(i) a copy of the treatment plan provided to the patient pursuant to paragraph 7,

(ii) a copy of the referral notice, and

(iii) a statement of the amount paid to it, or due to be paid to it, by the patient under the NHS Charges Regulations in respect of the course of treatment during which the referral is made.

(3) Where the patient notifies the contractor, whether verbally or in writing, that he or she does not wish to be referred to the alternative contractor, hospital or other relevant service provider selected by the contractor, the contractor will, if requested to do so by the patient, use its best endeavours to refer the

patient to another suitable contractor, hospital or other relevant service provider under Part 1 of the Act for the provision of the referral service.

Mixing of services provided under the contract with private services

10.—(1) Subject to the requirements in paragraphs 2 (referral services) and 6 (orthodontic treatment plans) of Schedule 1 and paragraph 7(1)(g) of this Schedule, a contractor may, with the consent of the patient, provide privately any part of a course of treatment or orthodontic course of treatment for that patient, including in circumstances where that patient has been referred to the contractor for a referral service.

(2) A contractor will not, with a view to obtaining the agreement of a patient to undergo services privately—

(a) advise a patient that the services which are necessary in his or her case are not available from the contractor under the contract; or

(b) seek to mislead the patient about the quality of the services available under the contract.

(3) Sub-paragraph (1) will not apply—

(a) in respect of an orthodontic course of treatment in which case—

(i) the case assessment will be provided wholly under the contract or wholly privately, and

(ii) the orthodontic treatment will be provided wholly under the contract or wholly privately; or

(b) where the treatment involves the administration of general anaesthesia or the provision of sedation.

(4) In sub-paragraph (3), "provision of sedation" means the provision of one or more drugs to a patient in order to produce a state of depression of the central nervous system to enable treatment to be carried out.

Repair or replacement of restorations

11.—(1) Subject to sub-paragraph 11(3), where a restoration specified in sub-paragraph 11(2) needs to be repaired or replaced the contractor will repair or replace the restoration at no charge to the patient.

(2) The restorations referred to in sub-paragraph (1) are any filling, root filling, inlay, porcelain veneer or crown provided by the contractor to a patient in the course of providing services under the contract, which within the relevant period has to be repaired or replaced to secure oral health.

(3) Sub-paragraph (1) will not apply where—

(a) within the relevant period, a person other than the contractor has provided treatment on the tooth in respect of which the restoration was provided;

(b) the contractor advised the patient at the time of the restoration and indicated on the patient record that—

(i) the restoration was intended to be temporary in nature; or

(ii) in its opinion, a different form of restoration was more appropriate to secure oral health but, notwithstanding that advice, the patient nevertheless requested the restoration which was provided;

(c) in the opinion of the contractor, the condition of the tooth in respect of which the restoration was provided is such that the restoration cannot satisfactorily be repaired or replaced and different treatment is now required; or

(d) the repair or replacement is required as a result of trauma.

(4) In this paragraph, "the relevant period" means the 12 month period beginning on the date on which the restoration was provided, and ceasing twelve months after that date.

Premises, facilities and equipment

12.—(1) The contractor will ensure that the practice premises used for the provision of services under the contract are—

(a) suitable for the delivery of those services; and

(b) sufficient to meet the reasonable needs of the contractor's patients.

(2) The obligation in sub-paragraph (1) includes providing proper and sufficient waiting-room accommodation for patients.

(3) The contractor will provide, in relation to all of the services to be provided under the contract, such other facilities and equipment as are necessary to enable it to properly perform that service.

(4) In this paragraph, "practice premises" includes a mobile surgery.

Telephone services

13.—(1) The contractor will not be a party to any contract or other arrangement under which the number for telephone services to be used by—

(a) patients to contact the practice for any purpose related to the contract; or

(b) any other person to contact the practice in relation to services provided as part of the health service,

starts with the digits 087, 090 or 091 or consists of a personal number, unless the service is provided free to the caller.

(2) In this paragraph, "personal number" means a telephone number which starts with the number 070 followed by a further 8 digits.

National Institute for Clinical Excellence guidance

14. [The contractor will provide services under the contract in accordance with any relevant guidance that is issued by the National Institute for Clinical Excellence(**1**), in particular the guidance entitled "Dental recall - Recall interval between routine dental examinations"(**2**)].

Infection control

15. The contractor will ensure that it has appropriate arrangements for infection control and decontamination.

Treatment under general anaesthesia: prohibition

16. The contractor will not provide any services under the contract that involve the provision of general anaesthesia.

PART 3

SUPPLY OF DRUGS AND PRESCRIBING

[General

17. The contractor will ensure that any prescription form for listed drugs, medicines or appliances issued by a prescriber complies as appropriate with the requirements in this Part.

(**1**) The National Institute for Clinical Excellence is established as a Special Health Authority under section 11 of the Act (S.I. 1999/220, as amended by S.I. 1999/2219, 2002/1760 and 2005/497).

(**2**) This guidance is available from NICE's website, www.nice.org.uk.

Supply of drugs

18.—(1) A presciber may supply to a patient listed drugs, medicines or appliances as are required for immediate use before the issue of a prescription for such drugs, medicines or appliances in accordance with paragraph 19.

(2) A prescriber may personally administer to a patient any drug or medicine required for the treatment of that patient.

Issue of prescription forms

19.—(1) A prescriber will order listed drugs, medicines or appliances (other than those supplied under paragraph 18) as are required for the treatment of any patient to whom it is providing services under the contract by issuing to the patient a prescription form.

(2) Every prescription form will—

(a) be signed by the prescriber; and

(b) be issued separately to each patient to whom the contractor is providing services under the contract.

(3) For the purposes of this paragraph, "prescription form" means a form that is supplied for the purposes of this paragraph by the Local Health Board.

Excessive prescribing

20. A prescriber will not prescribe drugs, medicines or appliances whose cost or quantity, in relation to any patient, is, by reason of the character of that drug, medicine or appliance, in excess of that which was reasonably necessary for the proper treatment of that patient.]

PART 4

PERSONS WHO PERFORM SERVICES

Dental practitioners

21. A dental practitioner(1) may perform dental services under the contract provided —

(a) he or she is included in a dental performers list for a Local Health Board in Wales; and

(b) his or her inclusion in that list is not subject to a suspension.

Dental care professionals

22.—(1) Prior to the coming into force of the first regulations under section 36A(2) of the Dentists Act (professions complementary to dentistry) (**2**)—

(a) a dental hygienist; or

(b) a dental therapist

may perform dental services under the contract provided he or she is enrolled in the appropriate register established in accordance with the Dental Auxiliaries Regulations 1986(**3**).

(2) Upon the coming into force of the first regulations under section 36A(2) of the Dentists Act a —

(a) dental hygienist;

(b) dental therapist; or

(**1**) The term dental practitioner is defined in section 128 of the Act as a person registered in the dentists register under the Dentists Act.
(**2**) Section 36A is prospectively inserted into the Dentists Act by article 29 of the Dentists Act Order.
(**3**) S.I. 1986/887.

(c) professional or member of a class as specified in regulations made under section 36A(2) of the Dentists Act,

may perform dental services under the contract provided he or she is—

(i) a dental care professional; and

(ii) his or her registration in the dental care professional register established under section 36B of the Dentists Act is not subject to a suspension .

Performers: further requirements

23.—(1) No health care professional or other person other than one to whom paragraph 22 applies will perform clinical services under the contract unless he or she is appropriately registered with his or her relevant professional body and his or her registration is not subject to a current suspension.

(2) Where—

(a) the registration of a dental practitioner, dental care professional or other health care professional; or

(b) a dental practitioner's inclusion in a dental performers list,

is subject to conditions, the contractor will ensure compliance with those conditions in so far as they are relevant to the contract.

(3) No health care professional or other person will perform any clinical services under the contract unless he or she has such clinical experience and training as are necessary to enable him or her properly to perform such services.

Conditions for employment and engagement: dental practitioners performing dental services

24.—(1) A contractor will not employ or engage a dental practitioner to perform dental services under the contract unless—

(a) that practitioner has provided it with the name and address of the Local Health Board on whose dental performers list he or she appears; and

(b) the contractor has checked that the practitioner meets the requirements in paragraph 21.

(2) Where the employment or engagement of a dental practitioner is urgently needed and it is not possible to check the matters referred to in paragraph 21 in accordance with sub-paragraph (1)(b) before employing or engaging him or her he or she may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

Conditions for employment and engagement: persons performing dental services other than dental practitioners

25.—(1) The contractor will not employ or engage a dental care professional to perform dental services unless it has taken reasonable steps to satisfy itself that he or she has the clinical experience and training necessary to enable him or her to properly perform dental services and —

(a) prior to the coming into force of the first regulations under section 36A(2) of the Dentists Act, the contractor has checked that his or her name is on the roll of the appropriate register established in accordance with the Dental Auxiliaries Regulations 1986(**1**); and

(b) from the coming into force of the first regulations under section 36A(2) of the Dentists Act, the contractor has checked that—

(i) his or her name is included in the register of dental care professionals; and

(ii) his or her registration in the dental care professional register is not subject to a suspension.

(2) Where the employment or engagement of a person specified in sub-paragraph (1) is urgently needed and it is not possible to check his or her registration in accordance with sub-paragraph (1)(b)

(**1**) S.I. 1986/887.

(where it applies) before employing or engaging him or her, he or she may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

(3) When considering a person's experience and training for the purposes of sub-paragraph (1), the contractor will have regard in particular to—

(a) any post-graduate or post-registration qualification held by that person; and

(b) any relevant training undertaken by him or her and any relevant clinical experience gained by him or her.

Conditions for employment and engagement: all persons performing dental services

26.—(1) The contractor will not employ or engage a person to perform dental services under the contract unless—

(a) that person has provided two clinical references that relate to two recent posts (which may include any current post) exercising the profession in which he or she seeks employment or engagement with the contractor which lasted for three months or more without a significant break, or where this is not possible, that person has provided a full explanation and alternative referees; and

(b) the contractor has checked and is satisfied with the references.

(2) Where the employment or engagement of a person falling within sub-paragraph (1) is urgently needed and it is not possible for the contractor to obtain and check the references in accordance with sub-paragraph (1)(b) before employing or engaging him or her, he or she may be employed or engaged on a temporary basis for a single period of up to 14 days whilst his or her references are checked and considered, and for an additional period of a further 7 days if the contractor believes the person supplying those references is ill, on holiday or otherwise temporarily unavailable.

(3) Where the contractor employs or engages the same person on more than one occasion within a period of three months, it may rely on the references provided on the first occasion, provided that those references are not more than twelve months old.

Conditions for employment or engagement: persons assisting in the provision of services under the contract

27.—(1) Before employing or engaging any person to assist it in the provision of services under the contract, the contractor will take reasonable care to satisfy itself that the person in question is both suitably qualified and competent to discharge the duties for which he or she is to be employed or engaged.

(2) The duty imposed by sub-paragraph (1) is in addition to the duties imposed by paragraphs 24 to 26.

(3) When considering the competence and suitability of any person for the purpose of sub-paragraph (1), the contractor will have regard in particular to—

(a) that person's academic and vocational qualifications;

(b) his or her education and training; and

(c) his or her previous employment or work experience.

Training

28.—(1) The contractor will ensure that for any dental practitioner or dental care professional who is—

(a) performing dental services under the contract; or

(b) employed or engaged to assist in the performance of such services,

arrangements are in place for the purpose of maintaining and updating his or her skills and knowledge in relation to the services which he or she is performing or assisting in performing.

(2) The contractor will afford to each employee reasonable opportunities to undertake appropriate training with a view to maintaining that employee's competence.

Level of skill

29. The contractor will carry out its obligations under the contract with reasonable care and skill.

Appraisal and assessment

30. The contractor will ensure that any dental practitioner performing services under the contract—

(a) participates in the appraisal system (if any) provided by the Local Health Board unless he or she participates in the appraisal system provided by another health service body; [and]

(b) [co-operates with an assessment by the [NPSA] when requested to do so by the Local Health Board].

Sub-contracting of clinical matters

31.—(1) The contractor will not sub-contract any of its rights or duties under the contract to any person in relation to clinical matters unless—

(a) it has taken reasonable steps to satisfy itself that—

(i) it is reasonable in all the circumstances; and

(ii) that the person is qualified and competent to provide the service; and

(b) it is satisfied in accordance with paragraphs 81 and 82 that the sub-contractor holds adequate insurance.

(2) Where the contractor sub-contracts any of its rights or duties under the contract in relation to clinical matters, it will—

(a) inform the Local Health Board of the sub-contract as soon as is reasonably practicable; and

(b) provide the Local Health Board with such information in relation to the sub-contract as it reasonably requests.

(3) Where the contractor sub-contracts clinical services in accordance with sub-paragraph (1), the parties to the contract will be deemed to have agreed a variation to the agreement which has the effect of adding to the list of the contractor's premises any premises which are to be used by the sub-contractor for the purpose of the sub-contract and paragraph 60 does not apply.

(4) A contract with a sub-contractor must prohibit the sub-contractor from sub-contracting the clinical services it has agreed with the contractor to provide.

PART 5

RECORDS, INFORMATION, NOTIFICATIONS AND RIGHTS OF ENTRY

Patient records

32.—(1) The contractor will ensure that a full, accurate and contemporaneous record is kept in the patient record in respect of the care and treatment given to each patient under the contract, including treatment given to a patient who is referred to the contractor.

(2) The patient record may be kept in electronic form.

(3) The patient record will include details of any private services (to the extent that they are provided with services under the contract) and will be kept with—

(a) a copy of any treatment plan or referral treatment plan given to the patient pursuant to paragraph 2 of Schedule 1 (referral services) or paragraph 7 of this Schedule;

(b) all radiographs, photographs and study casts taken or obtained by it as part of the services provided to that patient;

(c) where an orthodontic course of treatment has been provided to a patient, a copy of the orthodontic treatment plan;

(d) where information is to be submitted to the Local Health Board in accordance with paragraph 38 and that information is submitted electronically —

(i) the written declaration form in respect of exemption under paragraph 1(1) of Schedule 12ZA to the Act duly made and completed in accordance regulations made under section 79 of, and paragraph 7(a) of Schedule 12ZA to that Act; and

(ii) a note of the evidence in support of that declaration; and

the statement concerning any custom-made devices provided by any person as a consequence of regulation 15 of the Medical Devices Regulations 2002(**1**)(procedures for custom-made devices) in respect of services being provided to that patient.

(4) The patient record and the items referred to in sub-paragraph (3) will be retained for a period of 2 years after—

(a) the date on which—

(i) a course of treatment or orthodontic course of treatment is terminated, or

(ii) a course of treatment or an orthodontic course of treatment is completed; or

(b) in respect of courses of treatment or orthodontic courses of treatment not falling within paragraph (a)(i) or (a)(ii) the date by which no more services can be provided as part of that course of treatment or orthodontic course of treatment by virtue of paragraph 5(4)(b) of Schedule 1 (orthodontic course of treatment) or paragraph 6(4)(b) of this Schedule.

(5) Nothing in this paragraph will affect any property right which the contractor may have in relation to the records, radiographs, photographs and study models referred to in this paragraph.

Confidentiality of personal data

33. The contractor will nominate a person with responsibility for practices and procedures relating to the confidentiality of personal data held by it.

Patient information

34.—(1) The contractor will ensure that there is displayed in a prominent position in its practice premises, in a part to which patients have access—

(a) in respect of its practice based quality assurance system referred to in paragraph 80, a written statement relating to its commitment to the matters referred to in paragraph 80(4);

(b) such information relating to NHS Charges as is supplied by the Local Health Board for the purposes of providing information to patients; and

(c) information about the complaints procedure which it operates in accordance with Part 6, giving the name and title of the person nominated by the contractor in accordance with paragraph 50(2)(a).

(2) The contractor will—

(a) compile a document (in this paragraph called a "patient information leaflet") which will include the information specified in Schedule 4;

(b) review its patient information leaflet at least once in every period of 12 months and make any amendments necessary to maintain its accuracy; and

(c) make available a copy of the leaflet, and any subsequent updates, to its patients and prospective patients.

(**1**) S.I. 2002/618.

(3) The requirements in sub-paragraph (2) do not apply to any contractor to the extent that it provides services to persons detained in prison.

Provision of and access to information: Local Health Board

35.—(1) The contractor will, at the request of the Local Health Board—

(a) produce to the Local Health Board or to a person authorised in writing by the Local Health Board in such format, and at such intervals or within such time period, as the Local Health Board specifies; or

(b) allow the Local Health Board, or a person authorised in writing by it to access,

the information specified in paragraph (2).

(2) The information specified for the purposes of sub-paragraph (1) is—

(a) any information which is reasonably required by the Local Health Board for the purposes of or in connection with the contract; and

(b) any other information which is reasonably required in connection with the Local Health Board's functions,

and includes the contractor's patient records.

Requests for information from Community Health Councils

36.—(1) [Subject to sub-paragraph (2), where the contractor receives a written request from the Community Health Council to produce any information which appears to the Council to be necessary for the effective carrying out of its functions it will comply with that request promptly and in any event no later than the twentieth working day following the date the request was made.

(2) The contractor will not be required to produce information under sub-paragraph (1) which—

(a) is confidential and relates to a living individual, unless at least one of the conditions specified in sub-paragraph (3) applies; or

(b) is prohibited from disclosure by or under any enactment or any ruling of a court of competent jurisdiction or is protected by the common law, unless sub-paragraph (4) applies.

(3) The conditions referred to in sub-paragraph (2)(a) are—

(a) the information can be disclosed in a form from which the identity of the individual cannot be ascertained; or

(b) the individual consents to the information being disclosed.

(4) This sub-paragraph applies where—

(a) the prohibition of the disclosure of information arises because the information is capable of identifying an individual; and

(b) the information can be disclosed in a form from which the identity of the individual cannot be ascertained.

(5) In a case where the information falls within—

(a) sub-paragraph (2)(a) and the condition in sub-paragraph (3)(a) applies; or

(b) sub-paragraph (2)(b) and sub-paragraph (4) applies,

a Community Health Council may require the contractor to disclose the information in a form from which the identity of the individual concerned cannot be ascertained **- Need instructions]**.

Inquiries about prescriptions and referrals

37.—(1) The contractor will, subject to sub-paragraphs (2) and (3), sufficiently answer any inquiries whether oral or in writing from the Local Health Board concerning—

(a) any prescription form issued by a prescriber;

(b) the considerations by reference to which prescribers issue such forms;

(c) the referral by or on behalf of the contractor of any patient to any other services provided under the Act; or

(d) the considerations by which the contractor makes such referrals or provides for them to be made on its behalf.

(2) An inquiry referred to in sub-paragraph (1) may only be made for the purpose either of obtaining information to assist the Local Health Board to discharge its functions or of assisting the contractor in the discharge of its obligations under the contract.

(3) The contractor will not be obliged to answer any inquiry referred to in sub-paragraph (1) unless it is made—

(a) in the case of sub-paragraph (1)(a) or (1)(b), by an appropriately qualified health care professional; or

(b) in the case of sub-paragraph (1)(c) or (1)(d), by an appropriately qualified dental practitioner,

appointed in either case by the Local Health Board to assist it in the exercise of its functions under this paragraph and that person produces, on request, written evidence that he or she is authorised by the Local Health Board to make such inquiry on its behalf.

Notification of a course of treatment, orthodontic course of treatment etc.

38.—(1) The contractor will, within 2 months of the date upon which it—

(a) completes a course of treatment in respect of mandatory or additional services;

(b) completes a case assessment in respect of an orthodontic course of treatment that does not lead to a course of treatment;

(c) provides an orthodontic appliance following a case assessment in respect of orthodontic treatment;

(d) completes a course of treatment in respect of orthodontic treatment;

(e) a course of treatment in respect of mandatory services or additional services or orthodontic course of treatment being terminated; or

(f) in respect of courses not falling within sub-paragraph (e) or (d), the date by which no more services can be provided by virtue of paragraph 5(4)(b) of Schedule 1 (orthodontic course of treatment) or paragraph 6(4)(b) of this Schedule,

send to the Local Health Board, on a form supplied by that Board, the information specified in paragraph (2).

(2) The information referred to in sub-paragraph (1) is—

(a) details of the patient to whom the treatment in respect of mandatory or additional services, the treatment in respect of orthodontic treatment, case assessment or orthodontic appliance was provided;

(b) details of the treatment in respect of mandatory or additional services, the treatment in respect of orthodontic treatment, case assessment or orthodontic appliance provided;

(c) NHS Charge, if any, payable by that patient; and

(d) in the case of a patient exempt from NHS Charges and where such information is not submitted electronically, the written declaration form and note of evidence in support of that declaration.

Annual report and review

39.—(1) The Local Health Board will provide to the contractor an annual report relating to the contract which will contain the same categories of information for all persons who hold contracts with that Trust.

(2) Once the Local Health Board has provided the report referred to in sub-paragraph (1), the Local Health Board will arrange with the contractor an annual review of its performance in relation to the contract.

(3) The Local Health Board will prepare a draft record of the review referred to in sub-paragraph (2) for comment by the contractor and, having regard to such comments, will produce a final written record of the review.

(4) A copy of the final record referred to in sub-paragraph (3) will be sent to the contractor.

Notifications to the Local Health Board

40.—(1) In addition to any requirements of notification elsewhere in the Regulations, the contractor will notify the Local Health Board in writing, as soon as reasonably practicable, of—

(a) any serious incident that in the reasonable opinion of the contractor affects or is likely to affect the contractor's performance of its obligations under the contract; or

(b) any circumstances which give rise to the Local Health Board's right to terminate the contract under paragraph 70 or 71(1).

(2) The contractor will, unless it is impracticable for it to do so, notify the Local Health Board in writing within 28 days of any occurrence requiring a change in the information about it published by the Local Health Board in accordance with regulations made under section 16CA(3) of the Act (primary dental services)(**1**).

(3) The Contractor will give notice in writing to the Local Health Board when a dental practitioner who is performing or will perform services under the contract (as the case may be)—

(a) leaves the contractor, and the date upon which he or she left; or

(b) is employed or engaged by the contractor

which will include the name of the dental practitioner who has left, or who has been employed or engaged, together with his or her professional registration number.

Notice provisions specific to a contract with a dental corporation

41. A contractor which is a dental corporation will give notice in writing to the Local Health Board forthwith when—

(a) it passes a resolution or a court of competent jurisdiction makes an order that the contractor be wound up;

(b) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the contractor;

(c) circumstances arise which would enable the court to make a winding up order in respect of the contractor; or

(d) the contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (definition of inability to pay debts)(**2**).

Notice provisions specific to a contract with two or more individuals practising in partnership

42.—(1) A contractor which is a partnership will give notice in writing to the Local Health Board forthwith when—

(a) a partner leaves or informs his or her partners that he or she intends to leave the partnership, and the date upon which he or she left or will leave the partnership; or

(b) a new partner joins the partnership.

(2) A notice under sub-paragraph (1)(b) will—

(a) state the date that the new partner joined the partnership;

(b) confirm that the new partner is a dental practitioner, or that he or she satisfies the conditions specified in section 28M(2)(b) of the Act;

(**1**) Section 16CA was inserted into the Act by section 170 of the 2003 Act.
(**2**) 1986 c.45.

(c) confirm that the new partner meets the conditions imposed by regulation [0] (general conditions relating to all contracts); and

(d) state whether the new partner is a general or a limited partner.

Notifications to patients following a variation of the contract

43. Where the contract is varied in accordance with Part 9 of this Schedule and, as a result of that variation there is to be a change in the range of services provided by the contractor, the contractor will ensure that there is displayed in a prominent position in its practice premises, in a part to which patients have access, written details of that change.

Entry and inspection by the Local Health Board

44.—(1) Subject to—

(a) the conditions in sub-paragraph (2); and

(b) sub-paragraph (3),

the contractor will allow persons authorised in writing by the Local Health Board to enter and inspect the practice premises at any reasonable time.

(2) The conditions referred to in sub-paragraph (1) are that—

(a) reasonable notice of the intended entry has been given;

(b) written evidence of the authority of the person seeking entry is produced to the contractor on request; and

(c) entry is not made to any premises or part of the premises used as residential accommodation without the consent of the resident.

(3) Where the contractor is providing services under the contract in a prison, the contractor will not be obliged to comply with sub-paragraph (1), or paragraph 45 or 46, if—

(a) the contractor has used its best endeavours to allow the Local Health Board, [members of a Community Health Council] or the Commission for Healthcare Audit and Inspection (as the case may be) to enter and inspect the practice premises; but

(b) entry and inspection has been prevented by the prison authorities despite the contractor's best endeavours.

(4) In this paragraph "practice premises" includes a mobile surgery.

Entry and inspection by members of Community Health Councils

45. Subject to paragraph 44(3), the contractor will allow members of a Community Health Council authorised by or under regulation 20 of the Community Health Councils Regulations 2004(**1**) to enter and inspect the practice premises for the purpose of any of the Council's functions in accordance with that regulation.

Entry and inspection by the Commission for Healthcare Audit and Inspection

46. [Subject to paragraph 44(3), the contractor will allow persons authorised by the Commission for Healthcare Audit and Inspection [**and the Assembly**] to enter and inspect premises in accordance with sections 66 [and 73] of the Health and Social Care (Community Health and Standards) Act 2003 (right of entry)(**2**).

(**1**) S.I. 2004/905 (W.89) (as amended by 2005/603 (W.51)).

(**2**) 2003 c.43.

PART 6

COMPLAINTS

Complaints procedure

47.—(1) The contractor will establish and operate a complaints procedure to deal with any complaints in relation to any matter reasonably connected with the provision of services under the contract which will comply with the requirements of paragraphs 48 to 50 and 52.

(2) The contractor will take reasonable steps to ensure that patients are aware of—

(a) the complaints procedure;

(b) the role of the Local Health Board and other bodies in relation to complaints about services under the contract; and

(c) their right to assistance with any complaint from independent advocacy services provided under section 19A of the Act (independent advocacy services)(**1**).

(3) The contractor will take reasonable steps to ensure that the complaints procedure is accessible to all patients.

Making of complaints

48.—(1) A complaint may be made by or, with his or her consent, on behalf of a patient or former patient, who is receiving or has received services under the contract, or—

(a) where the patient is a child, by—

(i) a parent or other person who has parental responsibility for that child;

(ii) a person duly authorised by a local authority to whose care the child has been committed under the provisions of the Children Act 1989(**2**); or

(iii) a person duly authorised by a voluntary organisation by which the child is being accommodated under the provisions of that Act;

(b) where the patient is incapable of making a complaint, by a relative or other adult person who has an interest in his or her welfare.

(2) Where a patient has died, a complaint may be made by a relative or other adult person who had an interest in his or her welfare or, where the patient falls within sub-paragraph (1)(1)(a)(ii) or (iii) by the authority of a voluntary organisation.

Period for making complaints

49.—(1) Subject to sub-paragraph (2), the period for making a complaint is—

(a) six months beginning with the date on which the matter which is the subject of the complaint occurred; or

(b) six months beginning with the date on which the matter which is the subject of the complaint comes to the complainant's notice provided that the complaint is made no later than 12 months after the date on which the matter which is the subject of the complaint occurred.

(2) Where a complaint is not made during the period specified in sub-paragraph (1), it will be referred to the person nominated under paragraph 50(2)(a) and if he or she is of the opinion that—

(a) having regard to all the circumstances of the case, it would have been unreasonable for the complainant to make the complaint within that period; and

---

(**1**) Section 19A was inserted by the Health and Social Care Act 2001 (c.15), section 12.
(**2**) 1989 c.41.

(b) notwithstanding the time that has elapsed since the date on which the matter which is the subject matter of the complaint occurred, it is still possible to investigate the complaint properly,

the complaint will be treated as if it had been received during the period specified in sub-paragraph (1).

Further requirements for complaints procedures

50.—(1) A complaints procedure will also comply with the requirements set out in sub-paragraphs (2) to (6).

(2) The contractor must nominate—

(a) a person (who need not be connected with the contractor and who, in the case of an individual, may be specified by his or her job title) to be responsible for the operation of the complaints procedure and the investigation of complaints; and

(b) a partner, or other senior person associated with the contractor, to be responsible for the effective management of the complaints procedure and for ensuring that action is taken in the light of the outcome of any investigation.

(3) All complaints must be—

(a) either made or recorded in writing;

(b) acknowledged in writing within the period of 3 working days beginning with the day on which the complaint was made or, where that is not possible, as soon as reasonably practicable; and

(c) properly investigated.

(4) Within the period of 10 working days beginning with the day on which the complaint was received by the person specified under sub-paragraph (2)(a) or, where that is not possible, as soon as reasonably practicable, the complainant must be given a written summary of the investigation and its conclusions.

(5) Where the investigation of the complaint requires consideration of the patient's dental records, the person specified in sub-paragraph (2)(a) must inform the patient or person acting on his or her behalf if the investigation will involve disclosure of information contained in those records to a person other than the contractor or an employee of the contractor.

(6) The contractor must keep a record of all complaints and copies of all correspondence relating to complaints for a period of at least two years from the date on which such complaints were made, but such records will be kept separate from the patients' dental records.

Co-operation with investigations

51.—(1) The contractor will co-operate with—

(a) any investigation of a complaint in relation to any matter reasonably connected with the provision of services under the contract undertaken by—

(i) the Local Health Board; and

(ii) the Commission for Healthcare Audit and Inspection;

(iii) [the Assembly;] and **[see GMS Regs and Reg 46 of these Regs];**

(b) any investigation of a complaint by an NHS body or local authority which relates to a patient or former patient of the contractor.

(2) In sub-paragraph (1)—

"NHS body" *(" ")* means a Local Health Board, (in England and Wales and Scotland) an NHS trust, an NHS foundation trust, a Strategic Health Authority, a Primary Care Trust, a Health Board, a Health and Social Services Board or a Health and Social Services Trust;

"local authority" *(" ")* means—

(a) any of the bodies listed in section 1 of the Local Authority Social Services Act 1970 (local authorities)(**1**);

(b) the Council of the Isles of Scilly; or

(c) a council constituted under section 2 of the Local Government etc, (Scotland) Act 1994 (constitution of councils)(**2**).

(3) The co-operation required by sub-paragraph (1) includes—

(a) answering questions reasonably put to the contractor by the Local Health Board;

(b) providing any information relating to the complaint reasonably required by the Local Health Board; and

(c) attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given) if the contractor's presence at the meeting is reasonably required by the Local Health Board.

Provision of information

52. The contractor will inform the Local Health Board, at such intervals as the Local Health Board requires, of the number of complaints it has received under the procedure established in accordance with this Part.

PART 7

DISPUTE RESOLUTION

Local resolution of contract disputes

53. In the case of any dispute arising out of or in connection with the contract, the contractor and the Local Health Board must make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings).

Dispute resolution: non-NHS contracts

54.—(1) In the case of a contract which is not an NHS contract, any dispute arising out of or in connection with the contract, except matters dealt with under the complaints procedure pursuant to Part 6 of this Schedule, may be referred for consideration and determination to the Assembly, if—

(a) the Local Health Board so wishes and the contractor has agreed in writing; or

(b) the contractor so wishes (even if the Local Health Board does not agree).

(2) In the case of a dispute referred to the Assembly under sub-paragraph(1)—

(a) the procedure to be followed is the NHS dispute resolution procedure; and

(b) the parties agree to be bound by any determination made by the adjudicator.

NHS dispute resolution procedure

55.—(1) The procedure specified in the following sub-paragraphs and paragraph 56 applies in the case of any dispute arising out of or in connection with the contract which is referred to the Assembly—

(a) in accordance with section 4(3) of the 1990 Act (where the contract is an NHS contract); or

(b) in accordance with paragraph 54 (where the contract is not an NHS contract).

(**1**) 1970 c.42; section 1 was amended by the Local Government Act 1972 (c.70), section 195 and by the Local Government (Wales) Act 1994 (c.19), Schedule 10, paragraph 7.

(**2**) 1994 c.39.

(2) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) will send to the Assembly a written request for dispute resolution which will include or be accompanied by—

(a) the names and addresses of the parties to the dispute;

(b) copy of the contract; and

(c) a brief statement describing the nature and circumstances of the dispute.

(3) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send the request under sub-paragraph (2) within a period of three years beginning with the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute.

(4) Where the dispute relates to a contract which is not an NHS contract, the Assembly may determine the matter itself or, if it considers it appropriate, appoint a person or persons to consider and determine it(**1**).

(5) Before reaching a decision as to who should determine the dispute, either under sub-paragraph (4) or under section 4(5) of the 1990 Act, the Assembly will, within the period of 7 days beginning with the date on which a matter was referred to it, send a written request to the parties to make in writing, within a specified period, any representations which they may wish to make about the matter.

(6) The Assembly will give, with the notice given under sub-paragraph (5), to the party other than the one which referred the matter to dispute resolution a copy of any document by which the matter was referred to dispute resolution.

(7) The Assembly will give a copy of any representations received from a party to the other party and will in each case request (in writing) a party to whom a copy of the representations is given to make within a specified period any written observations which it wishes to make on those representations.

(8) Following receipt of any representations from the parties or, if earlier, at the end of the period for making such representations specified in the request sent under sub-paragraph (5) or (7), the Assembly will, if it decides to appoint a person or persons to hear the dispute—

(a) inform the parties in writing of the name of the person or persons whom it has appointed; and

(b) pass to the person or persons so appointed any documents received from the parties under or pursuant to paragraph (2), (5) or (7).

(9) For the purpose of assisting the adjudicator in his or her consideration of the matter, the adjudicator may—

(a) invite representatives of the parties to appear before him or her to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which he or she wishes them to give special consideration; or

(b) consult other persons whose expertise he or she considers will assist him or her in his or her consideration of the matter.

(10) Where the adjudicator consults another person under sub-paragraph (9)(b), he or she will notify the parties accordingly in writing and, where he or she considers that the interests of any party might be substantially affected by the result of the consultation, he or she shall give to the parties such opportunity as he or she considers reasonable in the circumstances to make observations on those results.

(11) In considering the matter, the adjudicator will consider—

(a) any written representations made in response to a request under sub-paragraph (5), but only if they are made within the specified period;

(b) any written observations made in response to a request under sub-paragraph (7), but only if they are made within the specified period;

(c) any oral representations made in response to an invitation under sub-paragraph (9)(a);

(d) the results of any consultation under sub-paragraph (9)(b); and

---

(**1**) Where the dispute relates to a contract which is an NHS contract, section 4(5) of the 1990 Act applies.

(e) any observations made in accordance with an opportunity given under sub-paragraph (10).

(12) In this paragraph, "specified period" means such period as the Assembly will specify in the request, being not less than 2, nor more than 4, weeks beginning with the date on which the notice referred to is given, but the Assembly may, if it considers that there is good reason for doing so, extend any such period (even after it has expired) and, where it does so, a reference in this paragraph to the specified period is to the period as so extended.

(13) Subject to the other provisions of this paragraph and paragraph 56, the adjudicator will have wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.

Determination of dispute

56.—(1) The adjudicator will record his or her determination and the reasons for it, in writing and will give notice of the determination (including the record of the reasons) to the parties.

(2) In the case of a contract referred for determination in accordance with paragraph 54(1), subsection (8) of section 4 of the 1990 Act will apply as that subsection applies in the case of a contract referred for determination in accordance with subsection (3) of section 4 of that Act.

(3) In the case of a contract referred for determination in accordance with paragraph 54(1), subsection (5) of section 28P of the Act(**1**) (GDS contracts: disputes and enforcement) will apply as that subsection applies in the case of a contract referred for determination in accordance with subsection (3) of section 4 of the 1990 Act.

Interpretation of Part 7

57.—(1) In this Part, "any dispute arising out of or in connection with the contract" includes any dispute arising out of or in connection with the termination of the contract.

(2) Any term of the contract that makes provision in respect of the requirements in this Part will survive even where the contract has terminated.

PART 8

MID-YEAR REVIEW OF ACTIVITY UNDER CONTRACTS

Mid-year reviews

58.—(1) This paragraph and paragraph 59 only apply where services are to be provided under the contract from 1st April in any financial year.

(2) In this paragraph and paragraph 59, "required to provide" or "required to be provided" in relation to units of dental activity or orthodontic activity means required to be provided in accordance with a term of the contract giving effect to regulation 17 (units of dental activity) or 18 (units of orthodontic activity).

(3) The Local Health Board will, by 31st October in each financial year, determine the number of—

(a) units of dental activity; or

(b) units of orthodontic activity,

that the contractor has provided between 1st April and 30th September of that financial year based on the data provided to it by virtue of paragraph 38.

(4) Where the Local Health Board determines under sub-paragraph (3) that the contractor has, between 1st April and 30th September, provided less than [**30 per cent**] of the total number of—

(a) units of dental activity; or

(**1**) Section 28P was inserted into the Act by section 175(1) of the 2003 Act.

(b) units of orthodontic activity,

that it is required to provide in that financial year, sub-paragraph (5) will apply.

(5) Where this sub-paragraph applies, the Local Health Board may—

(a) notify the contractor that it is concerned about the level of activity provided under the contract in the first half of the financial year, setting out—

(i) the number of units of dental activity or units of orthodontic activity (as the case may be) that it has determined that the contractor has provided, and

(ii) the percentage of the total number of units of dental activity or units of orthodontic activity (as the case may be) required to be provided during the financial year that the number in head (i) represents; and

(b) require in that notification that the contractor participate in a mid-year review of its performance in relation to the contract with the Local Health Board.

(6) Where a mid-year review is required by the Local Health Board pursuant to sub-paragraph (5), the Local Health Board and the contractor will discuss at that review—

(a) any written evidence the contractor puts forward to demonstrate that it has performed a greater number of units of dental activity or units of orthodontic activity during the first half of the financial year than those notified to it pursuant to sub-paragraph (5)(a)(i); and

(b) any reasons that the contractor puts forward for the level of activity in the first half of the financial year.

(7) The Local Health Board will prepare a draft record of the mid-year review for comment by the contractor and, having regard to such comments, will produce a final written record of the review.

(8) A copy of the final record of the mid-year review will be sent to the contractor.

Action the Local Health Board can take following a mid-year review

59.—(1) Where, following the mid-year review and the provision of the final record of that review to the contractor, the Local Health Board, having taken account of any evidence or reasons put forward by the contractor at that review, nevertheless has serious concerns that the contractor is unlikely to provide the number of—

(a) units of dental activity; or

(b) units of orthodontic activity,

that it is required to provide by the end of the financial year, the Local Health Board will be entitled to take either or both of the steps specified in paragraph (2).

(2) The Local Health Board may—

(a) require the contractor to comply with a written plan drawn up by the Local Health Board to ensure that the level of activity during the remainder of the financial year is such that the contractor will provide the number of units of dental activity or units of orthodontic activity it is required to provide; or

(b) withhold monies payable under the contract.

(3) The maximum amount that may be withheld pursuant to sub-paragraph (2)(b) is—

(a) the amount that is payable under the contract in respect of the number of units of dental activity or units of orthodontic activity required to be provided in a financial year, less

(b) the amount that would be payable under the contract as a relevant proportion of that amount if the contractor provided in the whole of the financial year only twice the number of units of dental activity or orthodontic activity that he or she provided between 1st April and 30th September.

(4) Nothing in this paragraph will prevent the Local Health Board and the contractor agreeing to vary the contract in accordance with paragraph 61 to adjust—

(a) the level of activity to be provided under the contract; or

(b) the monies to be paid by the Local Health Board to the contractor under the contract.

(5) Where the Local Health Board withholds monies pursuant to paragraph (2), it will ensure that it pays the withheld monies to the contractor as soon as possible following the end of the financial year where the contractor has—

(a) provided the number of units of dental activity or units of orthodontic activity required to be provided; or

(b) failed to provide that number of units of dental activity or units of orthodontic activity, but that failure amounts to [**5 per cent**] or less of the total number of units of dental activity or units of orthodontic activity that ought to have been provided during that financial year (and therefore regulation 19 applies).

PART 9

VARIATION AND TERMINATION OF CONTRACTS

Variation of a contract: general

60.—(1) Subject to paragraph 31(3), no amendment or variation will have effect unless it is in writing and signed by or on behalf of the Local Health Board and the contractor.

(2) In addition to the specific provision made in paragraphs 62(6), 63(6) and 75, the Local Health Board may vary the contract without the contractor's consent where it—

(a) is reasonably satisfied that it is necessary to vary the contract so as to comply with the Act, any regulations made pursuant to that Act, or any direction given by the Assembly pursuant to that Act; and

(b) notifies the contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect,

and, where it is reasonably practicable to do so, the date that the proposed variation is to take effect will be not less than 14 days after the date on which the notice under sub-paragraph (b) is served on the contractor.

Variation of a contract: activity under the contract

61.—(1) Where the contractor or the Local Health Board is of the opinion that there needs to be a variation to the number of—

(a) units of dental activity; or

(b) units of orthodontic activity,

to be provided under the contract, sub-paragraphs (2) and (3) will apply.

(2) The contractor or the Local Health Board (as the case may be) will notify the other party to the contract in writing of its opinion of the need for a variation, specifying in that notice the variation that it considers necessary, together with its reasons.

(3) Following service of the notice referred to in sub-paragraph (2), both parties will use their best endeavours to communicate and cooperate with each other with a view to determining what (if any) variation should be made to the—

(a) units of dental activity; or

(b) units of orthodontic activity,

and any related variations to the contract, including to the monies to be paid to the contractor under the contract, and will, where appropriate, effect the variation in accordance with paragraph 60.

Variation provisions specific to a contract with an individual dental practitioner

62.—(1) If a contractor which is an individual dental practitioner proposes to practise in partnership with one or more persons during the existence of the contract, the contractor will notify the Local Health Board in writing of—

(a) the name of the person or persons with whom it proposes to practise in partnership; and

(b) the date on which the contractor wishes to change its status as a contractor from that of an individual dental practitioner to that of a partnership, which will be not less than 28 days after the date upon which it has served the notice on the Local Health Board pursuant to this sub-paragraph.

(2) A notice under sub-paragraph (1) will in respect of the person or each of the persons with whom the contractor is proposing to practise in partnership, and also in respect of itself as regards the matters specified in sub-paragraph (c)—

(a) confirm that he or she is either—

(i) a dental practitioner, or

(ii) a person who satisfies the conditions specified in section 28M(2)(b)(i) to (iv) of the Act(**1**);

(b) confirm that he or she is a person who satisfies the conditions imposed by regulation [0]; and

(c) state whether or not it is to be a limited partnership, and if so, who is to be a limited and who a general partner,

and the notice will be signed by the individual dental practitioner and by the person, or each of the persons (as the case may be), with whom he or she is proposing to practise in partnership.

(3) The contractor will ensure that any person who will practise in partnership with it is bound by the contract, whether by virtue of a partnership deed or otherwise.

(4) If the Local Health Board is satisfied as to the accuracy of the matters specified in sub-paragraph (2) that are included in the notice, the Local Health Board will give notice in writing to the contractor confirming that the contract will continue with the partnership entered into by the contractor and its partners, from a date that the Local Health Board specifies in that notice.

(5) Where it is reasonably practicable, the date specified by the Local Health Board pursuant to sub-paragraph (4) will be the date requested in the notice served by the contractor pursuant to sub-paragraph (1), or, where that date is not reasonably practicable, the date specified will be a date after the requested date that is as close to the requested date as is reasonably practicable.

(6) Where a contractor has given notice to the Local Health Board pursuant to sub-paragraph (1), the Local Health Board—

(a) may vary the contract but only to the extent that it is satisfied is necessary to reflect the change in status of the contractor from an individual dental practitioner to a partnership; and

(b) if it does propose to so vary the contract, it will include in the notice served on the contractor pursuant to sub-paragraph (4) the wording of the proposed variation and the date upon which that variation is to take effect.

Variation provisions specific to a contract with two or more individuals practising in partnership

63.—(1) Subject to sub-paragraph (4), where a contractor consists of two or more individuals practising in partnership in the event that the partnership is terminated or dissolved, the contract will only continue with one of the former partners if that partner is—

(a) nominated in accordance with sub-paragraph (3); and

(b) a dental practitioner,

and provided that the requirements in sub-paragraphs (2) and (3) are met.

(**1**) Section 28M was inserted into the Act by section 172(1) of the 2003 Act.

(2) A contractor will notify the Local Health Board in writing at least 28 days in advance of the date on which the contractor proposes to change its status from that of a partnership to that of an individual dental practitioner pursuant to sub-paragraph (1).

(3) A notice under sub-paragraph (2) will—

(a) specify the date on which the contractor proposes to change its status from that of a partnership to that of an individual dental practitioner;

(b) specify the name of the dental practitioner with whom the contract will continue, which must be one of the partners; and

(c) be signed by all of the persons who are practising in partnership.

(4) If a partnership is terminated or dissolved because, in a partnership consisting of two individuals practising in partnership, one of the partners has died, sub-paragraphs (1) to (3) do not apply and—

(a) the contract will continue with the individual who has not died only if that individual is a dental practitioner; and

(b) that individual will in any event notify the Local Health Board in writing as soon as is reasonably practicable of the death of his or her partner.

(5) When the Local Health Board receives a notice pursuant to sub-paragraph (2) or (4)(b), it will acknowledge in writing receipt of the notice, and in relation to a notice served pursuant to sub-paragraph (2), the Board will do so before the date specified pursuant to sub-paragraph (3)(a).

(6) Where a contractor gives notice to the Local Health Board pursuant to sub-paragraph (2) or (4)(b), the Local Health Board may vary the contract but only to the extent that it is satisfied is necessary to reflect the change in status of the contractor from a partnership to an individual dental practitioner.

(7) If the Local Health Board varies the contract pursuant to sub-paragraph (6), it will notify the contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect.

Termination by agreement

64. The Local Health Board and the contractor may agree in writing to terminate the contract, and if the parties so agree, they will agree the date upon which that termination should take effect and any further terms upon which the contract should be terminated.

Termination on the death of an individual dental practitioner

65.—(1) Where the contract is with an individual dental practitioner and that practitioner dies, the contract will terminate at the end of the period of seven days after the date of his or her death unless, before the end of that period—

(a) subject to sub-paragraph (2), the Local Health Board has agreed in writing with the contractor's personal representatives that the contract should continue for a further period, not exceeding 3 months after the end of the period of seven days; and

(b) the contractor's personal representatives have confirmed in writing to the Local Health Board that they are employing or engaging one or more dental practitioners to assist in the provision of dental services under the contract throughout the period for which it continues.

(2) Where the Local Health Board is of the opinion, that another contractor may wish to enter into a contract in respect of the mandatory services which were provided by the deceased dental practitioner, the 3 month period referred to in sub-paragraph (1)(a) may be extended by a period not exceeding 6 months as may be agreed.

(3) Sub-paragraph [ ] does not affect any other rights to terminate the agreement which the Local Health Board may have under paragraphs 69 to 74.

Termination by the contractor

66.—(1) A contractor may terminate the contract by serving notice in writing on the Local Health Board at any time.

(2) Where a contractor serves notice pursuant to sub-paragraph (1), the contract will terminate three months after the date on which the notice is served ("the termination date"), save that if the termination date is not the last calendar day of a month, the contract will instead terminate on the last calendar day of the month in which the termination date falls.

(3) This paragraph and paragraph 67 are without prejudice to any other rights to terminate the contract that the contractor may have.

Late payment notices

67.—(1) The contractor may give notice in writing (a "late payment notice") to the Local Health Board if the Board has failed to make any payments due to the contractor in accordance with a term of the contract that has the effect specified in regulation 21 (finance), and the contractor will specify in the late payment notice the payments that the Board has failed to make in accordance with that regulation.

(2) Subject to sub-paragraph (3), the contractor may, at least 28 days after having served a late payment notice, terminate the contract by a further written notice if the Local Health Board has still failed to make the payments that were due to the contractor and that were specified in the late payment notice served on the Local Health Board pursuant to sub-paragraph (1).

(3) If, following receipt of a late payment notice, the Local Health Board refers the matter to the NHS dispute resolution procedure within 28 days of the date upon which it is served with the late payment notice, and it notifies the contractor in writing that it has done so within that period of time, the contractor may not terminate the contract pursuant to sub-paragraph (2) until—

(a) there has been a determination of the dispute pursuant to paragraph 56 and that determination permits the contractor to terminate the contract; or

(b) the Local Health Board ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

Termination by the Local Health Board: general

68. The Local Health Board may only terminate the contract in accordance with the provisions in this Part.

Termination by the Local Health Board: no longer eligible to enter into and breach of conditions of the contract

69.—(1) Subject to sub-paragraph (2), the Local Health Board will serve notice in writing on the contractor terminating the contract forthwith if—

(a) the contract was entered into pursuant to section 28M(1)(a) of the Act (persons eligible to enter into GDS contracts); and

(b) the contractor is no longer a dental practitioner.

(2) Where a contractor ceases to be a dental practitioner by virtue of a suspension specified in sub-paragraph (6), sub-paragraph (1) will not apply unless—

(a) the contractor is unable to satisfy the Local Health Board that it has in place adequate arrangements for the provision of dental services under the contract for so long as the suspension continues; or

(b) the Local Health Board is satisfied that the circumstances of the suspension are such that if the contract is not terminated forthwith—

(i) the safety of the contractor's patients is at serious risk, or

(ii) the Local Health Board is at risk of material financial loss.

(3) Except in a case to which paragraph 63(4) applies, where the contractor is two or more persons practising in partnership and the condition prescribed in section 28M(2)(a) of the Act is no longer satisfied, the Local Health Board will—

(a) serve notice in writing on the contractor terminating the contract forthwith; or

(b) serve notice in writing on the contractor confirming that the Local Health Board will allow the contract to continue for a period specified by the Local Health Board in accordance with sub-paragraph (4) (the "interim period") if the Local Health Board is satisfied that the contractor has in place adequate arrangements for the provision of dental services for the interim period.

(4) The period specified by the Local Health Board under sub-paragraph (3)(b) will not exceed—

(a) six months; or

(b) in a case where the failure of the contractor to continue to satisfy the condition in section 28M(2)(a) of the Act is the result of a suspension referred to in sub-paragraph (6), the period for which that suspension continues.

(5) Where the contract was entered into pursuant to section 28M(1)(b) of the Act, but the contractor ceases to be a dental corporation, the Local Health Board will serve notice in writing on the contractor terminating the contract forthwith.

(6) The suspensions referred to in sub-paragraphs (2) and (4)(b) are—

(a) until the coming into force article 18 of the Dentists Act Order (substitution of sections 27 and 28)—

(i) suspension by the Health Committee section 28 of the Dentists Act (powers of the Health Committee),

(ii) suspension by the Professional Conduct Committee or the Health Committee under section 30(3) of that Act (orders for immediate suspension), or

(iii) suspension by the Preliminary Proceedings Committee under section 32 of that Act (orders for interim suspension);

(b) from the coming into force of article 18 of the Dentists Act Order—

(i) suspension by the Health Committee, the Professional Performance Committee or the Professional Conduct Committee under section 27B or 27C of the Dentists Act, except under section 27C(1)(d) (indefinite suspension), following a relevant determination;

(ii) suspension by the Health Committee, the Professional Performance Committee or the Professional Conduct Committee under section 30(1) of that Act (orders for immediate suspension), or

(iii) suspension by the Health Committee, the Professional Performance Committee, the Professional Conduct Committee or the Interim Orders Committee under section 32 of that Act (interim orders).

(7) For the purposes of sub-paragraph (6)(b)(i), a "relevant determination" is a determination that a person's fitness to practise is impaired based solely on the ground mentioned in—

(a) section 27(2)(b) of the Dentist Act (deficient professional performance) or

(b) section 27(2)(c) of that Act (adverse physical or mental health).

Termination by the Local Health Board for the provision of untrue etc. information

70. The Local Health Board may serve notice in writing on the contractor terminating the contract forthwith, or from such date as may be specified in the notice if, after the contract has been entered into, it comes to the attention of the Local Health Board that written information provided to the Local Health Board by the contractor—

(a) before the contract was entered into; or

(b) pursuant to paragraph 42(2),

in relation to the conditions set out in regulation 4 or 5 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.

Termination by the Local Health Board on grounds of suitability etc

71.—(1) The Local Health Board may serve notice in writing on the contractor terminating the contract forthwith, or from such date as may be specified in the notice if —

(a) in the case of a contract with a dental practitioner, that dental practitioner;

(b) in the case of a contract with two or more individuals practising in partnership, any individual or the partnership; and

(c) in the case of a contract with a dental corporation —

(i) the corporation, or

(ii) any director, chief executive or secretary of the corporation,

falls within sub-paragraph (2) during the existence of the contract or, if later, on or after the date on which a notice in respect of his or her compliance with the conditions in regulation [0] was given under paragraph 42(2).

(2) A person falls within this sub-paragraph if—

(a) he, she or it is the subject of a national disqualification;

(b) subject to sub-paragraph (3), he, she or it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation or a suspension on the grounds of ill-health) from practising by any licensing body anywhere in the world;

(c) subject to sub-paragraph (4), he or she has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless before the Local Health Board has served a notice terminating the contract pursuant to this paragraph, he or she is employed by the health service body that dismissed him or her or by another health service body;

(d) he, she or it is removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 49F(2), (3) and (4) of the Act respectively(**1**)) unless his or her name has subsequently been included in such a list;

(e) 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;

(f) subject to sub-paragraph (5), 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;

(g) he or she has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933(**2**) (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(**3**) (offences against children under the age of 17 years to which special provisions apply);

(h) 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(**4**), unless that order has ceased to have effect or has been annulled;

(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; or

---

(**1**) Section 49F was inserted into the Act by section 25 of the 2001 Act.

(**2**) 1933 c.12 as amended by the Criminal Justice Act 1988 (c.33), section 170, Schedule 15, paragraph 8 and Schedule 16, paragraph 16; the Sexual Offences Act 1956 (c.69), sections 48 and 51 and Schedules 3 and 4, as modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9.

(**3**) 1995 c.46.

(**4**) 1986 c.45. Schedule 4A was inserted by section 257 of and Schedule 3 to the Enterprise Act 2002 (c.40).

(iv) been wound up under Part IV of the Insolvency Act 1986;

(i) there is—

(i) an administrator, administrative receiver or receiver appointed in respect of it; or

(ii) an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986(**1**);

(j) that person is a partnership and—

(i) a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator; or

(ii) an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership;

(k) he or she has been—

(i) 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) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(**2**) (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body;

(l) he or she is subject to a disqualification order under the Company Directors Disqualification Act 1986(**3**), the Companies (Northern Ireland) Order 1986(**4**) or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order); or

(m) he or she has refused to comply with a request by the Local Health Board for him or her to be medically examined on the grounds that it is concerned that he or she is incapable of adequately providing services under the contract and, in a case where the contract is with two or more individuals practising in partnership or with a dental corporation, the Local Health Board is not satisfied that the contractor is taking adequate steps to deal with the matter.

(3) A Local Health Boardwill not terminate the contract pursuant to sub-paragraph (2)(b) where the Local Health Board is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the person unsuitable to be—

(a) a contractor;

(b) a partner, in the case of a contract with two or more individuals practising in partnership; or

(c) in the case of a contract with a dental corporation, a director, chief executive or secretary of the corporation,

as the case may be.

(4) A Local Health Board will not terminate the contract pursuant to sub-paragraph (2)(c)—

(a) until a period of at least three months has elapsed since the date of the dismissal of the person concerned; or

(b) if, during the period of time specified in paragraph (a), the person concerned brings proceedings in any competent tribunal or court in respect of his dismissal, until proceedings before that tribunal or court are concluded,

and the Local Health Board may only terminate the contract at the end of the period specified in paragraph (b) if there is no finding of unfair dismissal at the end of those proceedings.

(5) A Local Health Board will not terminate the contract pursuant to sub-paragraph (2)(f) where the Local Health Board is satisfied that the conviction does not make the person unsuitable to be—

(**1**) Schedule B1 was inserted by section 248 of and Schedule 16 to the Enterprise Act 2002.
(**2**) 1990 c.40.
(**3**) 1986 c.46 as amended by the Insolvency Act 2000 (c.39).
(**4**) S.I. 1986/1032 (N.I. 6).

(a) a contractor;

(b) a partner, in the case of a contract with two or more individuals practising in partnership; or

(c) in the case of a contract with a dental corporation, a director, chief executive or secretary of the corporation,

as the case may be.

Termination by the Local Health Board: patient safety and material financial loss

72. The Local Health Board may serve notice in writing on the contractor terminating the contract forthwith or with effect from such date as may be specified in the notice if—

(a) the contractor has breached the contract and as a result of that breach, the safety of the contractor's patients is at serious risk if the contract is not terminated; or

(b) the contractor's financial situation is such that the Local Health Board considers that the Local Health Board is at risk of material financial loss.

Termination by the Local Health Board: remedial notices and breach notices

73.—(1) Where a contractor has breached the contract other than as specified in paragraphs 70 to 72 and the breach is capable of remedy, the Local Health Board will, before taking any action it is otherwise entitled to take by virtue of the contract, serve a notice on the contractor requiring it to remedy the breach ("remedial notice").

(2) A remedial notice will specify—

(a) details of the breach;

(b) the steps the contractor must take to the satisfaction of the Local Health Board in order to remedy the breach; and

(c) the period during which the steps must be taken ("the notice period").

(3) The notice period will, unless the Local Health Board is satisfied that a shorter period is necessary to—

(a) protect the safety of the contractor's patients; or

(b) protect itself from material financial loss,

be no less than 28 days from the date that notice is given.

(4) Where a Local Health Board is satisfied that the contractor has not taken the required steps to remedy the breach by the end of the notice period, the Local Health Board may terminate the contract with effect from such date as the Local Health Board may specify in a further notice to the contractor.

(5) Where a contractor has breached the contract other than as specified in paragraphs 70 to 72 and the breach is not capable of remedy, the Local Health Board may serve notice on the contractor requiring the contractor not to repeat the breach ("breach notice").

(6) If, following a breach notice or a remedial notice, the contractor—

(a) repeats the breach that was the subject of the breach notice or the remedial notice; or

(b) otherwise breaches the contract resulting in either a remedial notice or a further breach notice,

the Local Health Board may serve notice on the contractor terminating the contract with effect from such date as may be specified in that notice.

(7) The Local Health Board will not exercise its right to terminate the contract under sub-paragraph (6) unless it is satisfied that the cumulative effect of the breaches is such that the Local Health Board considers that to allow the contract to continue would be prejudicial to the efficiency of the services to be provided under the contract.

(8) If the contractor is in breach of any obligation and a breach notice or a remedial notice in respect of that default has been given to the contractor, the Local Health Board may withhold or deduct monies which would otherwise be payable under the contract in respect of that obligation which is the subject of the default.

Termination by the Local Health Board: additional provisions specific to contracts with two or more individuals practising in partnership and dental corporations

74.—(1) Where the contractor is a dental corporation, if the Local Health Board becomes aware that the contractor is carrying on any business which the Local Health Board considers to be detrimental to the contractor's performance of its obligations under the contract—

(a) the Local Health Board will be entitled to give notice to the contractor requiring that it ceases carrying on that business before the end of a period of not less than 28 days beginning on the day on which the notice is given ("the notice period"); and

(b) if the contractor has not satisfied the Local Health Board that it has ceased carrying on that business by the end of the notice period, the Local Health Board may, by a further written notice, terminate the contract forthwith or from such date as may be specified in the notice.

(2) Where the contractor is a dental corporation and on or after the coming into force for all purposes of article 39 of the Dentists Act Order during the existence of the contract—

(a) the majority of the directors of the dental corporation cease to be either dental practitioners or dental care professionals;

(b) the dental corporation has been convicted of an offence under section 43(1) of the Dentists Act(**1**) (directors of bodies corporate); or

(c) the dental corporation, or a director or former director of that corporation, has had a financial penalty imposed on it or him or her by the General Dental Council pursuant to section 43B (financial penalties in relation to bodies corporate) or 44(**2**) (further financial penalties on bodies corporate) of the Dentists Act,

the Local Health Board may, by written notice, terminate the contract if it considers that as a consequence the dental corporation is no longer suitable to be a contractor.

(3) Where the contractor is two or more persons practising in partnership, the Local Health Board will be entitled to terminate the contract by notice in writing on such date as may be specified in that notice where one or more partners have left the practice during the existence of the contract if in its reasonable opinion, the Local Health Board considers that the change in membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Local Health Board to perform its obligations under the contract.

(4) A notice given to the contractor pursuant to sub-paragraph (3) will specify—

(a) the date upon which the contract is to be terminated; and

(b) the Local Health Board's reasons for considering that the change in the membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Local Health Board to perform its obligations under the contract.

Contract sanctions

75.—(1) In this paragraph and paragraph 76, "contract sanction" means—

(a) termination of specified reciprocal obligations under the contract;

(b) suspension of specified reciprocal obligations under the contract for a period of up to six months; or

(c) withholding or deducting monies otherwise payable under the contract.

(2) Where the Local Health Board is entitled to terminate the contract pursuant to paragraph 70, 71, 72, 73(4), 73(6) or 74, it may instead impose any of the contract sanctions if the Local Health Board is reasonably satisfied that the contract sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the Local Health Board's entitlement to terminate the contract.

(**1**) Section 43 of the Dentists Act 1984 is substituted by the Dentists Act 1984 (Amendment) Order 2005 (S.I. 2005/) ("the Dentists Act Order"), article 39.

(**2**) Section 43B is inserted into, and section 44 is substituted by, the Dentists Act 1984 by the Dentists Act Order, article 39.

(3) The Local Health Board will not, under sub-paragraph (2), be entitled to impose any contract sanction that has the effect of terminating or suspending any obligation to provide, or any obligation that relates to, mandatory services.

(4) If the Local Health Board decides to impose a contract sanction, it must notify the contractor of the contract sanction that it proposes to impose, the date upon which that sanction will be imposed and provide in that notice an explanation of the effect of the imposition of that sanction.

(5) Subject to paragraph 76, the Local Health Board will not impose the contract sanction until at least 28 days after it has served notice on the contractor pursuant to sub-paragraph (4) unless the Local Health Board is satisfied that it is necessary to do so in order to—

(a) protect the safety of the contractor's patients; or

(b) protect itself from material financial loss.

(6) Where the Local Health Board imposes a contract sanction, the Local Health Board will be entitled to charge the contractor the reasonable costs of additional administration that the Local Health Board has incurred in order to impose, or as a result of imposing, the contract sanction.

Contract sanctions and the NHS dispute resolution procedure

76.—(1) If there is a dispute between the Local Health Board and the contractor in relation to a contract sanction that the Local Health Board is proposing to impose, the Local Health Board will not, subject to sub-paragraph (4), impose the proposed contract sanction except in the circumstances specified in sub-paragraph (2)(a) or (2)(b).

(2) If the contractor refers the dispute relating to the contract sanction to the NHS dispute resolution procedure within 28 days beginning on the date on which the Local Health Board served notice on the contractor in accordance with paragraph 75(4) (or such longer period as may be agreed in writing with the Local Health Board), and notifies the Local Health Board in writing that it has done so, the Local Health Board will not impose the contract sanction unless—

(a) there has been a determination of the dispute pursuant to paragraph 56 and that determination permits the Local Health Board to impose the contract sanction; or

(b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(3) If the contractor does not invoke the NHS dispute resolution procedure within the time specified in sub-paragraph (2), the Local Health Board will be entitled to impose the contract sanction forthwith.

(4) If the Local Health Board is satisfied that it is necessary to impose the contract sanction before the NHS dispute resolution procedure is concluded in order to—

(a) protect the safety of the contractor's patients; or

(b) protect itself from material financial loss,

the Local Health Board will be entitled to impose the contract sanction forthwith, pending the outcome of that procedure.

Termination and the NHS dispute resolution procedure

77.—(1) Where the Local Health Board is entitled to serve written notice on the contractor terminating the contract pursuant to paragraph 70 71, 72, 73(4), 73(6) or 74, the Local Health Board will, in the notice served on the contractor pursuant to those provisions, specify a date on which the contract terminates that is not less than 28 days after the date on which the Local Health Board has served that notice on the contractor unless sub-paragraph (2) applies.

(2) This sub-paragraph applies if the Local Health Board is satisfied that a period less than 28 days is necessary in order to—

(a) protect the safety of the contractor's patients; or

(b) protect itself from material financial loss.

(3) In a case falling with sub-paragraph (1), where the exceptions in sub-paragraph (2) do not apply, where the contractor invokes the NHS dispute resolution procedure before the end of the period of notice referred to in sub-paragraph (1), and it notifies the Local Health Board in writing that it has done so, the contract will not terminate at the end of the notice period but instead shall only terminate in the circumstances specified in sub-paragraph (4).

(4) The contract will only terminate if and when—

(a) there has been a determination of the dispute pursuant to paragraph 56 and that determination permits the Local Health Board to terminate the contract; or

(b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(5) If the Local Health Board is satisfied that it is necessary to terminate the contract before the NHS dispute resolution procedure is concluded in order to—

(a) protect the safety of the contractor's patients; or

(b) protect itself from material financial loss,

sub-paragraphs (3) and (4) will not apply and the Local Health Board will be entitled to confirm, by written notice to be served on the contractor, that the contract will nevertheless terminate at the end of the period of the notice it served pursuant to paragraph 70, 71, 72, 73(4), 73(6) or 74.

PART 10

MISCELLANEOUS

Evidence of exemption under the Act

78.—(1) Subject to sub-paragraphs (2) and (3), the contractor will ensure that it requests, in respect of a person who makes a declaration relating to exemption under paragraph 1(1) of Schedule 12ZA to the Act evidence in support of that declaration and —

(a) a note of the type of evidence submitted is made; or

(b) in the case where no evidence is submitted, a note of that fact is made.

(2) Sub-paragraph (1) does not apply where the contractor is satisfied that the person in respect of whom the declaration is made is under the age of 18 years.

(3) The contractor may, for the purposes of sub-paragraph (1), ensure procedures are in place to enable a member of its staff to undertake the task set out in that sub-paragraph.

Clinical governance arrangements

79.—(1) The contractor will co-operate with such clinical governance arrangements as the Local Health Board may establish in respect of contractors providing services under a contract. [**This must include co-operation in any clinical audit programme established by the Local Health Board or where the Local Health Board for the purpose of clinical audit expects such contractors to participate in the national scheme funded by the Assembly]**.

(2) The contractor will nominate a person who—

(a) will have responsibility for ensuring co-operation with clinical governance arrangements; and

(b) performs or manages services under the contract.

(3) In this paragraph, “clinical governance arrangements” means arrangements through which the contractor endeavours to continuously improve the quality of its services and safeguard high standards of care by creating an environment in which clinical excellence can flourish.

Quality assurance system

80.—(1) The contractor will establish, and operate a practice based quality assurance system **w**hich is applicable to all the persons specified in sub-paragraph (2).

(2) The specified persons are—

(a) any dental practitioner who performs services under the contract;

(b) any other person employed or engaged by the contractor to perform or assist in the performance of services under the contract.

(3) A contractor will ensure that in respect of its practice based quality assurance system, it has nominated a person (who need not be connected with the contractor's practice) to be responsible for operating that system.

(4) In this paragraph, "a practice based quality assurance system" means one which comprises a system to ensure that—

(a) effective measures of infection control are used;

(b) all legal requirements relating to health and safety in the workplace are satisfied;

(c) all legal requirements relating to radiological protection are satisfied; and

(d) any requirements of the General Dental Council in respect of the continuing professional development of dental practitioners are satisfied.

Insurance: negligent performance

81.—(1) The contractor will at all times hold adequate insurance against liability arising from negligent performance of clinical services under the contract.

(2) The contractor will not sub-contract its obligations to provide clinical services under the contract unless it has satisfied itself that the sub-contractor holds adequate insurance against liability arising from negligent performance of such services.

(3) In this paragraph—

(a) "insurance" means a contract of insurance or other arrangement made for the purpose of indemnifying the contractor; and

(b) a contractor will be regarded as holding insurance if it is held by an employee of its in connection with clinical services which that employee provides under the contract or, as the case may be, sub-contract.

Public liability insurance

82.—(1) The contractor will at all times hold adequate public liability insurance in relation to liabilities to third parties arising under or in connection with the contract which are not covered by the insurance referred to in paragraph 81(1).

(2) In this paragraph, "insurance" has the same meaning as in paragraph 81.

Gifts

83.—(1) The contractor will keep a register of gifts which—

(a) are given to any of the persons specified in sub-paragraph (2) by or on behalf of—

(i) a patient;

(ii) a relative of a patient; or

(iii) any person who provides or wishes to provide services to the contractor or its patients in connection with the contract; and

(iv) have, in its reasonable opinion, an individual value of more than £100.00.

(2) The persons referred to in sub-paragraph (1) are—

(a) the contractor;

(b) where the contract is with two or more individuals practising in partnership, any partner;

(c) where the contract is with a dental corporation a director, chief executive or secretary of the corporation;

(d) any person employed by the contractor for the purposes of the contract;

(e) any dental practitioner engaged by the contractor for the purposes of the contract;

(f) any spouse or civil partner of a contractor (where the contractor is an individual dental practitioner) or of a person specified in paragraphs (b) to (e); or

(g) any person whose relationship with the contractor (where the contractor is an individual dental practitioner) or with a person specified in paragraphs (b) to (e) has the characteristics of the relationship between husband and wife or civil partners.

(3) Sub-paragraph (1) does not apply where—

(a) there are reasonable grounds for believing that the gift is unconnected with services provided or to be provided by the contractor;

(b) the contractor is not aware of the gift; or

(c) the contractor is not aware that the donor wishes to provide services to the contractor.

(4) The contractor will take reasonable steps to ensure that it is informed of gifts which fall within sub-paragraph (1) and which are given to the persons specified in sub-paragraph (2)(b) to (2)(g).

(5) The register referred to in sub-paragraph (1) will include the following information—

(a) the name of the donor;

(b) in a case where the donor is a patient, the patient's National Health Service number or, if the number is not known, his or her address;

(c) in any other case, the address of the donor;

(d) the nature of the gift;

(e) the estimated value of the gift; and

(f) the name of the person or persons who received the gift.

(6) The contractor will make the register available to the Local Health Board on request.

Compliance with legislation and guidance

84. The contractor will—

(a) comply with all relevant legislation; and

(b) have regard to all relevant guidance issued by the Local Health Board, or the Assembly.

Third party rights

85. The contract will not create any right enforceable by any person not a party to it.

Signing of documents

86.—(1) In addition to any other requirement that may relate to the documents specified in sub-paragraph (2), whether in these Regulations or otherwise, the contractor will ensure such documents include—

(a) the name and clinical profession of the professional who signed the document;

(b) the name of the contractor on whose behalf it is signed.

(2) The reference to documents in sub-paragraph (1) include —

(a) forms that are required to be completed as a consequence of these Regulations, where such forms require a signature;

(b) prescription forms; and

(c) any other clinical document.

SCHEDULE 4

PATIENT INFORMATION LEAFLET

A practice leaflet will include—

1. The name of the contractor.

2. In the case of a contract with a partnership—

(a) whether or not it is a limited partnership; and

(b) the names of all the partners and, in the case of a limited partnership, their status as a general or limited partner.

3. In the case of a contract with a dental corporation—

(a) the names of the directors, chief executive and secretary of the corporation, insofar as those positions exist in relation to the dental corporation; and

(b) the address of the corporation's registered office.

4. The full name of each person performing services under the contract.

5. In the case of each person performing dental services under the contract, his or her professional qualifications.

6. Whether the contractor undertakes the teaching or training of persons who provide dental services or who intend to do so.

7. The address of each of the practice premises.

8. The contractor's telephone and fax numbers and the address of its website (if any).

9. Whether the practice premises have suitable access for disabled patients and, if not, the alternative arrangements for providing services to such patients.

10. How to request services as a patient.

11. The rights of a patient to express a preference of practitioner in accordance with paragraph 2 of Schedule 3 and the means of expressing such a preference.

12. The services available under the contract.

13. The normal surgery days and hours of the practice.

14. The arrangements for dental services for the hours and days that fall outside normal surgery hours (whether or not provided by the contractor) and how the patient may contact such services.

15. If the services in paragraph 14 are not provided by the contractor, the fact that the Local Health Board referred to in paragraph 21 is responsible for commissioning the services.

16. The telephone number of [NHS Direct and details of NHS Direct online].

17. How patients may make a complaint or comment on the provision of service.

18. The rights and responsibilities of the patient, including keeping appointments.

19. The action that may be taken where a patient is violent or abusive to the contractor, its staff, persons present on the practice premises or in the place where treatment is provided under the contract or other persons specified in paragraph 3 of Schedule 3.

20. Details of who has access to patient information (including information from which the identity of the individual can be ascertained) and the patient's rights in relation to disclosure of such information.

21. The name, postal and email address and telephone number of the Local Health Board which is a party to the contract and from whom details of primary dental services in the area may be obtained.

DRAFT

To: Business Committee:

From: Dr Brian Gibbons AM:
Minister for Health & Social Services

Explanatory Memorandum:

The National Health Service (General Dental Services Contracts) (Wales) Regulations 2006

Summary:

From 1 April 2006 Local Health Boards (LHBs) will have a duty to secure or provide primary dental services in its area to the extent that it considers necessary to meet all reasonable requirements. LHBs will do this by contracting with dental practices, corporate bodies or private providers which agree to provide primary dental services or by providing the service itself through salaried NHS staff. These changes will be accompanied by devolution of the centrally held general dental services budget which will go to LHBs to commission dental services

These Regulations set out the framework for General Dental Services (GDS) contracts and prescribe the conditions which must be met by a contractor before the LHB may enter into a GDS contract with it; the procedure for pre-contract dispute resolution; the terms which must be included in a GDS contract; and a description of the services which must be provided to patients under a GDS contract. Under a GDS Contract, the contractor will be required to provide a range of dental services set out in the Regulations to be known as 'mandatory services'. Remuneration under the new contract will not be on an item of service basis (as it is under the current arrangements for GDS).

1. This memorandum is submitted to the Assembly's Business Committee in relation to The National Health Service (General Dental Services Contracts) (Wales) Regulations 2006 in accordance with Standing Order 24.6.

2. A copy of the draft Regulations is submitted with this Memorandum.

Enabling Power:

3. The power enabling these Regulations to be made is contained in sections 28L, 28M, 28O, 28P and 126(4) of the National Health Service Act 1977 and section 4(5) of the National Health Service and Community Care Act 1990. Responsibility for issues relating to the contents of the Regulations has been delegated to my portfolio as Minister for Health and Social Services.

Effect:

4. The intended effect of the Regulations is that for the first time every LHB will:

- have a duty to secure or provide primary dental services to the extent that it considers necessary to meet all reasonable requirements, rather than the current passive role of enabling GDS to be delivered where a dentist has agreed to provide them for a patient who has requested them;

- have financial resources for primary dental services directly allocated to them to commission primary dental services to meet local health needs from dental practices, dental corporate bodies or to provide the service itself;
- have the power to commission suitable high street specialised dental services more cost effectively, close to where patients live and to help reduce outpatient waiting times for consultant led services by reducing inappropriate referrals;
- have resources which follow patients rather than dentists so that if a provider ceases to provide primary dental services, or reduces commitment to the NHS, the LHB will still hold the finances to commission services from an alternative provider; and
- be enabled to provide assistance and support, including financial support to providers of primary dental services, strengthening the partnership between LHB and its providers.

5. The move to local commissioning of NHS primary care dental services offers a fresh start for dentists and patients. The reforms allow dentists to provide more appropriate clinical care, spend more time with each patient and, subject to agreement with LHBs, expand overall capacity. These reforms place dentistry more firmly in the mainstream of the NHS - an easy to access service, providing appropriate clinical care and giving out key public health messages to encourage self care wherever possible.

6. For dentists, the reforms will provide a guaranteed income, scope to plan services, and an end to the item of service treadmill. The current system provides incentives to maximise the items of treatment provided to maintain income, rather than provide the care necessary to maintain oral health. This may act as a deterrent to dentists working for the NHS. In contrast, the new system removes outmoded treatment incentives and allows time to advise patients of their role in maintaining oral health.

7. Dentists and patients will benefit from new regulations allowing a wider range of professionals to be involved in providing NHS dental care. This will enable the dental team to increase the focus on preventive measures to combat dental disease, and to tackle serious oral health inequalities, particularly in children.

8. For patients, the range of treatments provided by the NHS will be clearer. Each dental surgery will be required to display details of the new banded system of dental charges in their surgery. Dentists will still be able to offer NHS and private dental care and continue to see their existing patients, and this applies whether the existing patients are children and/or exempt adults. But dentists who provide private care will be required to give information and advice on private treatment choices and methods of payment. The choices for patients will become much more transparent.

9. Over time, patients should receive a more appropriate level of service as the local NHS more closely aligns resources for dentistry with local need and commissions services accordingly. The new local commissioning system means that if a dentist leaves a practice the resources for his contract revert to the LHB. Therefore the level of resource for NHS dentistry in a local area remains constant and is not affected by the decision of an individual dentist. The current remuneration system arbitrarily distributes resources according to the location and commitment of General Dental Practitioners not local oral health needs, and ensures an inequitable distribution of resources.

10. LHBs' new responsibility for local dental services will allow them to commission services to meet particular local oral health needs. The new contracts with local dentists will be longer term agreements, replacing the open ended nature of the current arrangements with an agreed level of service. Access for patients will be determined by the contract agreed with the LHB not the preference of an individual dentist.

11. Over time LHBs can judge the relative benefits of dental service provision and oral health measures as they seek to address oral health inequalities and ensure equitable access to NHS primary care dental services.

Target Implementation:

12. It is intended that the proposed Regulations should be made on 14 February 2006 and come into force on 1 April 2006. The need for the Regulations to be made in advance of their coming into force date is to enable LHBs and dentists to enter into their new contracts - and they need to be able to access final form legislation to be able to do this. The equivalent Regulations in England are due to come into force on the same day. The new dental contract is based closely on that being introduced in England although officials have been working with British Dental Association Wales and the dental profession to amend the contract where possible to reflect needs and address difficulties here. However, our timetable is linked to the one in England.

13. Any delay in implementation in Wales would put Wales seriously out of step and have an immediate and negative effect on retention and recruitment of dentists providing NHS care. There would also be substantial additional cost in maintaining different payment and charging arrangements for dentists in Wales with the Dental Practice Board.

Financial Implications:

14. The overall intention is to secure the existing level of NHS dental services within existing resources. Current expenditure on GDS is non-cash limited. Net expenditure in 2004-05 was some £80.041 million. It is proposed that current expenditure on dentistry will be protected so that when spend on GDS moves from a national budget into local allocations, there will be a floor, so that LHBs will be required to spend at least at the current level on dentistry. They can spend more than this if they wish but cannot spend less.

15. Practices are guaranteed the same level of gross income as that in the test period (October 2004-September 2005), increased by the agreed Doctors and Dentists Review Body (DDRB) uplift, for comparable levels of commitment work.

16. To support LHBs, local dental committees and dentists to help prepare for the changes and to implement reform, funding of £990,000 was incurred in 2004-05. This was made up as follows:

- £440,000. £20,000 to each LHB in terms of supporting the dental change agenda allowing them to support leadership in LHBs; improve organisational development to successfully implement the contract; support Local Dental Committees; developing dental leadership skills; improve communication and review and update dental competencies in line with the development of the dental reforms; and
- £550,000. The equivalent of £1,000 per dental practice (pro rata on NHS commitment). This was in response to the DDRB recommendation that financial assistance to practices was required to assist them to prepare for the new contractual arrangements.

17. The above allocation to LHBs to help them get to grips with the changes is recurrent in 2005-06 and 2006-07. This funding has come from the Health and Social Services Main Expenditure Group (Payments to Contractors Budget Expenditure Line).

Regulatory Appraisal:

18. A regulatory appraisal has been carried out jointly in relation to these draft Regulations and also the draft of The National Health Service (Personal Dental Services Agreements) Regulations 2006 and is attached.

Consultation: With stakeholders

19. The draft Regulations together with guidance were published for information and comment on 9 September 2005. This is part of wider discussion with the dental profession on an England and Wales, and Wales only basis, which is on-going. The Regulations and guidance were particularly aimed at dentists, including representative bodies such as British Dental Association Wales (BDA Wales), and LHB Directors of Primary Care who have an interest and responsibility for negotiating the new contract values and for managing the new system of local dental commissioning. In addition they have been published on the Welsh Assembly Government website and details included in updates sent to all dentists in Wales.

20. There have been a number of discussion between BDA Wales, others in the dental profession and Assembly government officials. I have also personally met BDA Wales and other dental professions to discuss the proposed reforms.

21. During discussions with the dental profession, their representatives and LHBs, a number of concerns were raised about the detail of the Regulations. These included:

- the system of monitoring under the new ways of working;
- selective acceptance of patients i.e. seeing children or exempt patients only;
- opening times of practices;
- provision of services to violent patients;
- ending contracts if a practitioner dies;
- charging for missed appointments;
- mixing of NHS and private treatment; and
- governance arrangements.

22. As a result of comments received and discussions with BDA Wales, others in the profession and LHBs, changes have been made to the draft Regulations:

- the amount of work (weighted courses of treatment) to be provided in 2006-07 will be 10% less than that provided in the test period, without any loss of income and will then form the baseline for future monitoring of the GDS contract. Additionally, there will be a further 5% tolerance over the year will be accepted before this triggers a discussion between the contractor and the LHB. (The percentages being applied in England are 5% and 4% respectively);
- it had never been intended to prevent dentists continuing to see their existing patients, and this applies whether the existing patients are children and/or exempt adults. Given the concern and misunderstanding about the proposals we will be putting the matter beyond doubt in producing revised regulations and guidance;
- clarification has been made to reflect normal opening hours;
- clauses extended to include irrevocable breakdown in relationship as reason to cease treatment to a patient;

- extension to the period during which the practice can continue to run by the contractor's personal representatives;
- charging for missed appointments not allowed under new system but it is recognised that this is a sensitive issue and it is part of the continuing discussions with the profession; and
- no change to the Regulations but clarification provided. Rules around mixing are largely unchanged (the restrictions on mixing on the same tooth are removed). Dentists will have to provide all treatment that is necessary to maintain a patient's oral health as is now the case. This does not mean providing treatments which are not clinically necessary.

Consultation: With Subject Committee

23. The draft Regulations were notified to the Health and Social Services Committee via the list of forthcoming legislation on 13 July 2005 (HSS(2)-09-05(p.2) and were identified for detailed scrutiny. This took place on 23 November 2005.

24. (To be completed after 23 November).

Recommended procedure

25. Subject to the views of the Business Committee I recommend that the Regulations continue to proceed to Plenary under the standard procedure.

Compliance

26. The proposed Regulations will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 Section 120);
- be compatible with the Assembly's scheme for sustainable development (Section121);
- be compatible with Community law (Section 106);
- be compatible with the Assembly's human rights legislation (Section 107);
- be compatible with any international obligations binding the UK Government and the Assembly (Section 108).

27. The information in this memorandum has been cleared with the Directorate of Legal Services (DLS) and the Assembly Compliance Officer (ACO).

28. Drafting lawyer: Sarah Wakeling, ext. 3754.

29. Head of Division: John Sweeney, ext. 3570.

30. Drafting policy official: Andrew Powell-Chandler, ext. 1689.

Dr Brian Gibbons AM Date: November 2005
Minister for Health and Social Services

1.Regulatory appraisal

(2) *1. Title of Proposal*

The draft National Health Service (General Dental Services Contracts) Regulations 2006; and the draft National Health Service (Personal Dental Services Agreements) Regulations 2006.
In Wales the draft National Health Service (General Dental Services Contracts) (Wales) Regulations 2006; and the draft National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006.

2. Purpose and intended effect of measure

(i) The objective

To implement provisions in the Health and Social Care (Community Health and Standards) Act 2003 to create a new locally led dental service which, allows dentists to spend more time with each patient, provides more appropriate clinical care and is far more sensitive to the variety of ways in which patients now wish to access NHS dentistry. The new system is to be in place by 1 April 2006.

(ii) Background

In the main, NHS dental care and treatment is currently provided by 'high street' dentists under general dental services (GDS) arrangements under section 35 of the National Health Service Act 1977 (the 1977 Act). About 70% of these dentists' earnings are derived from fees for the individual items of service they provide. The remaining 30% is derived from other monthly NHS payments which are not directly related to treatment provision but are intended to reimburse dentists for the provision of facilities in relation to the NHS. These payments to dentists are set out in the Statement of Dental Remuneration (SDR). Patient charges under GDS are regulated by the National Health Service (Dental Charges) Regulations 1989 (the 1989 Regulations) and are set at 80% of the treatment fees paid to the dentist, subject to a maximum charge per course of treatment of £354 in Wales. The NHS pays the remaining 20%.

Since 1998, an alternative system of dental service provision has been able to be piloted under the National Health Service (Primary Care) Act 1997 (the Primary Care Act). Under these Personal Dental Services (PDS) pilots, an annual contract sum is agreed between the provider of the service and the Local Health Board (LHB) commissioning the service for an agreed level of NHS commitment. Payments under the PDS agreement are made in 12 instalments. The Primary Care Act requires dental charges paid by the patient under a PDS pilot scheme to be the same as if the treatment had been provided under GDS arrangements.

Remuneration payments to dentists under both GDS and PDS pilots are undertaken by the Dental Practice Board (DPB) for England and Wales established under section 37 of the 1977 Act. The DPB is also responsible for establishing the probity of NHS payment claims and the verification of dental charges in relation to each course of treatment. An England and Wales Special Health Authority, the NHS Business Services Authority (BSA) is to be established and will take over the functions of the Dental Practice Board. Payments to dentists under both systems are made net of the dental charges due under the 1989 Regulations.

PDS piloting has proved popular with dentists and their patients in England although until this year there was only one PDS scheme operating in Wales. Under these pilot arrangements, dentists are better able to use their professional skills to relate dental services more closely to patients' oral health needs. Patients with lower treatment needs are seen less frequently and courses of treatment become simpler. Evidence from over five years of piloting PDS in England shows that a reduction of at least 10% in dentists' overall activity (courses of treatment and

individual items of treatment) can be expected with an improvement in clinical effectiveness, cost effectiveness and appropriateness of treatment provided.

In GDS, 51% of adult courses of treatment involve examination, scale and polish or diagnostic work with no other dental intervention. At least some of these courses of treatment are of questionable health gain. By adopting the new ways of working demonstrated in the PDS pilots, dentists are able to undertake fewer courses of treatment and, subject to agreement with LHBs, see greater numbers of patients. This has the potential to improve the working lives of dentists and their teams and also improve access to NHS dental services.

Building on the experience of PDS piloting, provisions in the Health and Social Care (Community Health and Standards) Act 2003 (the 2003 Act) will underpin modernised, locally sensitive primary dental services properly integrated with the rest of the NHS. Under the new arrangements, LHBs will be able to enter into contracts for the provision of primary dental services to meet all reasonable requirements or provide the services themselves. Remuneration of providers under the contract will be by annual contract value, as under the PDS piloting arrangements.

The 2003 Act provides for two types of contract: GDS contracts and PDS agreements. Under a GDS contract, the contractor will be required to provide a range of dental services set out in the GDS Contracts Regulations. New PDS agreements will be the 'permanent' version of PDS piloting and will provide for greater flexibility in the services to be provided. Additionally, a wider range of potential providers will be permitted to hold contracts, including healthcare professionals other than dentists. PDS agreements will, for example, be used for commissioning specialised services such as orthodontics.

In other material respects the mandatory terms of contracts are similar under both the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006 (the 2006 GDS Regulations) and the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006 (the 2006 PDS Regulations).
These draft Regulations are now published for information and to inform the public consultation on the draft National Health Service (Dental Charges) (Wales) Regulations 2006. Both sets of Regulations will apply in Wales only.

The National Health Service (General Dental Services) Regulations 1992 (the 1992 Regulations), as amended, will be revoked when the 2006 GDS Regulations come into force on 1 April 2006.

Part 1 of the Primary Care Act (c. 46) (power to make pilot scheme for the provision of personal medical and dental services) will cease to have effect when the 2006 PDS Regulations come into force on 1 April 2006.

A new system of patient charges under the National Health Service (Dental Charges) (Wales) Regulations 2006 will also come into force on 1 April 2006 alongside the new contracting arrangements. When the National Health Service (Dental Charges) (Wales) Regulations 2006 come into effect on 1 April 2006, the 1989 Regulations will be revoked.

The two new forms of contracting and the change in charging structure is provided for in the 2003 Act which implements all these changes by amending the provisions of the 1977 Act

(a) (iii) Reason for change

There is a high level of discontent with the current arrangements for the provision of GDS. Dentists tell us that the remuneration system, based on payment for individual items of service,

feels like a treadmill and is their main cause of dissatisfaction. It is thought to act as a barrier to dentists agreeing to undertake NHS dental work.

The report of the Health Committee inquiry *Access to NHS Dentistry* (19 March 2001) considered the general dental service remuneration system was the heart of the problem. The fee structure encourages the move of dentists out of the NHS. It also discourages preventive dental care and the continuing maintenance of good oral health. The committee concluded the time was ripe for reform.

The 2003 Act provides a legislative framework for implementing the reform of primary dental care services identified in *Routes to Reform, A Strategy for Primary Dental Care in Wales* which was published in September 2002. New forms of contracting should remove existing perverse incentives for the payment system to influence the type of treatment. This will establish a better approach to patient oral healthcare based on the clinical needs and wishes of the patient. Treatment will then only be offered if it is both clinically desirable and clinically effective. Incentives in the new contracting regime will be aligned towards these ends, which implies a different approach to the issue of patient registration and payment. Clinical pathways, as are now adopted across much of medical practice, are being developed and will be applied in dentistry. They build on available evidence and best practice. Dentists will then record their clinical interventions and note the outcomes, rather than receiving a fee for each intervention.

(3) *3. Options*

The following options were considered before the powers were taken in the 2003 Act:

Option 1	Leave things unchanged
Option 2	Introduce legislation to establish new forms of local contracting for the provision of primary dental services to improve access to a quality NHS dental service.
Non-regulatory option	A non-regulatory option would not ensure value for money for tax payers, nor proper governance of the services provided.

4. Costs and benefits

(i). Sectors and groups affected

The 1992 Regulations and the Primary Care Act already affect:

- patients receiving NHS dental services;
- dental practices providing dental services under the NHS;
- dental practice management software systems suppliers, in relation to the practice administration and charging system; and
- to a limited extent the dental laboratory industry which supplies dental appliances such as crowns and dentures.

The 2006 GDS Regulations and 2006 PDS Regulations will have a similar effect, once they are in force. They do not impact on voluntary organisations or charities.

The policy for new the new contracting regime will not have any race equality impact.

Administration of the new contracting arrangements and associated patient charging will be the responsibility of LHBs. The BSA will undertake activity monitoring and patient charge verification on behalf of all LHBs under National Assembly direction, in addition to payment functions. Both option 1 and option 2 have similar affect on administration by these public bodies.

(a) Option 1 and option 2 have a differential affect on users of the service. The main gain under option 2 would be improved access to an NHS dental service

better aligned to patients needs. Option 2 has the potential to enhance clinical effectiveness, cost effectiveness and appropriateness of oral healthcare for the patients. In addition, it is likely to lead to improved working lives for dentists and their dental teams

(b) (ii) Analysis of costs and benefits

(i)

(ii) Option 1

(aa) Economic impacts

If the reforms did not go ahead LHBs would not have to implement the new regime which would save administrative implementation work. Dental practices would leave practice management systems as they are at present, subject to changes in the fees for treatment.

(bb) Social impacts

There is a close link between dental disease and deprivation. The current system based on payments to dentists for each item of treatment they provide ensure those patients with poor oral health get the treatment they need, but does not properly provide for a preventive approach to oral healthcare

(cc) Environmental impacts

There are no environmental impacts from continuing with current charging arrangements.

(iii) Option 2

(aa) Economic impacts

There are currently 533 dental practice addresses in Wales, most providing GDS and a number of others PDS pilots. The 2006 Regulations will apply to all dental practices from 1 April 2006. Both paper and electronic changes to practices' administrative systems will be required for the new charging regime. Currently, dentists' NHS fees and the related charges change each year, requiring amendments to practices' administrative systems, so upgrades for April 2006 should not incur significant additional costs.

Dentists and practice staff will benefit from reduced bureaucracy and detailed form filling as a result of the move from over 400 different charges related to individual items of treatment to recording only course of treatment categories related to the banded patient charges.

About 30 million 'item of service' claims are submitted to the DPB each year, 70% of which are electronic (England & Wales figure). If the simpler data to be submitted saves 1 minute per electronic claim and 1.5 minutes per paper claim, then the saving at dental practices is the equivalent of around 300 fulltime posts per year (assuming 40 hours a week, 45 weeks a year). There are likely to be similar savings at the DPB and its successor body the BSA.

It is planned to use National Assembly directions to delegate the LHB administrative functions, including payments, in relation to GDS contracts and PDS agreements to the BSA. The BSA will verify patient charges in relation to the appropriate treatment band in order to make payments to the contractor net of patient charges. This enables the BSA to provide the LHB with regular activity monitoring information. LHBs' administrative costs should not increase. Because it will be easier to track patient charge levels, the BSA will also gain from the reduced bureaucracy of the new contracting arrangements and patient-charging regime.

The National Institute for Health and Clinical Excellence (NICE) guidance on dental recalls (*Dental recall: Recall interval between routine dental examinations*) advising a recall interval

related to the patient's oral health risk factors, means that patients will typically only need to visit the dentist every eighteen months as opposed to the current 6 monthly norm. This is likely to free up additional capacity at dental practices with the potential to improve access to NHS services.

Under the new contracting arrangements, dentists will agree an annual contract value to be paid to the contractor in monthly instalments. Because the total annual contract value is agreed in advance with the LHB, in future, there will be no financial incentive for dentists to unnecessarily complicate a course of treatment to maximise earnings. As now the patients' charges payable will be collected by the contract holder and the monthly contract payment will be reduced by the amount of the patient charges due

(bb)

(cc) Social impacts

Following an oral examination, a dentist will set out for the patient the type and extent of dental work required and which band that falls into. The patient will then make the payment for that band and be entitled to, within that course of treatment, all the treatment agreed to. Since the payment is set in advance, the patient will know exactly what the course of treatment will cost and can plan accordingly. Payment can be made upfront, during the course of treatment, or at the end.

The new contracting regime may help encourage dentists to do more NHS dental work because it is simpler to calculate charges and to explain them to patients.

(dd) Environmental impacts

There are no environmental impacts from this measure.

(4) *5. Impact on Small Firms*

The British Dental Association, British Orthodontic Society and other stakeholders, including the Dental Laboratories Association contributed to the development of the policy for local commissioning of primary dental services. From this, limited initial soundings have not identified any significant impact on small businesses.

Small practices and businesses are particularly encouraged to contribute their views.

(5) *6. Competition assessment*

There is a high level of discontent with the current arrangements for the provision of general dental services. Dentists tell us the remuneration system, based on payment for individual items of service, feels like a treadmill and is the main cause of dissatisfaction amongst dentists and patients. It is regarded as being inefficient and leading to poorer quality services. It is also thought to act as a barrier to dentists agreeing to undertake NHS dental work.

Because of the nature of the NHS dentistry market, the new contracting regime is likely to have little or no impact on competition. The new Regulations will impose no additional burden on small businesses providing NHS dentistry and will have no adverse affect on competition.

The new contracting regime and associated charging system may help encourage dentists to do more NHS dental work because it is simpler to operate, calculate charges and to explain to patients.

2.Of the 533 dental practice addresses in Wales, most will be providing GDS and a number of others PDS. Some of these practices may be owned by dental corporations. A dental corporation means a body corporate which, in accordance with the provisions of

the Dentists Act 1984, is entitled to carry on the business of dentistry. No dental corporation has more than 10% market share in Wales.

It is therefore unlikely that any costs involved in administering the new contracting regime, calculating and collecting dental charges under the 2006 GDS Regulations or 2006 PDS Regulations, will have a substantially different effect on dental businesses than the 1989 Regulations and 1992 Regulations, nor are they likely to change market structure as a result. New dental practices entering the market would incur no extra penalty in operating under these regulations.

There are a limited number of relatively small companies providing and maintaining dental practice software management systems. The new dataset necessary for the administration and verification of the new charging regime is a subset of the item of service codes currently submitted to the DPB for payment purposes. The DPB, Department of Health and Welsh Assembly Government have been working closely with all of the practice software system suppliers to ensure that the necessary upgrades to the IT software can be written with minimum disruption.

Administration of the new contracting arrangements and associated patient charging will be the responsibility of LHBs. The NHS BSA will undertake activity monitoring and patient charge verification as part of its payments function on behalf of all LHBs under National Assembly direction.

(2) *7. Consultation*

The National Assembly has new powers pursuant to the amendments made to the 1977 Act by the 2003 Act to make regulations providing for general dental services contracts, arrangements under section 28C of the 1977 Act (personal dental services agreements) and the making and recovery of dental charges for primary dental services. The regulations made under the 2003 Act will be subject to the Assembly's legislative procedure.

The British Dental Association and the British Orthodontic Society have been involved in the planning of local commissioning. Both sets of regulations are to be published during the National Health Service (Dental Charges) (Wales) Regulations 2006 consultation period and stakeholders will be consulted.

(3) ***The draft regulations are being published for information alongside the National Health Service (Dental Charges) (Wales) Regulations 2006 public consultation***

(4) *8. Enforcement, Monitoring and Review*

Option 1

The GDS terms of service (The National Health Service (General Dental Services) Regulations 1992, Schedule 1) require principal dentists to comply with their terms of service. Failure to comply would result in a breach of the terms of service. A financial withholding may be imposed on the dentist in relation to a breach.

The DPB is responsible for establishing the probity of payment claims for GDS and PDS pilots and for making payments to them for the work they have done. The DPB continually monitors dentists' prescribing patterns and activity and the verification of dental charges in respect of each course of treatment provided.

(a) Option 2

The 2006 Regulations require those holding contracts for the provision of primary dental services and dentists employed directly by LHBs to collect NHS dental charges only in accordance with the new regulations. Failure to comply with the regulations may amount to a breach of contract

or of the employee's terms and conditions of service. LHBs have sanctions, including the issue of remedial notices and breach notices, in relation to their contractors or their members of staff. A breach of contract could mean that the contractor could no longer provide primary dental services under NHS contract.

Contract holders will be required to submit to the BSA data for activity monitoring and patient charge verification. Data from this process will be provided regularly to both the LHB and the provider of the service.

The Assembly Government is planning a public communications campaign in the run-up to April 2006. This will explain to patients what the changes will mean for them, how their future care will be provided and how the new charging system will work. This is likely to include an information leaflet for practices to give to patients.