These notes refer to the Health and Social Care (Community Health and Standards) Act 2003 (c.43) which received Royal Assent on 20 November 2003

HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Dental and Medical Services

Primary dental services

Section 170: Provision of primary dental services

350. *Section 170* inserts a new *section 16CA* into the 1977 Act. The new *section 16CA* directly confers on each PCT and LHB a duty to provide or secure the provision of primary dental services in its area to the extent it considers necessary to meet all reasonable requirements *(16CA(1))*. This new duty replaces the duty in section 35 of the 1977 Act (arrangements for general dental services) which requires a PCT to make arrangements with dental practitioners and dental corporations for the provision of dental services where a dental practitioner has agreed to provide dental treatment and appliances to a patient.

351. *Section 16CA(2)* confers a power for PCTs and LHBs to provide dental services themselves. This will enable a PCT or LHB to employ dentists to provide primary dental services.

352. *Section 16CA(3)* places a duty on PCTs and LHBs to publish information about the services they commission or provide. This will assist patients in identifying providers of NHS dental care in the PCT's or LHB's area and the range of services offered. The duty is in response to the recommendations in *Options for Change* for "improving the patient experience".

353. *Section 16CA(4)* imposes a duty on PCTs and LHBs to co-operate with other PCTs and LHBs in making arrangements for primary dental services. In particular, PCTs will need to co-operate with LHBs where practices straddle the England and Wales border.

354. *Section 16CA(5)* and *(6)* provide regulation making powers to define what should, or should not, be considered as primary dental services. This would allow for services in care homes, for example, to be provided not as primary dental services, but under section 3 of the 1977 Act.

Section 171: Dental public health

355. *Section 171* inserts a new *section 16CB* into the 1977 Act. *Section 16CB* gives power to confer on PCTs, LHBs and the Assembly dental public health functions. Under *section 171(2)*, the existing duty on the Secretary of State under section 5(1A) of the 1977 Act to provide dental treatment and dental education in schools is repealed. PCTs and LHBs may involve other agencies in discharging dental public health functions, such as independent contractors or dental practices. For example, a PCT or LHB might

wish to involve a dental practice in providing an oral health promotion or smoking cessation programme.

Section 172: General dental services contracts

356. *Section 172* inserts six new *sections 28K* to *28P* into the 1977 Act.

357. New *section 28K(1)* and *(2)* provide for a PCT or LHB to enter into a general dental services contract ("GDS contract"). A general dental services contract is a contract for primary dental services, but it may also include services which are not primary dental services, for example, specialised services such as orthodontics. The general dental service contract replaces the arrangements for the provision of general dental services under sections 35 of the 1977 and the National Health Service (General Dental Services) Regulations 1992 (S.I. 1992/661). *Section 28K(3)* provides for PCTs and LHBs to negotiate the terms of a GDS contract with individual practices seeking to provide dental services under a GDS contract.

358. *Section 28L(1)* provides regulation-making power for the Secretary of State or the Assembly to prescribe the services that must be provided under a GDS contract. *Section 28L(2)* would allow the services to be prescribed by reference to the manner or circumstances in which they are provided. So, for example, the regulations could provide for certain services to be provided on weekdays only between 9am and 6pm.

359. *Section 28M* provides for the PCT or LHB to enter into a GDS contract either with a dental practitioner, dental corporation[1] or a group of individuals practising in partnership. Where the contract is to be with a partnership at least one member of the partnership must be a dental practitioner. *Section 28M(2)(b)* provides that where any partner is not a dental practitioner, that person must be either a health care professional or individual who is engaged in the provision of services under the NHS Act or the health services of Scotland and Northern Ireland. This will enable persons who are not dentists to be a party to a GDS contract. *Section 28M(1)* provides that regulations may place conditions on the persons who may enter into GDS contracts.

360. *Section 28M(3)* will allow regulations to make provision about the effect on a GDS contract of a change of partnership.

361. New *sections 28K* and *28N* replace the system of remuneration for dentists providing general dental services under section 35 of the 1977 Act.

362. *Section 28N(1)* allows the Secretary of State or the Assembly to give directions regarding payments to be made under the new contract. Where directions are made, the GDS contract must require that payments are made under the contract in accordance with the directions *(subsection (2)).* In this way, payments in respect of any particular matter under the contract can be set on a national basis. Directions may relate to payments to be made by a PCT to a GDS provider or by a GDS provider to a PCT. Where there are no applicable directions, the parties to the GDS contract are free to determine the remuneration to be paid under the contract *(section 28K(3)(b)).*

363. *Section 28N(3)* sets out how the power to make directions may be exercised. It will enable directions to provide for payments to be determined by reference to the meeting of particular standards for example. Directions may also be made in respect of individual practitioners and so would enable, for example, payments to be made in respect of a dental practitioner's maternity.

364. *Section 28N(4)* recreates the requirement in section 43B of the 1977 Act for the Secretary of State or the Assembly to consult representative bodies on remuneration matters. Under the new multi-professional GDS contract this extends consultation rights to other groups whose members can become GDS providers, for example

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1 A dental corporation is a limited company permitted to carry on the business of dentistry under s40 of the Dentists Act 1984

representatives of other groups of dental health care professionals whose remuneration might also be affected.

365. *Section 28N(5)* provides for directions to be made by regulations or by an instrument in writing and provides for directions to be revoked or varied where they are made by an instrument in writing. Where directions are made by regulations the Interpretation Act 1978 makes equivalent provision.

366. *Section 28N(6)* sets out some examples of what payments under this section will include, namely fees, allowances, reimbursements, loans and repayments.

367. *Section 28O(1)* provides for the Secretary of State or the Assembly to make regulations to determine terms which the contract must include or the contract must make provision about. *Section 28O(2)* gives examples of what the regulations under *section 28O(1)* may cover, such as, the circumstances as to the variation of contracts, details about rights of entry to, and inspection of, practice premises in connection with, for example health and safety legislation, and the dispute resolution procedure. *Section 28O(4)* requires regulations to make provision as to the right of patients to choose from whom they are to receive services.

368. *Section 28P(1)* and *(2)* provide for regulations concerning the resolution of pre-contractual disputes to be made. In particular, the regulations may provide for the Secretary of State or the Assembly or a person appointed by him or it to determine the terms on which any GDS contract may be entered into. Section 4(4) of the National Health Service and Community Care Act 1990 makes similar provision in relation to NHS contracts to be entered into by health service bodies[2].

369. *Section 28P(3)* to *(5)* allows GDS contractors to be treated as health service bodies for contracting purposes. The effect is that the contract is treated as a health service contract under section 4 of the 1990 Act, and any disputes arising under the GDS contract once it has been entered into will be determined by the Secretary of State or his appointee. *Subsection (5)* provides for regulations to make payments relating to NHS contracts enforceable through the courts. No GDS contractor will be forced to have health service body status (and therefore an NHS contract). If a contractor is not a health service body, then the contract is enforceable as an ordinary legal contract before the courts unless the contract itself sets out an alternative route for resolution of disputes.

370. *Section 28P(4)* allows regulations under *subsection (3)* to make provision about the effect of a change in the partnership of a GDS contractor. The purpose would be to ensure that a change in the partnership should not affect the health service status of the contractor.

371. *Section 172(2)* provides for the repeal of sections 35 and 36 of the 1977 Act. As stated above the new GDS contract will replace the existing statutory arrangements for the provision of general dental services.

Section 173: General dental services: transitional

372. *Subsection (1)* requires the Secretary of State or the Assembly to make an Order in respect of dentists who are providing GDS under section 35 of the 1977 Act immediately prior to the coming into force of *section 173*. An Order may require a PCT to enter into a new GDS contract with such a person *(subsection (2))*. Alternatively, it may require a PCT to enter into some other kind of contract for the provision of dental services *(subsection (3))*, which may be appropriate where it has not been possible to enter into a GDS contract before the coming into force of *section 172*. An Order may prescribe the circumstances in which a PCT or LHB must enter into a contract, the terms of the contract, remuneration and the resolution of any disputes.

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2 Section 4(1) of the 1990 Act defines an "NHS contract" and section 4(2) defines by way of a list "health service body".

Primary Medical Services

Section 174: Provision of Primary Medical Services

373. *Section 174* inserts new *section 16CC* into the 1977 Act. The new *section 16CC* directly confers on each PCT and LHB a duty to provide or secure the provision of primary medical services within its area to the extent that it considers necessary to meet all reasonable requirements (new*section 16CC* (*1*)). This is modelled on the Secretary of State's duty in section 3 of the 1977 Act. This new duty replaces the duty in section 29 of the 1977 Act (arrangements and regulations for general medical services) which requires a PCT to make arrangements with medical practitioners for the provision of general medical services for all persons in the area who wish to take advantage of the arrangements.

374. *Section 16CC(2)* allows a PCT or LHB to provide primary medical services itself. This will enable the PCT/LHB to employ general practitioners. Alternatively, it can make other arrangements as it sees fit, for example, through contractual arrangements with voluntary organisations or a commercial provider.

375. *Section 16CC(3)* places a duty on PCTs and LHBs to publish information about the primary medical services that they commission or provide. This will assist patients in identifying providers of primary medical services in the PCT's or LHB's area and the range of services they offer.

376. *Section 16CC(4)* imposes a duty on PCTs and LHBs to co-operate with other PCTs and LHBs and each other in making arrangements for primary medical services. In particular they will need to co-operate where practices straddle PCT and/or LHB boundaries, including practices that straddle the England/Wales border.

377. *Section 16CC(5)* and *(6)* provide regulation powers to clarify what should, or should not, be considered as primary medical services for which PCTs and LHBs have the duty to secure provision.

Section 175: General Medical Services contracts

378. *Section 175* inserts seven new *sections 28Q to 28W*, into the 1977 Act providing for new general medical services contracts ("GMS contracts") to replace arrangements made under section 29 of the 1977 Act.

379. *Section 28Q(1)* gives a power for PCTs and LHBs to enter into GMS contracts. A GMS contract is a contract for primary medical services, but it may also include services which are not primary medical services, for example, enhanced services that are on the boundaries of primary and secondary care such as certain more specialised services in areas like drug and alcohol misuse, sexual health or depression. The GMS contract replaces the arrangements for the provision of general medical services in sections 29 to 34A of the 1977 Act and the National Health Service (General Medical Services) Regulations 1992 (S.I. 1992/635). *Section 28Q(3)* provides for PCTs and LHBs to negotiate the terms of a GMS contract with individual practices seeking to provide medical services under a GMS contract.

380. *Section 28R* provides a regulation-making power for the Secretary of State or the Assembly to prescribe the services that must be provided under a GMS contract.

381. *Section 28R(2)* would allow the services to be prescribed by reference to the manner or circumstances in which they are provided. So, for example, the regulations could provide for certain services provided outside certain times (say, before 8 am and after 6:30 pm on weekdays) not to count as prescribed services that must be provided under a GMS contract.

382. *Section 28S* provides for the PCT or LHB to enter into a GMS contract either with a medical practitioner, a group of individuals practising in partnership or a company.

Where the contract is with members of a partnership at least one member of the partnership must be a medical practitioner. *Section 28S* provides that regulations may place conditions on persons who may enter into GMS contracts. *Section 28S(1)* and *(3)* provides that limited companies can hold a GMS contract subject to at least one share being legally and beneficially owned by a medical practitioner and secondly, that any shares not so owned by medical practitioners must be legally and beneficially owned by an individual who could otherwise enter into a GMS contract, for example a health care professional.

383. *Section 28S(2)(b)* provides that where any partner is not a medical practitioner that person must either be a health care professional as defined in *section 28M* who is engaged in the provision of NHS services, an NHS employee as defined in *section 28D* , a person employed by a provider of primary medical or primary dental services under *section 28C* (or Scottish and Northern Irish equivalents) or an individual who is (or within a prescribed period, was) providing services under a general medical services contract, a general dental services contract, under a PMS arrangement or under a PDS arrangement (or Scottish and Northern Irish equivalents). This will enable persons who are not medical practitioners to be a party to a GMS contract.

384. *Section 28S(4)* allows for the Secretary of State or the Assembly to make regulations to make provision about the effect on a GMS contract of a change in the membership of the partnership. For example, such provision may allow a partnership to continue where over time partners come and go due to routine events such as a career change or retirement.

385. *Sections 28Q(3) and 28T* replaces the system of remuneration for medical practitioners providing general medical services under section 29 of the 1977 Act.

386. *Section 28T(1)* will allow the Secretary of State or the Assembly to give directions regarding payments to be made under the new contract. Where directions are made, the GMS contract must require that payments are made under the contract in accordance with the directions (*subsection (2)*). In this way, payments in respect of any particular matter under the contract can be set on a national basis. Directions may relate to payments to be made by a PCT to a GMS provider or by a GMS provider to a PCT.

387. *Section 28T(3)* sets out how the power to make directions may be exercised. It will enable directions to provide for payments to be determined by reference, for example, to the meeting of standards. Directions may also be made in respect of individual practitioners and so would enable, for example, payments to be made that relate to the seniority of a medical practitioner.

388. *Section 28T(4)* recreates the requirement in section 43B of the 1977 Act for the Secretary of State or the Assembly to consult representative bodies on remuneration matters. Given that other health care professionals will be able to become GMS providers, *section 28T(4)(a)* does not confine the duty to consult only to bodies representative of medical practitioners.

389. *Section 28T* provides for directions to be made by regulation or by instruments in writing and provides for them to be revoked or varied where directions are made by an instrument in writing. Where directions are made by regulations the Interpretation Act 1978 makes equivalent provision.

390. *Section 28T(6)* sets out some examples of what payments under this section include, namely fees, allowances, reimbursements, loans and repayments.

391. *Section 28U* provides that a GMS contract must require the contractor to comply with any directions given by the Secretary of State or the Assembly as to the drugs, medicines or other substances which may or may not be prescribed for patients being treated under the terms of the contract. This allows the new contractual provisions to replicate the controls on prescribing set out in *paragraph 44* of *Schedule 2* and *Schedules 10* and *11*to, the National Health Service (General Medical Services) Regulations 1992.

Directions under this section will normally be made by regulations but may be made by instrument in writing following a request by a holder of a marketing authorisation.

392. *Section 28V* provides for the Secretary of State or the Assembly to make regulations to determine terms, which the contract must include, or what the contract must make provision about. *Section 28V(2)* gives examples of what the regulations *may* cover, such as the persons who perform services, the circumstances in which, and the manner in which, the contract may be terminated and the dispute resolution procedure.

393. *Section 28V(3)* provides that the regulations must make provisions setting out the circumstances under which a contractor may or must accept a person as a patient for whom services are to be provided under the contract, the circumstances in which they can decline to accept such a person and how the contractor can terminate their responsibility for a patient.

394. *Section 28V(4)* and *(5)* provide for the regulations to set out the circumstances under which a PCT or LHB may impose a variation to a GMS contract and the circumstances under which any duty under the contract may be suspended or terminated. This will, for example, allow GMS contractors to seek to opt out of providing certain services, such as minor surgery, child health surveillance and contraceptive services in accordance with a prescribed procedure.

395. *Section 28W(1)* provides for regulations concerning the resolution of pre-contract disputes. In particular, the regulations may provide for the Secretary of State or the Assembly or a person appointed by him or it to determine the terms on which any GMS contract may be entered into. Section 4(4) of the National Health Service and Community Care Act 1990 makes similar provision in relation to NHS contracts entered into by health service bodies.

396. *Section 28W(3)* allows contractors to elect to be treated as a health service body for contracting purposes. The effect is that any contract is treated as a health service contract under section 4 of the 1990 Act, and any dispute arising under the GMS contract once it has been entered into will be determined by the Secretary of State or the Assembly or his or their appointee. *Section 28W(5)* provides for regulations to make payments relating to NHS contracts enforceable through the courts. No GMS contractor will be forced to have health service body status (and therefore an NHS contract). If a contractor does not have the status of a health service body, then the contract is enforceable as an ordinary legal contract before the courts unless the contract itself sets out an alternative route for the resolution of disputes.

397. *Section 28W(4)* allows regulations under *section 28W(3)* to make provision about the effect of a change in the partnership of a GMS contractor. The purpose would be, for example, to ensure that a routine change in the partnership should not affect the health service body status of the contractor.

398. *Section 175(2)* repeals the GMS provisions contained in sections 29 to 34A of the 1977 Act.

Section 176: General medical services: transitional

399. *Subsection (1)* requires the Secretary of State or the Assembly to make an Order in respect of medical practitioners who are providing GMS under section 29 of the 1977 Act immediately prior to the coming into force of *section 175*. An Order may require a PCT to enter into a new GMS contract with such a person. An Order under *section 176(3)* may also require a PCT to enter into a different sort of contract for the provision of medical services. A contract under *subsection (3)* may be appropriate where it has not been possible to enter into a GMS contract before the coming into force of *section 175* to ensure continuity of service. An Order may prescribe the circumstances in which a PCT or LHB must enter into a contract, the terms of the contract, remuneration and the resolution of any disputes.

Primary dental and medical services: supplementary

Section 177: Arrangements under section 28C of the NHS Act 1977

400. *Section 177* amends the existing provisions in section 28D of the 1977 Act which set out who can enter into primary medical services or primary dental services arrangements. *Section 177(2)* substitutes section 28D(1)(b) and (c) with new *section 28D(1) (b)* to *(bc)*. These paragraphs include a number of changes to the categories of persons who may enter into PMS or PDS arrangements. For example, a dentist will be able to enter into a PMS contract and a medical practitioner will be able to enter into a PDS contract. In such cases, the services under these contracts will have to be performed by appropriately qualified individuals.

401. New regulation making powers set out in *section 28D(1)* provide that the Secretary of State or the Assembly may set conditions that prospective providers of PMS or PDS must meet before they can enter into PMS or PDS arrangements. They are intended to ensure that the conditions that are to be prescribed in respect of GMS contractors under *section 28S* and GDS contractors under *section 28M* may be applied, where appropriate, to providers of PMS and PDS under section 28C arrangements.

402. *Subsection (5)* provides a new definition of NHS employee, that will apply equally to PMS and PDS, to replace that in section 28D(2) of the 1977 Act.

403. *Subsection (7)* inserts new *subsection (3)(ca)* into section 28E of the 1977 Act. This provides that the Secretary of State or the Assembly may set out conditions that apply to persons performing primary dental or primary medical services under section 28C of the 1977 Act. For example, conditions may set out the qualifications and experience required of healthcare professionals performing PMS or PDS.

404. *Subsection (8)* inserts new *subsections (3A)* and *(3B)* into section 28E of the 1977 Act which allows for regulations under section 28E(1) to require payments under PMS or PDS arrangements to be made in accordance with any directions given by the Secretary of State or the Assembly. The amendment allows the Secretary of State or the Assembly to require certain payments to be provided for within the contractual terms, for example to ensure that maternity payments made to dentists under a PDS agreement are the same as those under a GDS contract or that seniority payments are made to PMS general practitioners in the same way as to a GMS practitioner.

405. *Subsection (9)* introduces new *section 28E(3C)* which allows the Secretary of State or the Assembly to make regulations as to the circumstances under which a PCT or LHB must enter into a GMS or GDS contract with an existing provider of PMS or PDS when asked to do so. This replaces the regulation making powers in section 28E (3)(g) and (7) of the 1977 Act that permit a PMS medical practitioner to have a preferential right of return to the PCT or LHB medical list. The preferential right of return provides an assurance to a GMS GP who moves to become a PMS medical practitioner that should they, in the future, wish to revert to providing services under GMS they will, in most cases, be able to do so as of right.

406. *Subsection (10)* provides for regulations concerning the resolution of pre-contract disputes. In particular, the regulations may provide for the Secretary of State or the Assembly or a person appointed by him or it to determine the terms on which any PMS contract or PDS contract may be entered into.

407. *Subsection (11)* inserts into section 28E new *subsections (3E)* and *(3F)*. *Subsection (3E)* requires for regulations to make provisions that set out the circumstances under which a person providing PMS may or must accept a person as a patient for whom services are to be provided under a PMS arrangement, the circumstances in which he can decline to accept such a person and how he can terminate his responsibility for a patient.

408. New*section 28E (3F)* requires for regulations to provide for the right of a patient of a PMS or PDS provider to exercise choice as to the person from whom they will receive services.

409. *Subsection (12)* - repeals sections 28F and 28G of the 1977 Act. These sections relate to the choice of medical practitioner and choice of dental practitioner; matters now covered in the new GMS/GDS contracts and PMS/PDS arrangements. Section 28H is also repealed. Section 28H requires the Secretary of State to ensure that every person providing or performing PMS has the opportunity to participate in arrangements for vaccinations and immunisations. In future, PMS arrangements might not be for the full range of primary medical services, for example a PCT might choose to enter into a PMS contract where an existing GMS practice has decided not to deliver certain services, such as vaccinations and immunisations or contraceptive services, as being the most appropriate way of ensuring that patients still have access to those services. Consequent to the repeal of section 28H, immunisation services will be a matter for both GMS contracts and PMS arrangements.

Section 178: Abolition of pilot schemes

410. *Section 178* repeals the power in Part 1 of the National Health Service (Primary Care) Act 1997 concerning pilot schemes for the provision of personal medical and personal dental services in England and Wales.

411. PMS and PDS will however continue under the arrangements (frequently referred to as PMS and PDS permanence) set out in sections 28C, 28D, 28E and 28EE of the NHS Act 1977 (which are amended by *section 177*).

Section 179: Persons performing primary medical and dental services

412. *Section 179(1)* inserts new *section 28X* in the 1977 Act to allow regulations to provide that healthcare professionals (including medical and dental practitioners) may not perform primary or medical or dental services unless they are on an appropriate PCT/ LHB list.

413. In relation to medical practitioners, for example, the new single medical list will replace the medical list (section 29A of the 1977 Act), the medical supplementary list (section 43D of the 1977 Act) and services lists in PMS (sections 8ZA of the Primary Care Act and 28DA of the 1977 Act). Under the new arrangements a medical practitioner performing primary medical services need only be included in one appropriate PCT list – normally that of the PCT with whom he holds a contract.

414. In relation to dental practitioners, the new single dental list will replace the dental list (section 36 of the 1977 Act), supplementary list (section 43D of the 1977 Act) and services lists in PDS (sections 8ZA of the Primary Care Act, and 28DA of the 1977 Act). Under the new arrangements a dentist who is performing primary dental services need only be on one PCT list – normally that of the PCT with whom he holds a contract.

415. *Section 28X(4)* provides for the regulations to make provision about eligibility for inclusion in a list, grounds for refusal for inclusion in a list and the procedure to be followed. It allows provision to be made corresponding to sections 49F to 49N of the 1977 Act, thereby providing for suspension and removal from the PCT/LHB's list and appeals to the Family Health Service Appeals Authority. Further, *section 28X(4)(e)* allows for the regulations to make provision about requirements that a person who is included in a list must comply with if their name is to remain in the list. *Section 28X(4)(g)* allows for regulations to make provision about the circumstances in which a person included in a list may not withdraw from it. *Section 28X(7)* makes clear that information about applications, refusals, suspensions or removals may be shared with the NHS authorities which need the information.

416. Section 49M(7) of the 1977 Act enables regulations to be made about payments to practitioners who have been removed from lists by primary care organisations, whose appeals to the appeals body (the Family Health Services Appeals Authority) have been unsuccessful, but have been successful on further appeal to the Courts. *Section 179(2)* provides that the regulations may also include provision for the amount of any payment or the method of calculating the amount to be determined by the Secretary of State or someone appointed by the Secretary of State.

Section 180: Assistance and support

417. *Section 180* inserts a new *section 28Y* in the 1977 Act. This new section gives PCTs and LHBs a power to assist and support providers and prospective providers of primary dental services and primary medical services who do so through GDS, PDS, GMS or PMS arrangements. Support and assistance includes financial support.

418. For dentistry, this will enable PCTs or LHBs, for example, to increase primary dental services capacity by giving financial assistance to establish or extend dental practice premises. In respect of medical services, the PCT/LHB might employ a practice manager who would then work, for example, for two small practices who might not otherwise be able to avail themselves of such services. Equally the PCT/LHB might employ a general practitioner to support a practice temporarily to avoid the practice opting out of certain service provision. A PCT/LHB will be able to charge for the support given.

Dental services: miscellaneous

Section 181: Abolition of Dental Practice Board

419. *Section 181* provides for the abolition of the Dental Practice Board. A Special Health Authority is to be established under section 11 of the 1977 Act by the Secretary of State and the Assembly. The new Special Health Authority will be a cross border Special Health Authority undertaking functions in relation to both England and Wales. The assets, liabilities and staff (subject to consultation) of the DPB will be transferred under section 11 powers to the new Special Health Authority.

Section 182: Special Health Authorities

420. *Subsection (1)* amends section 16B of the 1977 Act in relation to the exercise of functions by PCTs. An Order may provide for the transfer to a Special Health Authority of the rights and liabilities of a PCT under a GDS contract where the Special Health Authority is to exercise functions on its behalf, and for transfer back should that function cease. *Subsection (2)* makes similar provisions in relation to LHBs in Wales.

421. For example, a GDS contract may provide for payments to dentists under such a contract to be made by the new Special Health Authority rather than PCTs. This section would allow an Order to provide for the Special Health Authority to take on the PCT's contractual responsibility for the payments it makes under the contract.

Section 183: Charges for dental services

422. *Section* 183 inserts a new *section 79* and a new *Schedule 12ZA* to the 1977 Act replacing sections 78A, 79 and 79A which linked the calculation of dental charges to the remuneration of a dental practitioner. *Section 183(3)* provides that the first regulations made under new *section 79* shall be subject to approval by resolution of each House of Parliament.

423. New *section 79(1)* provides for regulations to prescribe the way in which patient charges can be made and recovered for dental services. New*section 79(2)* provides that regulations made under new *section 79(1)*, may for example, set a maximum charge and exempt certain treatments from a charge. New*section 79(5)* ensures that charges

apply to all primary dental services whether provided under a GDS contract, PDS or by the PCT/LHB, and to dental appliances under other Part 1 services. New*section 79(3)* enables regulations made under new *section 79(1)* to provide for the amount that PCTs, LHBs or Special Health Authorities recompense dental clinics or practices and that this amount may be reduced by the amount that has been collected in patient charges by that clinic or practice.

424. *Schedule 12ZA* maintains the same exemptions from dental charges as under the provisions previously set out in old section 79 and Schedule 12 of the 1977 Act**.***Paragraphs 1, 2, 4* and *6* of new *Schedule 12ZA* set out the circumstances in which dental charges will not apply. *Paragraph 2* makes it clear that, normally, charges will not apply to the replacement or repair of appliances. *Paragraph 3* provides that charges will, however, apply to the repair or replacement either of prescribed appliances, or of appliances which need to be repaired or replaced because of something that person supplied with the appliance has done (or where that person is under 16, something that their parent or guardian has done). Dental appliances will be free of charge when provided by a hospital for its in-patients (*paragraph 4*). However, if dental appliances are provided for a hospital in-patient under GDS or PDS contracts or by a PCT as part of Primary Care Trust Dental Services, then the normal charges will apply *(paragraph 5).*

425. *Paragraph 7* of new*Schedule 12ZA* enables regulations to prescribe the evidence that must be provided when a patient claims an exemption from charge. For example, a patient may be required to provide a birth certificate or FP92 Maternity Exemption Certificate issued through the Prescription Pricing Authority in England.

426. *Section 183(4)* provides for charges to apply to dentures and dental appliances provided in accordance with PDS pilot schemes following the coming into force of new *section 79* of the 1977 Act, but before the abolition of PDS piloting under *section 178* above.

General

Section 184: Minor and consequential amendments

427. This section introduces *Schedule 11*, which provides for minor and consequential amendments. *Paragraph 23* inserts *sections 45A* and *45B* into the 1977 Act. These sections cover the recognition of Local Medical Committees ("LMCs") and Local Dental Committees ("LDCs"). *Sections 45A(7*) to *(9)* and *45B(7)* to *(9)* allow the Secretary of State to make regulations that require PCTs/LHBs or Strategic Health Authorities to consult LMCs and LDCs and to prescribe other functions of these Committees. *Sections 45A* and *45B* separate out the roles of these committees from the provisions in sections 44 and 45 of the 1977 Act and the new regulation making powers simply replace those in section 45(1) in respect of LMCs and LDCs.