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WELSH STATUTORY INSTRUMENTS

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**2006 No. 488**

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

**PART 2**

**GENERAL DENTAL SERVICES**

**CHAPTER 1**

**Entitlement to General Dental Services Contracts**

**Entitlement to a general dental services contract**

3.—(1) For the purposes of section 173(2) of the 2003 Act, the circumstances in which a Local Health Board must enter into a general dental services contract with a person who, on 31 March 2006, is providing services under section 35 of the 1977 Act are prescribed in articles 4 and 5.

(2) Nothing in this Order will require a Local Health Board to enter into a general dental services contract with any person (whether as an individual or as a member of a partnership) on more than one occasion.

**Individual dental practitioner**

4.—(1) Subject to paragraphs (2) and (3), a Local Health Board must, if a person so wishes, enter into a general dental services contract with him or her as an individual dental practitioner if—

- (a) on 31 March 2006 or, if earlier, on the date on which the contract is to be signed, he or she is included in the dental list of that Local Health Board;
- (b) on the date on which the contract is to be signed, he or she is practising as an individual dental practitioner and—
  - (i) no other dental practitioner, or
  - (ii) no other person providing services under section 35 arrangements, practises in partnership with him or her; and
- (c) in the case of a contract that is to be signed after 31 March 2006, he or she is, at the date on which the contract is to be signed, included in a dental performers list.

(2) A person will not be entitled to enter into a general dental services contract if he or she is an individual dental practitioner who is included in the dental list and in accordance with regulation 4(2)(b)(i) of the 1992 Regulations, it is indicated in the dental list that the dental practitioner provides only orthodontic treatment.

(3) A person will be treated as practising for the purposes of paragraph (1)(b) if he or she would have been so practising on the date in question except for the fact that on that date he or she is—

- (a) suspended from the—

- (i) Dentists Register under section 32 of the Dentists Act (interim suspension)(1) or by a direction or order of the Health Committee under that Act (health cases),
  - (ii) dental list under section 49I (suspension for the protection of the public or in the public interest) or 49J (suspension pending appeal) of the 1977 Act(2), or
  - (iii) dental performers list under regulation 13 of the Performers Lists Regulations (suspension for the protection of public or in the public interest);
- (b) on maternity, paternity or adoption leave and is, on that date, in receipt of payments in respect of such leave by virtue of Determination VI of the SDR;
  - (c) on long term sickness leave and is, on that date, in receipt of payments pursuant to Determination VII of the SDR; or
  - (d) performing relevant service.
- (4) Where a person is suspended under or as a consequence of any of the provisions referred to in paragraph (3)(a), a Local Health Board will only be required under paragraph (1) to enter into a general dental services contract with him or her during the period of that suspension if it is satisfied that—
- (a) having regard to the grounds for suspension he or she is able to provide (but not perform) services under the contract and the Local Health Board is not at risk of material financial loss;
  - (b) the entering into the contract would not—
    - (i) put at risk the safety of the contractor’s patients, or
    - (ii) be prejudicial to the efficiency of the provision of primary dental services in the area of the Local Health Board; and
  - (c) the practitioner has in place adequate arrangements for the provision of services under the contract during the period of his or her suspension.
- (5) Where a Local Health Board refuses to enter into a general dental services contract as a consequence of paragraph (4), it will notify the prospective contractor in writing of its decision, reasons for that decision and of the individual’s right of appeal under article 7.
- (6) Where the contracting parties are unable to agree on a particular term of the general dental services contract and the dispute is referred to the National Assembly for Wales for determination in accordance with section 4 of the 1990 Act (NHS contracts) or regulation 8(1) of the GDS Contracts Regulations (pre-contract disputes), the determination may if it is made after the contract has been entered into—
- (a) vary the terms of the contract; or
  - (b) bring the contract to an end.
- (7) Where a determination is made in accordance with paragraph (6), section 4(8)(a) and (b) of the 1990 Act will apply in respect of the determination where the terms of the general dental services contract is varied or brought to an end.

## Partnerships

5.—(1) Subject to paragraph (2), a Local Health Board must, if a person so wishes, enter into a general dental services contract with him or her as one of two or more individuals practising in partnership if—

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(1) 1984 c. 24; as amended by S.Is 2001/3926 and 2005/2011.

(2) Sections 49I and 48J are inserted into the 1977 Act by the Health and Social Care Act 2001 (c. 15) (“the 2001 Act”), section 25.

- (a) on 31 March 2006 or, if earlier, on the date on which the contract is to be signed, he or she is included in the dental list of that Local Health Board and is practising;
  - (b) on 31 March 2006 or, if earlier, on the date on which the contract is to be signed, he or she is in partnership with one or more persons who are—
    - (i) included in the dental list of the Local Health Board, or
    - (ii) providing general dental services under section 35 arrangements (and are not dental practitioners); and
  - (c) he or she wishes to enter into a contract as an individual practising in partnership with the persons referred to in paragraph (b).
- (2) A dental practitioner does not fall within paragraph (1)(a) if he or she is included in the dental list on the date in question, and in accordance with regulation 4(2)(b)(i) of the 1992 Regulations, it is indicated in the dental list that the dental practitioner only provides orthodontic treatment.
- (3) A person will be treated as practising for the purposes of paragraph (1)(a) if he or she would have been so practising on the date in question except for the fact that on that date he or she is—
- (a) suspended from the—
    - (i) Dentists Register by order under section 32 of the Dentists Act or by a direction or order of the Health Committee under that Act,
    - (ii) dental list under section 49I or 49J of the 1977 Act, or
    - (iii) dental performers list under regulation 13 of the Performers Lists Regulations;
  - (b) on maternity, paternity or adoption leave and is, on that date, in receipt of payments in respect of such leave pursuant to Determination VI of the SDR;
  - (c) on long term sickness leave and is, on that date, in receipt of payments pursuant to Determination VII of the SDR; or
  - (d) performing relevant service.
- (4) Where the person referred to in paragraph (1)(a) is suspended under or as a consequence of any of the provisions referred to in paragraph (3)(a), a Local Health Board will only be required under paragraph (1) to enter into a general dental services contract with that person and the persons practising in partnership with him or her, if it is satisfied that—
- (a) having regard to the grounds for suspension the individual so suspended is able to provide (but not perform) services under the contract and the Local Health Board is not at risk of material financial loss;
  - (b) the entering into the contract would not—
    - (i) put at risk the safety of the contractor’s patients, or
    - (ii) be prejudicial to the efficiency of the provision of primary dental services in the area of the Local Health Board; and
  - (c) the partnership has in place adequate arrangements for the provision of services under the contract during the period of the individual’s suspension.
- (5) Where a Local Health Board refuses to enter into a general dental services contract as a consequence of paragraph (4), it will notify the individual who is suspended in writing of its decision, reasons for that decision and of the individual’s right of appeal under article 7.
- (6) Where the contracting parties are unable to agree on a particular term of the general dental services contract, article 4(6) and (7) will apply.

### **Pilot scheme providers**

6.—(1) Subject to section 28M(3) of the 1977 Act (but not subject to regulation 4 and 5 of the GDS Contracts Regulations), a Local Health Board must, if a pilot scheme provider so wishes, enter into a general dental services contract instead of a personal dental services agreement where the pilot scheme provider—

- (a) is entitled to enter into a personal dental services agreement with the Local Health Board under article 14;
- (b) is on 31 March 2006, or if earlier, on the date on which the contract is to be signed, providing services that are equivalent to mandatory services under the pilot scheme agreement; and
- (c) wishes to enter into a general dental services contract instead of a personal dental services agreement.

(2) Where a pilot scheme provider enters into a general dental services contract under paragraph (1), it will have no entitlement to enter into a personal dental services agreement with the Local Health Board under article 14.

(3) Where the contracting parties are unable to agree on a particular term of the contract, article 4(6) and (7) will apply.

### **Appeal against refusal to enter into a contract as a consequence of a suspension**

7.—(1) A person who has been notified by a Local Health Board under article 4(5) or 5(5) of its refusal to enter into a general dental services contract may appeal to the National Assembly for Wales by giving notice in writing to the National Assembly for Wales within a period of six weeks beginning on the day that the Local Health Board notified him or her of the refusal.

(2) A notice of appeal under paragraph (1) will include—

- (a) the names and addresses of the parties to the dispute;
- (b) a copy of the notification received from the Local Health Board under article 4(5) or 5(5); and
- (c) a brief statement of the grounds for appeal.

(3) The National Assembly for Wales may determine the appeal itself or, if it considers it appropriate, appoint a person or persons to consider and determine it.

(4) Before reaching a decision as to who should determine the dispute, the National Assembly for Wales will, within the period of seven days beginning with the date on which the notice of appeal was sent 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.

(5) The National Assembly for Wales will give, with the notice under paragraph (4), to the Local Health Board which is a party to the appeal, a copy of the notice of appeal.

(6) The National Assembly for Wales will—

- (a) give a copy of any representations received from a party to the other party; and
- (b) 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 on those representations.

(7) 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 paragraph (4) or (6), the National Assembly for Wales will, if it decides to appoint a person or persons to consider and determine the dispute—

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(3) Section 28M is inserted into the 1977 Act by section 172 of the 2003 Act.

- (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 pursuant to paragraph (2), (4) or (6).
- (8) For the purpose of assisting it, him or her in its, his or her consideration of the matter, the adjudicator may—
- (a) invite representatives of the parties to appear before it, 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 it, he or she wishes them to give special consideration; or
  - (b) consult other persons whose expertise it, he or she considers will assist it, him or her in its, his or her consideration of the matter.
- (9) Where the adjudicator consults another person under paragraph (8)(b), it, he or she will notify the parties accordingly in writing and, where it, he or she considers that the interests of any party might be substantially affected by the results of the consultation, it, he or she will give to the parties such opportunity as it, he or she considers reasonable in the circumstances to make observations on those results.
- (10) In considering the matter, the adjudicator will consider—
- (a) any written representations made in response to a request under paragraph (4), but only if they are made within the specified period;
  - (b) any written observations made in response to a request under paragraph (6), but only if they are made within the specified period;
  - (c) any oral representations made in response to an invitation under paragraph (8)(a);
  - (d) the results of any consultation under paragraph (8)(b); and
  - (e) any observations made in accordance with an opportunity given under paragraph (9).
- (11) In this article, “specified period” means such period as the National Assembly for Wales will specify in the request, being not less than two, nor more than four, weeks beginning with the date on which the notice referred to is given, but the National Assembly for Wales 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 article to the specified period is to the period as so extended.
- (12) The adjudicator may, when determining the appeal require the Local Health Board to enter into a general dental services contract with the prospective contractor on terms to be agreed between the parties or, where necessary, determined under the pre-contract dispute resolution procedure in section 4(4) of the 1990 Act (NHS contracts) or under regulation 8 of the GDS Contracts Regulations (pre-contract disputes) (whichever is applicable) but may not require the prospective contractor to proceed with the contract.
- (13) The adjudicator will record it, his or her determination in writing and will give notice of the determination (including the record of the reasons) to the parties.
- (14) The determination of the adjudicator will be binding upon the parties.
- (15) Subject to the other provisions of this article, the adjudicator will have wide discretion in determining the procedure of the appeal to ensure the just, expeditious, economical and final determination of the dispute.
- (16) In this article, “adjudicator” means the National Assembly for Wales or a person or persons appointed by it under this article.

### **Duration of entitlement to a general dental services contract**

8.—(1) In a case where—

- (a) the prospective contractor has appealed in accordance with article 7; and
- (b) the determination requires the Local Health Board to enter into a general dental services contract,

the entitlement of the prospective contractor to enter into such a contract continues for the period of six weeks beginning with the date on which the parties were notified of the determination.

(2) Where a person who is entitled to enter into a general dental services contract under article 4(1) or 5(1) has been unable to do so before 1 April 2006 because he or she is performing relevant service, his or her entitlement will continue until the end of the period of six weeks beginning with the date on which he or she ceases to perform relevant service.

### **Appeal against failure of a Local Health Board to enter into a general dental services contract**

9.—(1) This article applies where a person has—

- (a) offered to enter into a general dental services contract under article 4, 5 or 6; and
- (b) as a result of a failure to act by the Local Health Board—
  - (i) been unable to sign such a contract before 1 April 2006, or
  - (ii) in a case where article 8 applies, been unable to sign such a contract within the period of entitlement provided for in accordance with that article.

(2) Where this article applies, the prospective contractor must, if he or she wishes to enter into a general dental service contract, apply in writing to the National Assembly for Wales—

- (a) before 15 April 2006; or
- (b) in a case where article 8 applies, no later than the end of the period of 14 days beginning on the date his or her entitlement to enter into such a contract ceases.

(3) An application under paragraph (2) will specify—

- (a) the names and addresses of the parties to the dispute;
- (b) the grounds on which the applicant claims to be entitled to enter into a general dental services contract; and
- (c) the grounds for alleging default by the Local Health Board.

(4) Article 7(3) to 7(16) will apply to an application made under paragraph (1), subject to the modification that the references in article 7(4) and (5) to a notice of appeal will be read as references to an application under paragraph (2) of this article.