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

2001 No. 3741

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (General Dental Services) Amendment (No.6) Regulations 2001

Made - - - -	*22nd November 2001*
Laid before Parliament	*22nd November 2001*
Coming into force	*14th December 2001*

The Secretary of State for Health, in exercise of the powers conferred upon him by sections 15(1), 35(1), 36(1), (1A) and (4) to (8), 37(1), 43ZA, 49F, 49I, 49L, 49M, 49N, 49O, 49P, 49R and 126(4) of the National Health Service Act 1977**(a)** and section 65 of the Health and Social Care Act 2001**(b)** hereby makes the following Regulations:

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the National Health Service (General Dental Services) Amendment (No.6) Regulations 2001 and shall come into force on 14th December 2001.

(2) In these Regulations—

(a) "the principal Regulations" means the National Health Service (General Dental Services) Regulations 1992**(c)**;

(b) except where the context otherwise requires, a reference to a numbered regulation or Schedule is to the regulation or Schedule bearing that number in the principal Regulations.

(a) 1977 c.49; *see* section 128(1), as amended by the National Health Service and Community Care Act 1990 (c.19) ("the 1990 Act"), section 26(2)(g) and (i); and by the Health Act 1999 (c.8) ("the 1999 Act"), Schedule 4, paragraph 38(2), for the definitions of "prescribed" and "regulations". Section 15(1) was amended by the Health and Social Security Act 1984 (c.48) ("the 1984 Act"), section 5(2); by the 1990 Act, section 12(1) and by the Health Authorities Act 1995 (c.17) ("the 1995 Act"), Schedule 1, paragraph 6. Section 35(1) was substituted by S.I. 1985/39, article 7(9), and amended by the 1995 Act, Schedule 1, paragraph 24. Section 36(1) was so numbered by the 1984 Act, Schedule 3, paragraph 5(1) and amended by S.I. 1981/432, article 3(3)(a); by S.I. 1985/39, article 7(10); by the Health and Medicines Act 1988 (c.49), Schedule 2, paragraph 4; by the 1990 Act, section 24 and by the 1995 Act, Schedule 1, paragraph 25(a). Section 36(3) was inserted by the 1990 Act, section 24(3). Subsections (1A) and (4) to (8) were inserted by the Health and Social Care Act 2001 (c.15) ("the 2001 Act"), section 20(4). Section 37(1) (so numbered by the 1988 Act), section 12(2)) was amended by the Health Services Act 1980 (c.53), section 1 and Schedule 1, paragraph 50; modified by section 12(1) of the 1988 Act and amended by that Act, Schedule 3; and amended by the 1995 Act, Schedule 1, paragraph 26. Section 126 (4) was amended by the 1990 Act, section 65(2); and by the 1999 Act, Schedule 4, paragraph 37(6). Section 43A was inserted by the 2001 Act, section 21. Sections 49F to 49R were inserted by the 2001 Act, section 25. As regards Wales, the functions of the Secretary of State under sections 15, 35, 36 and 126(4) of the 1977 Act were transferred to the National Assembly for Wales under the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1; these Regulations therefore extend only to England.

(b) 2001 c.15.

(c) S.I. 1992/661; relevant amending instruments are S.I. 1993/2209, 1993/3172, 1995/3092, 1996/704, 1996/2051, 1998/1648, 1998/2224, 2000/2459, 2001/289 and 2001/1746.

(3) These Regulations extend to England only.

(4) The principal Regulations are amended in accordance with the following provisions of these Regulations.

Amendment of regulation 2

2.—(1) In paragraph (1) of regulation 2 (interpretation)—

(a) insert the following definitions in the appropriate alphabetical positions—

""the Abolition of the Tribunal Regulations 2001" means the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2001**(a)**;",

""employment" means any employment whether paid or unpaid and whether under a contract for services or a contract of service, and "employed" and "employer" shall be construed accordingly;",

""equivalent body" means a Health Authority in Wales, a Health Board or an NHS trust in Scotland or a Health and Social Services Board in Northern Ireland;",

""equivalent lists" means lists kept by an equivalent body;",

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

""fraud case" means a case where a person satisfies the second condition for removal from the dental list set out in section 49F(3) of the Act or by virtue of section 49H of the Act is treated as doing so;",

""licensing or regulatory body" means the body that licenses or regulates any profession of which the dentist is or has been a member;",

""lists" means lists referred to in section 49N(1)(a) to (c);",

""a national disqualification" means—

(a) a decision made by the FHSAA in relation to a dentist under section 49N of the Act,

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

(c) a decision by the Tribunal which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4)(b) of the Abolition of the Tribunal Regulations 2001, or

(d) a decision by the Tribunal, which applies to the whole of Wales and which is made after 13th December 2001;",

""the National Health Service Counter Fraud Service" means the service provided by the Secretary of State to deal with inquiries and investigations in relation to any allegations of fraud or corruption in the health service**(c)**;",

""originating events" means the events that gave rise to the conviction, investigation, proceedings, suspension, refusal to admit, conditional inclusion, removal or contingent removal that took place;",

""professional registration number" means the number against a dentist's name in the register maintained by the General Dental Council;",

""suspended" means—

(a) suspended by a Health Authority under section 49I or 49J of the Act or under regulations made under sections 28DA or 43D of the Act, or section 8ZA of the 1997 Act,

(b) in relation to Wales, suspended by the Tribunal,

(c) in relation to Scotland or Northern Ireland, suspended under provisions in force corresponding to those in section 49I or 49J of the Act,

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(a) S.I.[2001/3744]

(b) Section 49S was inserted by the Health and Social Services Act 2001, section 27(1).

(c) The National Health Service Counter Fraud Service may be contacted by writing to them at Hannibal House, Elephant and Castle, London SE1 6JE or emailing them on DCFS@doh.gov.uk.

and shall be treated as including a case where a person is treated as suspended by a Health Authority in England by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations 2001,

and "suspend" and "suspension" shall be construed accordingly;",

(b) for the definition of "the Tribunal" substitute ""the Tribunal" means the Tribunal constituted under section 46 of the Act**(a)** for England and Wales, and which had effect in relation to England only until 14th December 2001;";

(c) in the definition of "estimate", for "an FHSA" substitute "a Health Authority"; and

(d) omit the definition "suspended by direction of the Tribunal".

(2) In paragraph (2)(d) of regulation 2—

(a) for "FHSA" whenever it appears, substitute "Health Authority", and

(b) for "an" where it appears immediately before "FHSA" substitute "a".

Amendment of regulation 4

3. In regulation 4(1) (dental list), after "in its locality" insert "who are not subject to a national disqualification".

Amendment of regulation 5

4. Regulation 5 (application for inclusion in the dental list) shall be amended as follows—

(a) in paragraph (1) after "subject to paragraph (3)" insert "and regulations 5ZA to 5ZD";

(b) for paragraph (2) substitute—

"(2) Subject to paragraphs (3ZA), (3A) and (4) and to regulation 5ZB, a Health Authority shall determine an application made by a dentist under paragraph (1) within 21 days of their receiving all the information referred to in Part I of Schedule 2, including references from any referees, and where the Health Authority considers that the proposed practice premises should be inspected, they shall carry out that inspection within that 21 day period.";

(c) after paragraph (3A), insert—

"(3ZA) The Health Authority must, before determining an application, check so far as practicable—

(a) the references and information provided by the dentist in accordance with paragraphs 5B, 11A and 14 of Schedule 2, and

(b) with the National Health Service Counter Fraud Service whether the dentist has any record of a fraud case.";

(d) in paragraph (4), for "the date of receipt of the application" substitute "the date of the Health Authority receiving all the information mentioned in paragraph (2)";

(e) after paragraph (4) add—

"(5) Where a Health Authority proposes to include a dentist on a list subject to conditions imposed under regulation 5ZD, the name of the dentist may be included on the list during the period for bringing an appeal to the FHSAA pursuant to that regulation, or if an appeal is brought, until such time as that appeal is decided, provided the dentist agrees to be bound by the condition imposed until the time for appeal has expired or his appeal is decided.".

Insertion of new regulations 5ZA to 5ZD into the principal Regulations

5. After regulation 5 insert the following regulations—

"**Grounds for refusal**

5ZA.—(1) The grounds on which a Health Authority may refuse to include a dentist in the dental list under regulation 5 are—

(a) Section 46 was substituted by the Health Act 1999 c.8.

(a) that they have considered the declaration required by paragraph 5B of Schedule 2 and any other information in their possession in relation to his application and consider he is unsuitable to be included in the list;

(b) that having checked the information provided by the dentist under paragraph 5B of Schedule 2 they consider the dentist is unsuitable to be included in the list;

(c) that having contacted referees, they are not satisfied with the references given in accordance with paragraph 11A of Schedule 2;

(d) that having checked with the National Health Service Counter Fraud Service for any facts that it considers relevant relating to past or current investigations involving the dentist, and having considered these and any fraud case relating to the dentist, they consider these justify such refusal;

(e) they consider that there are grounds to consider that admitting the dentist to the list would be prejudicial to the efficiency of the service which he would undertake.

(2) The grounds on which a Health Authority must refuse to include a dentist under regulation 5 are—

(a) where he has been convicted in the United Kingdom of murder;

(b) where, after 13th December 2001, he has been convicted in the United Kingdom of a criminal offence and sentenced to a term of imprisonment of over six months;

(c) where he is subject to a national disqualification;

(d) where he has not updated his application in accordance with regulation 5Z(b)(4);

(e) where he does not notify the Health Authority under regulation 5ZD(11) that he wishes to be included in the list subject to the specified conditions.

(3) Where the Health Authority are considering refusing to include a dentist in a list under paragraph (1), they shall consider all facts which appear to them to be relevant and shall in particular take into consideration in relation to paragraph (1)(a), (b) or (d) above—

(a) the nature of any offence, investigation or incident;

(b) the length of time since the offence was committed or the incident occurred and since any conviction or investigation;

(c) whether there are other offences, incidents or investigations to be considered;

(d) any action or penalty imposed by any professional, licensing, regulatory or other body, the police or the courts as a result of any such offence, incident or investigation;

(e) the relevance of any offence, investigation or incident to the provision by him of general dental services and any likely risk to his patients or to public finances;

(f) whether any offence was a sexual offence to which Part I of the Sexual Offences Act 1997**(a)** applies;

(g) whether he has been refused admission to or conditionally included in, removed, contingently removed, or is currently suspended from any of a Health Authority's lists or from equivalent lists, and if so, what the facts were in those cases and the reasons given by the Health Authority or equivalent body involved.

(4) When the Health Authority take into consideration the matters set out in paragraph (3), they shall consider the overall effect of all the matters being considered.

(5) When the Health Authority refuse to include a dentist in the dental list they shall notify the dentist of their decision and the reasons for it (and any facts relied on) and of any right of appeal under regulation 5ZC against their decision.

(a) 1997 c.51.

Deferment of decision

5ZB.—(1) A Health Authority may defer a decision whether to include a dentist in a dental list—

(a) where there are legal proceedings that are criminal proceedings in the United Kingdom or, if brought elsewhere in the world, would be criminal proceedings if brought in the United Kingdom, and that if successful would be likely to lead to the removal of the dentist from the Health Authority list if he had been included;

(b) where there is an investigation anywhere in the world by the dentist's regulatory or licensing body or any other investigation (including one by another Health Authority or equivalent body) relating to him in his professional capacity, that if successful would be likely to lead to the removal of the dentist from the Health Authority list if he were to be included;

(c) where the dentist is suspended from any of the lists or equivalent lists;

(d) where the FHSAA is considering an appeal by the dentist against a decision of a Health Authority to refuse to include him in their list, or to conditionally include in or to contingently remove from, or to remove from any list kept by a Health Authority and if that appeal is unsuccessful the Health Authority would be likely to remove the dentist from the Health Authority list if he were to be included;

(e) where the dentist is being investigated by the National Health Service Counter Fraud Service in relation to any fraud case, where the result if adverse would be likely to lead to the removal of the dentist from the Health Authority list if he were to be included;

(f) where the FHSAA is considering an application from a Health Authority for a national disqualification of the dentist.

(2) A Health Authority may only defer consideration under paragraph (1) above until the outcome of the relevant events mentioned in that paragraph is known.

(3) A Health Authority must notify the dentist of a decision to defer a decision on his application, and the reasons for this.

(4) Once the outcome of the relevant event mentioned in paragraph (1) is known, the Health Authority must notify the dentist that he must update his application within 28 days (or such longer period as the Health Authority may agree), with any relevant information before it can be considered.

(5) Provided any additional information has been received within 28 days or the time agreed, as the case may be, the Health Authority shall notify the dentist as soon as possible—

(a) that his application to be included has been successful; or

(b) that the Health Authority decided to refuse the application or to impose conditions on his inclusion, the reasons for it, and that he has a right of appeal under regulation 5ZC or 5ZD(8).

Appeal to the FHSAA

5ZC.—(1) A dentist may appeal to the FHSAA against a decision of a Health Authority to refuse to include his name in a list pursuant to regulation 5(1).

(2) Such an appeal shall be by way of redetermination.

Conditional inclusion

5ZD.—(1) A Health Authority may determine that if a dentist is to be included in the list, he is to be subject, while he remains included in the list, to conditions imposed on his inclusion, having regard to the requirements in section 43ZA(2) of the Act.

(2) A Health Authority may vary the terms of service in Schedule 1 in relation to the dentist for the purpose of, or in connection with, the imposition of those conditions.

(3) The Health Authority may, of their own volition or at the request of the dentist concerned, review any decision made under this regulation.

(4) A dentist may not request a review of a Health Authority decision until the expiry of a period of three months beginning with the date the Health Authority includes the dentist's name on the list.

(5) After a review has taken place, the dentist cannot request a further review before the expiry of a period of six months from the date of the Health Authority's decision on the previous review.

(6) On any review, the Health Authority may vary the conditions, impose different conditions, or remove the dentist from the list.

(7) Failure to comply with a condition may lead to the removal of the dentist from the list.

(8) There shall be an appeal to the FHSAA from any decision of the Health Authority—

(a) to impose conditions, or any particular condition on a dentist;

(b) to vary a condition;

(c) to vary his terms of service;

(d) on any review of an earlier such decision of theirs;

(e) to remove him from the dental list for breach of condition,

and the appeal shall be by way of redetermination of the Health Authority decision.

(9) On appeal the FHSAA may make any decision which the Health Authority could have made.

(10) Where the decision of the FHSAA on appeal is that one or more conditions be imposed on the dentist, whether this condition is different from any condition or conditions imposed by the Health Authority or not, the Health Authority shall ask the dentist to notify them within 28 days of the decision (or such longer period as the Health Authority may agree), whether he wishes to be included in the dental list subject to this condition or conditions.

(11) If the dentist notifies the Health Authority that he does wish to be included in the dental list subject to the condition or conditions, the Health Authority shall so include him.

(12) Subject to regulation 5(5) any decision of the Health Authority that may be the subject of appeal under paragraph (8) shall not have effect until the FHSAA has determined any appeal against it or any time for appeal has expired.

(13) A Health Authority shall disclose to those persons specified in paragraph (15) information of the kind mentioned in paragraph (14) about dentists whose inclusion in the list is subject to conditions imposed under this regulation and about the removal of such dentists from the list for breach of such a condition.

(14) The information referred to in paragraph (13) is—

(a) identifying details of the dentist;

(b) his professional registration number;

(c) the date and a copy of the decision taken by the Health Authority; and

(d) the contact name of a person in the Health Authority for further enquiries.

(15) The persons or bodies to whom information shall be disclosed by the Health Authority under paragraph (13) are—

(a) the Secretary of State;

(b) any Health Authority in England that have the dentist on any list of theirs, or are considering an application for one of their lists;

(c) the Scottish Executive;

(d) the National Assembly for Wales;

(e) the Northern Ireland Executive;

(f) the Dental Practice Board;

(g) the General Dental Council or any other appropriate regulatory body;

(h) any organisation that to the knowledge of the Health Authority, employs or uses the services of the dentist in a professional capacity;

(i) where it is a fraud case, the National Health Service Counter Fraud Service.

(16) The Health Authority shall notify any body of the information specified in paragraph (14) if they can establish that they are considering employing the dentist and they receive a written request (including an electronic request) to do so.

(17) The Health Authority shall send to the dentist concerned a copy of any information about him provided to the persons or bodies listed in paragraph (15), and any correspondence with those persons.

(18) Where a Health Authority have notified any person or body mentioned in paragraph (15) or (16) of the matters set out in paragraph (14), they may in addition notify that person or body of any evidence that was considered, including representations of the dentist, if so requested by the person or body.

(19) Where a Health Authority are notified by the FHSAA that it has imposed a national disqualification on a dentist whom the Health Authority had removed from their dental list, they shall notify the persons or bodies listed in paragraphs (15)(b), (g), (h) and (i) and (16).

(20) Where a decision is changed on review or appeal or a suspension lapses, the Health Authority shall notify any person or body previously notified of the original decision under this regulation of the new facts.".

Amendment of regulation 8

6. In regulation 8 (removal from dental list)—

(a) omit paragraph (5)(iv);

(b) at the end of paragraph (5)(v) add "or,

(vi) any period during which the dentist provided no general dental services by reason only that he was suspended from the dental list.".

Insertion of new regulations 8A to 8H

7. After regulation 8 (removal from dentist list) insert the following regulations—

"**Supplementary matters relating to removal**

8A. In addition to the services covered by the definition of "health scheme" in section 49F(8) of the Act, the following shall also be health schemes—

(a) health services, including dental treatment, provided by Her Majesty's Forces;

(b) services provided by Port Health Authorities constituted under the Public Health (Control of Disease) Act 1984**(a)**;

(c) health services provided to a prisoner in the care of the medical officer or such other officer of a prison appointed for the purposes of section 7 of the Prison Act 1952**(b)**;

(d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

Criteria for decisions on removal

8B.—(1) Where a Health Authority are considering whether to remove a dentist from a list using the power in section 49F(4) of the Act they shall in particular take into account information from the dentist supplied under paragraph 31H of Schedule 1 and the criteria set out in paragraph (2).

(2) The criteria referred to in paragraph (1) are—

(a) the nature of any criminal offence, investigation or incident;

(b) the length of time since any such offence was committed or incident occurred and since any criminal conviction or investigation;

(a) 1984 c.22.
(b) 1952 c.52.

(c) whether there are other criminal offences to be considered;

(d) the penalty imposed following any criminal conviction or the outcome of any investigation;

(e) the relevance of any criminal offence or investigation into his professional conduct on the provision by the dentist of general dental services and the likely risk to patients;

(f) whether any criminal offence was a sexual offence to which Part I of the Sexual Offences Act 1997**(a)** applies; and

(g) whether the dentist has been refused admittance to, conditionally included, contingently removed, removed or is currently suspended from other Health Authority lists or equivalent lists, and if so, what the facts were in those cases and what reasons were given by the Health Authority or equivalent body in the case.

(3) Where a Health Authority are considering removal of a dentist from a list under section 49F(3) of the Act, they shall in particular take into account information from the dentist supplied under paragraph 31H(1) and (2) of Schedule 1 and the criteria set out in paragraph (4) below.

(4) The criteria referred to in paragraph (3) are—

(a) the nature of any incidents of a fraud case;

(b) the length of time since any incident occurred, and since the investigation was concluded;

(c) whether there are other incidents of fraud cases or other criminal offences to be considered;

(d) any action taken by any licensing or regulatory body, the police or the courts as a result of the incident;

(e) the relevance of the investigation to the provision by him of general dental services and the likely risk to patients or to public finances; and

(f) whether he has been refused admittance to, conditionally included, removed, contingently removed or currently suspended from other Health Authority lists or equivalent lists and if so, what the facts were in those cases and what were the reasons given by the Health Authority or equivalent body in the case.

(5) Where a Health Authority are considering removal of a dentist under section 49F(2) of the Act they shall, in particular, take into account information from the dentist supplied under paragraph 3H(1) and (2) of Schedule 1 and the criteria set out in paragraph (6) below.

(6) The criteria referred to in paragraph (5) are—

(a) the efficiency of the General Dental Services;

(b) the length of time since any incident occurred, and since the investigation was concluded;

(c) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident;

(d) the nature of the incident and whether there is a likely risk to patients;

(e) whether the dentist has previously failed to make a declaration or to comply with an undertaking required by these Regulations;

(f) whether the dentist has been refused admittance to, conditionally included, removed, contingently removed or is currently suspended from other Health Authority lists or equivalent lists, and if so, what the facts were in those cases and what reasons were given by the Health Authority or equivalent body in the case.

(a) 1997 c.51.

(7) In making any decision under section 49F of the Act, the Health Authority shall take into account the effect of all relevant incidents and offences relating to the dentist of which they are aware, whichever condition they rely on.

(8) When making a decision on any condition in section 49F of the Act, the Health Authority shall state in their decision on which condition (or conditions) in section 49F they rely.

Cases where the Health Authority must remove a dentist

8C.—(1) The Health Authority must remove a dentist from their dental list where they become aware that he—

(a) has been convicted in the United Kingdom of murder;

(b) after 13th December 2001 has been convicted in the United Kingdom of a criminal offence and has been sentenced to a term of over six months.

(2) The Health Authority shall notify the dentist immediately that he has been removed from the list.

Notifications by Health Authorities

8D.—(1) Where a Health Authority—

(a) refuse to include a dentist under regulation 5ZA;

(b) remove a dentist under section 49F of the Act;

(c) contingently remove a dentist under section 49G of the Act; or

(d) suspend a dentist under section 49I or 49J of the Act,

they shall notify the persons or bodies listed in paragraph (2), and shall notify those listed in paragraph (3) if so requested, of the matters set out in paragraph (4).

(2) Where paragraph (1) applies, a Health Authority shall notify—

(a) the Secretary of State;

(b) any Health Authority in England that has the dentist on any of their lists, or is considering an application for inclusion in any of their lists by such a dentist;

(c) the Scottish Executive;

(d) the National Assembly for Wales;

(e) the Northern Ireland Executive;

(f) the General Dental Council or any other appropriate regulatory body;

(g) the Dental Practice Board;

(h) any other organisation that, to the knowledge of the Health Authority, employs or uses the services of the dentist in a professional capacity;

(i) where it is a fraud case, the National Health Service Counter Fraud Service.

(3) Where paragraph (1) applies, the Health Authority shall notify any body that can establish that it is considering employing the dentist in a professional capacity, if they receive a written request (including an electronic request) to do so.

(4) The matters referred to in paragraph (1) are—

(a) identifying details of the dentist;

(b) his professional registration number;

(c) the date, and a copy of, the decision of the Health Authority;

(d) a contact name of a person in the Health Authority for further enquiries.

(5) The Health Authority shall send to the dentist concerned a copy of any information about him provided to the persons or bodies specified in paragraph (2) or (3) and of any correspondence with those persons or bodies.

(6) Where a Health Authority have notified any of the persons or bodies mentioned in paragraph (2) or (3) of the matters set out in paragraph (4), they may in addition, if so

requested by that person or body, notify that person or body of any evidence that was considered, including representations made by the dentist.

(7) Where a Health Authority are notified by the FHSAA that it has imposed a national disqualification on a dentist whom the Health Authority have removed from their list, they shall notify the persons or bodies mentioned in paragraph (2)(b), (g), (h) and (i) and paragraph (3).

(8) Where a decision is changed on review or appeal, or a suspension lapses, the Health Authority shall notify any person or body that was notified of the original decision of the new facts.

Procedure on removal

8E.—(1) Where a Health Authority are considering, in relation to the dental list—

(a) removing a dentist under section 49F of the Act (other than in cases specified in regulation 8C),

(b) contingently removing a dentist under section 49G of the Act, or

(c) removing a dentist for breach of a condition imposed by regulation 5ZD,

they shall follow the procedure set out in paragraphs (3) to (8) below.

(2) Where a Health Authority are notified by the FHSAA that it has considered—

(a) an appeal by a dentist against a contingent removal by the Health Authority and has decided to remove him instead; or

(b) an appeal by a dentist against a conditional inclusion, where the dentist has been conditionally included in the list until the appeal has been decided, and has decided not to include him,

the Health Authority shall remove the dentist and shall notify him immediately that they have done so.

(3) Before reaching a decision of the type mentioned in paragraph (1), the Health Authority shall—

(a) give the dentist notice in writing of any allegation against him;

(b) give the dentist notice of what action the Health Authority are considering and on what grounds;

(c) give him the opportunity to make written representations to the Health Authority within 28 calendar days of the date of the notification under sub-paragraph (b);

(d) give him the opportunity to put his case at an oral hearing before the Health Authority, if he so requests within the 28 day period mentioned in sub-paragraph (c).

(4) If the dentist makes no representations within the period specified in paragraph (3), the Health Authority shall inform him of their decision, the reasons for it (including any facts relied on), and of any right of appeal.

(5) If the dentist makes representations, the Health Authority must take them into account before reaching their decision and notifying the dentist of their decision, the reasons for it (including any facts relied on), and of any right of appeal.

(6) If the dentist requests an oral hearing, this must take place before the Health Authority reach their decision and the Health Authority must then notify the dentist of their decision, the reasons for it (including any facts relied on), and of any right of appeal.

(7) When the Health Authority notifies the dentist of any decision, they shall inform him that if he wishes to exercise his right of appeal, he has 28 days from the date of the decision to do so, and tell him how to do so.

(8) The Health Authority shall also notify the dentist of his right to have the decision reviewed in accordance with section 49L of the Act.

Procedure on suspension

8F.—(1) Before reaching a decision to suspend a dentist under section 49I or 49J, the Health Authority shall—

(a) give him notice in writing of any allegation against him,

(b) give him notice of the action they are considering taking and on what grounds, and

(c) give him the opportunity to put his case at an oral hearing before the Health Authority on a specified day, provided that at least 24 hours' notice of the hearing is given.

(2) If the dentist does not wish to have an oral hearing or does not attend the oral hearing, the Health Authority shall inform him of their decision and the reasons for it (including any facts relied on).

(3) If an oral hearing takes place, the Health Authority shall take into account any representations made by the dentist before they reach their decision.

(4) The Health Authority shall notify the dentist of their decision and the reasons for it (including any facts relied on), and may suspend the dentist with immediate effect following the hearing.

Procedure on review of Health Authority decision

8G.—(1) If a Health Authority decide to review their decision to conditionally include, contingently remove, or suspend a dentist under section 49I or 49J of the Act, they shall—

(a) notify him in writing that they intend to review their decision;

(b) notify him of what action they have in mind and the reasons for it;

(c) give him the opportunity to make written representations to them within 28 days of the date of the notification given under sub-paragraph (b);

(d) give him the opportunity to put his case at an oral hearing before the Health Authority if he requests one within the 28 day period mentioned above; and

(e) after any hearing or on completion of the review, notify him of their decision and the reasons for it (including any facts relied on).

(2) If the dentist makes representations, the Health Authority must take them into account before reaching their decision and notifying the dentist of their decision and the reasons for it (including any facts relied on).

(3) If the dentist requests an oral hearing, this must take place before the Health Authority reach their decision and the Health Authority must then notify the dentist of their decision and the reasons for it (including any facts relied on).

(4) When the Health Authority notifies the dentist of any decision, they shall inform him of any right of appeal, that he has 28 days from the date of the decision to exercise that right if he wishes to do so, and tell him how to do so.

(5) The Health Authority shall also notify the dentist of his right to have the decision further reviewed in accordance with section 49L of the Act.

National Disqualification

8H.—(1) The period for review shall be the different period specified below instead of that in section 49N(8) of the Act where the circumstances are that—

(a) on making a decision to impose a national disqualification, the FHSAA states that it is of the opinion that the criminal or professional conduct of the dentist is such that there is no realistic prospect of a further review being successful if held within the period specified in section 49N(8)(a), in which case the reference to "two years" in that provision shall be a reference to five years;

(b) on the last review by the FHSAA of a national disqualification the dentist was unsuccessful and the FHSAA states that it is of the opinion that there is no realistic prospect of a further review being successful if held within a period of three years beginning with the date of its decision on that review, in which case the reference to "one year" in section 49N(8)(b) shall be a reference to three years;

(c) the FHSAA states that it is of the opinion that because a criminal conviction considered by the FHSAA in reaching its decision has been quashed or the penalty reduced on appeal, there is a need for an immediate review, in which case the

reference to "two years" or "one year" in section 49N(8) shall be a reference to the period that has already lapsed;

(d) where the FHSAA is of the opinion that because the decision of a licensing or regulatory body has been quashed or the penalty reduced on appeal, there is a need for an immediate review, in which case the reference to "two years" and "one year" in section 49N(8) of the Act shall be a reference to the period that has already elapsed.".

Amendment of regulation 10

8. In regulation 10 (withdrawal from dental list)—

(a) omit paragraph (2);

(b) immediately before paragraph (3) insert—

"(2A) Where a Health Authority are investigating a dentist—

(a) for the purpose of deciding whether or not to exercise their powers under section 49F, 49G or 49I of the Act,

(b) in order to see whether the dentist has failed to comply with a condition imposed on his inclusion under regulation 5ZD so as to justify his removal from the list; or

(c) who has been suspended under section 49I(1)(a) of the Act,

the dentist may not withdraw from any list kept by any Health Authority in which he is included, except where the Secretary of State has given his consent, until the matter has been finally determined by the Health Authority.

(2B) Where a Health Authority have decided to remove a dentist from a list under section 49F or 49G of the Act, or contingently remove him under section 49G, or remove him for breach of any condition imposed on his inclusion under regulation 5ZD but have not yet given effect to their decision, the dentist may not withdraw from any list kept by any Health Authority in which he is included, except where the Secretary of State has given his consent.

(2C) Where a Health Authority have suspended a dentist under section 49I(1)(b) of the Act, the dentist may not withdraw from any list kept by any Health Authority in which he is included, except where the Secretary of State has given his consent, until the decision of the relevant court or body is known and the matter has been considered and finally determined by the Health Authority."; and

(c) omit paragraph (3).

Amendment of regulation 13

9. In regulation 13 (transfer of continuing care and capitation arrangements)—

(a) in paragraph (1), for "suspended by direction of the Tribunal" substitute "suspended by the Health Authority";

(b) in paragraph (3) for the words from "suspension by direction" to "suspended dentist" substitute "suspension ceases to have effect and the dentist".

Amendment of regulation 24

10. In regulation 24 (entitlement to payments) in paragraph (4)(h) for "by direction of the Tribunal" substitute "by the Health Authority".

Amendments to Part VA of the principal Regulations

11. In Part VA of the principal Regulations**(a)**—

(a) for the heading to that Part substitute "Payments in consequence of suspension or successful appeal";

(a) Part VA was inserted by S.I.1995/3092, regulation 9.

(b) omit regulation 28A (payments to dentists suspended by direction of the Tribunal), and

(c) insert—

"**Payments to dentists suspended by Health Authorities**

28B.—(1) The Board shall make payments to any dentist who is suspended by a Health Authority in accordance with the Secretary of State's determination for the time being in force in relation to such payments.

(2) The Secretary of State shall make the determination in accordance with paragraphs (3) and (4) after consultation with the organisation referred to in regulation 19(1) and it shall be published with the Statement referred to in regulation 19(2).

(3) Subject to paragraph (4), the Secretary of State's determination shall be such as to secure that, as far as reasonably practicable, and after making adjustments for any reduction in expenses, the suspended dentist receives payments at a rate corresponding to his remuneration by virtue of regulation 19 during the 12 months ending with the suspension.

(4) The Secretary of State's determination may include provision that payments in accordance with the determination are not to exceed a specified amount in any specified period.

(5) Regulation 19(3) shall apply to determinations under this regulation as it applies to determinations under that regulation.

(6) Regulation 28 shall apply to payments made under this Part as it applies to payments made under Part V."

Amendments to Schedule 1

12.—(1) Schedule 1 (terms of service for dentists) shall be amended in accordance with the following paragraphs.

(2) In paragraph 2 (incorporation of provisions of Regulations), in sub-paragraph (b)(i), for "FHSA" substitute "Health Authority".

(3) In paragraph 8 (duration and extension of a continuing care arrangement)**(a)** and in paragraph 9 (duration and extension of a capitation arrangement)**(b)** for the wording in head (iii) of sub-paragraph (2)(b) and head (iv) of sub-paragraph (2)(b) respectively, substitute—

"the dentist is suspended and the Health Authority does not within the period of one month beginning with the suspension arrange for it to be transferred to another dentist under regulation 13.".

(4) After paragraph 31G (quality assurance system return)**(c)** insert—

"**Declaration of convictions etc.**

31H.—(1) A dentist shall by 31st March 2002 supply in writing information to the Health Authority as to whether he—

(a) has any criminal convictions in the United Kingdom;

(b) has been bound over following a criminal conviction in the United Kingdom;

(c) has accepted a police caution in the United Kingdom;

(d) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;

(e) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Health Authority;

(f) has been subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world, where the outcome was adverse;

(a) Relevant amending instruments are S.I. 1995/3092 and 1996/2051.
(b) Relevant amending instruments are S.I. 1995/3092 and 1996/2051.
(c) Paragraphs 31A, 31B and 31C were inserted by regulation 5 of S.I.1996/704, paragraph 31D was inserted by regulation 7(4) of S.I.1998/1648 and paragraphs 31E, 31F and 31G were inserted by regulation 5 of S.I.2001/1677.

(g) is currently subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world;

(h) is, to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the National Health Service Counter Fraud Service in relation to any fraud case;

(i) is the subject of any investigation by another Health Authority or equivalent body, which might lead to his removal from any of that Health Authority's lists or equivalent lists;

(j) is, or has been where the outcome was adverse, subject to an investigation into his professional conduct in respect of any current or previous employment;

(k) has been removed, contingently removed, refused admission to, or conditionally included in any list or equivalent list kept by another Health Authority or equivalent body, or is currently suspended from such a list,

and if so, he must give details, including approximate dates, of any investigation or proceedings which were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(2) The dentist shall consent to a request being made by the Health Authority to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, by them into the dentist.

(3) Having supplied the information referred to in paragraph (1), the dentist shall inform the Health Authority within 7 days of the occurrence if he—

(a) is convicted of any criminal offence in the United Kingdom;

(b) is bound over following a criminal conviction in the United Kingdom;

(c) accepts a police caution in the United Kingdom;

(d) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;

(e) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in England and Wales, would constitute a criminal offence;

(f) is notified by any licensing or regulatory body anywhere in the world, of the outcome of any investigation into his professional conduct, and there is a finding against him;

(g) becomes the subject of any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world;

(h) becomes subject to an investigation into his professional conduct in respect of any current or previous employment, or is notified of the outcome of such an investigation and any finding against him;

(i) becomes the subject of any investigation by the National Health Service Counter Fraud Service in relation to a fraud case or is notified of the outcome of such an investigation where it was adverse;

(j) becomes the subject of any investigation by another Health Authority or equivalent body, which might lead to his removal from any of that Health Authority's or equivalent lists;

(k) is removed, contingently removed, suspended, refused admission to, or conditionally included in any list kept by another Health Authority or equivalent list kept by an equivalent body,

and if so, he must give details, including approximate dates, of any investigation or proceedings which were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(4) Where paragraph (3) applies, the dentist shall consent to a request being made by the Health Authority to any employer or former employer, licensing, regulatory or other body

in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, by them into the dentist.

Applications to other lists

31J. A dentist shall inform the Health Authority if he applies to be included in any list held by another Health Authority or any equivalent list held by an equivalent body, and of the outcome of any such application.".

(5) In paragraph 35 (deputies and assistants) for sub-paragraph (10A)**(a)** substitute—

"(10A) A dentist shall not employ as a deputy or assistant for the purposes of the provision of general dental services any dentist who is—

(a) the subject of a national disqualification, or

(b) suspended or suspended nationally.".

Amendments to Schedule 2, Part I

13.—(1) Schedule 2, Part I (information and undertaking to be included in an application for inclusion in the dental list)**(b)** shall be amended in accordance with the following paragraphs.

(2) After paragraph 5A insert**(c)**—

"**5B.** Information on whether—

(a) he has any criminal convictions in the United Kingdom;

(b) he has been bound over following a criminal conviction in the United Kingdom;

(c) he has accepted a police caution in the United Kingdom;

(d) he has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;

(e) he is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Health Authority;

(f) he is currently, or has been where the outcome was adverse, subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world;

(g) he is to his knowledge, or has been where the outcome was adverse, subject to any investigation into his professional conduct in respect of any current or previous employment;

(h) he is currently, to his knowledge, or has been where the outcome was adverse, subject to an investigation by the National Health Service Counter Fraud Service in relation to a fraud case;

(i) is the subject of an investigation by another Health Authority or equivalent body which might lead to his removal from any of that Authority's lists or equivalent lists,

and if so, he must give details, including approximate dates, of any investigation or proceedings which were or are to be brought, the nature of that investigation or proceedings, and any outcome.".

(3) For paragraph 8 substitute—

"**8.** An undertaking to—

(a) be bound by the terms of service;

(b) notify the Health Authority within 7 days of any material changes to the information provided in the application until the application is finally determined;

(c) supply the information required by paragraph 31H of Schedule 1; and

(d) provide general dental services in the locality of the Health Authority.".

(a) Inserted by S.I.1995/3092, reg. 10(4)(b).
(b) Relevant amending Regulations are S.I. 1993/2209, 1995/3092 and 1998/1648.
(c) Paragraph 5A was inserted by S.I.1993/2209.

(4) For paragraph 11, substitute—

"**11.** Professional experience (including starting and finishing dates of each appointment with an explanation of any gaps between appointments) an explanation of why he was dismissed from any post, and any additional supporting particulars.

11A. The names and addresses of two referees who are willing to provide clinical references for the last two clinical posts where the employment lasted for a continuous period of at least three months, and where this is not possible, a full explanation and the names and addresses of alternative referees.".

(5) For paragraph 14 substitute—

"**14.** Whether he—

(a) is or has ever been subject to a national disqualification,

(b) has ever been removed or contingently removed from a list held by a Health Authority or by an equivalent body from an equivalent list,

(c) has been refused admission to or conditionally included in a Health Authority list or equivalent list, with an explanation as to why, or

(d) is suspended.".

(6) After paragraph 16 add—

"**17.** Consent to the Health Authority requesting from any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, information relating to a current investigation, or an investigation where the outcome was adverse, by them into the dentist.".

Savings

14.—(1) Notwithstanding the amendments made to the principal Regulations by the regulations listed in paragraph (2) ("the listed amendments"), where by virtue of regulation 6(3) of the Abolition of the Tribunal Regulations a case continues before the Tribunal after 31st October 2001, the listed amendments shall not apply to a dentist in relation to his case until such time as the case has concluded and the time for making an appeal has ended, or any appeal has been withdrawn, or he has exhausted his rights of appeal, as the case may be.

(2) For the purposes of paragraph (1) the listed amendments are those made by—

(a) regulation 2(1)(d);

(b) regulation 3;

(c) regulation 6(a);

(d) regulation 8(a);

(e) regulation 9;

(f) regulation 10;

(g) regulation 11(b); and

(h) regulation 12(3).

Signed by authority of the Secretary of State for Health

John Hutton
Minister of State,
Department of Health

22nd November 2001

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service (General Dental Services) Regulations 1992 ("the principal Regulations"), which regulate the terms on which dentists provide general dental services under the National Health Service Act 1977 ("the 1977 Act"), in order to implement certain provisions of the Health and Social Care Act 2001 ("the 2001 Act").

Regulation 2 inserts additional definitions into regulation 2 of the principal Regulations.

Regulation 3 amends regulation 4 (dental list) to exclude dentists subject to a national disqualification from being included in a dental list.

Regulation 4 amends regulation 5 (application for inclusion in the dental list) of the principal Regulations, principally to take account of provisions in the new regulation 5ZB (deferment of decision) and 5ZD (conditional inclusion) inserted by regulation 5.

Regulation 5—

inserts a new regulation 5ZA into the principal Regulations, which sets out the grounds on which a Health Authority may or must refuse to include a dentist in the dental list and the criteria to which they must have regard;

inserts a new regulation 5ZB into the principal Regulations, which sets out the circumstances in which a Health Authority may defer consideration of a decision to include a dentist in a dental list and the procedure to be followed;

inserts a new regulation 5ZC into the principal Regulations, allowing for an appeal to the FHSAA against a decision of a Health Authority to refuse to include a dentist's name in a list;

inserts a new regulation 5ZD into the principal Regulations, to provide for a Health Authority to impose conditions when it includes a dentist in a dental list, to enable a Health Authority to review such conditions and to remove dentists for breach of a condition; there is an appeal to the FHSAA against a decision of a Health Authority relating to conditional inclusions.

Regulation 6 makes minor amendments to regulation 8 (removal from dental list).

Regulation 7 inserts new regulations 8A to 8H, which give effect to powers in sections 49F to 49R of the 1977 Act, inserted by section 25 of the 2001 Act;

regulation 8A extends the definition of a "health scheme" in section 49(8) of the 1977 Act;

regulation 8B sets out the criteria the Health Authority must take into account when exercising their discretionary powers of removal under section 49F of the 1977 Act;

regulation 8C sets out the grounds for mandatory removal by the Health Authority of a dentist from the dental list;

regulation 8D provides for a Health Authority to notify specified persons of specified information relating to decisions to remove or suspend a dentist from the dental list;

regulation 8E provides the procedure to be followed by Health Authorities on removal of a dentist from the dental list;

regulation 8F provides the procedure to be followed by Health Authorities on suspension of a dentist from the dental list;

regulation 8G provides the procedure to be followed by Health Authorities where the Health Authority decide to review a decision to conditionally include, conditionally remove or suspend a dentist from the dental list;

regulation 8H amends the statutory period for review set out in section 49N of the 1977 Act in specified circumstances.

Regulation 8 amends regulation 10 (withdrawal from dental list) of the principal Regulations to prevent a dentist withdrawing from the dental list, without the consent of the Secretary of State, when the Health Authority are investigating to see whether there are grounds for removal or suspension from the dental list, or whether a dentist has failed to comply with a condition imposed on his inclusion so as to justify his removal.

Regulation 9 amends regulation 13 (transfer of continuing care and capitation arrangements) and regulation 10 amends regulation 24 (entitlement to payments) of the principal Regulations to take account of the abolition of the NHS Tribunal and the suspension provisions of sections 49I and 49J of the 1977 Act inserted by section 25 of the 2001 Act.

Regulation 11 amends Part VA of the principal Regulations, to provide payments to dentists suspended by Health Authorities under powers in section 49I of the 1977 Act inserted by section 25 of the 2001 Act, section 49E of the 1977 Act being repealed by the 2001 Act, Schedule 5, paragraph 5. Regulation 11 also inserts a new regulation 28C into the principal Regulations providing for a Health Authority to make payments to a dentist whose appeal against a decision by the FHSAA to remove him from the dental list is successful.

Regulation 12 amends Schedule 1 to the principal Regulations (terms of service for dentists), to take account of the abolition of the NHS Tribunal, to impose new requirements on a dentist to supply information and make a declaration to the Health Authority in relation to criminal convictions and investigations into professional conduct. Provision is also made in the inserted paragraph 31H to consent to the disclosure of information, and to keep the Health Authority informed of relevant changes.

Regulation 13 amends Schedule 2, Part I (information and undertaking to be included in an application for inclusion in the dental list) to the principal Regulations broadly corresponding to the provisions inserted by regulation 12, and requiring additional information to be provided about professional experience, and the names and addresses of two referees. The undertaking given under paragraph 8 is extended to require the dentist to undertake to inform the Health Authority of any changes to the information provided with the application, and to continue to supply information to the Health Authority once included. New paragraph 17 requires the dentist to consent to a request being made to a licensing, regulatory or other body in the United Kingdom or elsewhere, about any decision in relation to an application to be included in a list.

Regulation 14 makes savings provisions in relation to cases which by virtue of regulation 6(3) of the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2001 continue before the NHS Tribunal after 2001.

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