EXECUTIVE NOTE

The National Health Service (General Dental Services) (Scotland) Amendment Regulations 2006 S.S.I. 2006/137

The above instrument is made in exercise of the powers conferred by sections 25(1) and (2), 28A, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978 ("the 1978 Act"). The instrument is subject to negative procedure.

Policy Objective

The purpose of this instrument is to amend the National Health Service (General Dental Services) (Scotland) Regulations 1996 (S.I 1996/177) ("the 1996 Regulations") to:

- provide for the introduction of a deprived area allowance;
- allow the coming into effect date of Determinations contained within the Statement of Dental Remuneration to be backdated;
- allow NHS Boards to request information from dentists on their provision of general dental services;
- provide that where an appeal against a decision of the Scottish Dental Practice Board is in respect of orthodontic treatment then the appeals panel must include an orthodontist;
- extend the periods of continuing care and capitation from the current 16 months to 36 months;
- provide that where a dentist intends to terminate a continuing care or capitation arrangement then he/she must give the NHS Board 3 months notice of the termination;
- allow dentists to refer patients, with their agreement, for care and treatment by a dental student as part of the student's training;
- to prevent dentists from claiming a free or otherwise imposing conditions on a patient in exchange for treating that patient under general dental services;
- make consequential regulatory amendments as a result of amendments to the 1978 Act made by in the Smoking, Health and Social Care Act 2005.

Regulation 22 of the 1996 Regulations sets down the matters to be included in the Statement of Dental Remuneration (SDR). Regulation 2(4)(a) includes a new matter in regulation 22 in respect of a deprived area allowance. This will allow payment of an allowance to dentists who work in specific deprived areas in Scotland. Regulation 2(4)(b) of the instrument provides for the coming into force date of matters contained in the SDR so that where required they can be backdated, provided that backdating will not be detrimental to dentists.

Regulation 2(7) of the instrument extends regulation 34 of the 1996 Regulations to make it a requirement that a dentist, on request by the NHS Board, must provide information on his provision of general dental services. The NHS Board can request such information at no less than six monthly intervals.

Regulation 34A of the 1996 Regulations provides for appeals by dentists or patients against decisions of the Scottish Dental Practice Board concerning treatment or intended treatment under general dental services, fees in respect of provision or intended provision of general dental services and prior approval due to a dentist's pattern of treatment. Regulation 2(8) of

the instrument provides that where an appeal panel is convened to consider any appeal and the appeal is in connection with orthodontic treatment then one of the dentists on the appeal panel must be an orthodontist on the Specialists List of Orthodontists maintained by the General Dental Council. It also provides that any such appeal panel should include a Chairperson who is not a dentist and who may be legally qualified.

Paragraphs 8 and 9 of Schedule 1 to the 1996 Regulations provide that a continuing care or capitation arrangement will lapse at the end of 16 months if the arrangement is not extended during the currency of the arrangement, ie once in the 16 month period. Regulation 2(9)(a) and (b) of the instrument extend the period at which a continuing care or capitation arrangement will lapse from the current 16 months to 36 months.

Paragraph 11 of Schedule 1 to the 1996 Regulations provides that where a dentist intends to terminate a continuing care or capitation arrangement with a patient then he must give that patient 3 months' written notice of the termination, unless the NHS Board agrees to a shorter period of notice. Regulation 2(9)(c) of the instrument provides that a dentist must also give the NHS Board 3 months' written notice of his intention to terminate a continuing care or capitation arrangement.

Regulation 2(9)(d) of the instrument includes a new paragraph 12A in Schedule 1 to the 1996 Regulations to provide that a dentist can refer a patient, with the patient's consent, for care and treatment by a person studying for a qualification in dentistry, dental therapy or dental hygiene.

Paragraph 19 of Schedule 1 to the 1996 Regulations provides for the circumstances in which a dentist cannot claim a fee from patients receiving general dental services. Regulation 2(9)(e) of the instrument inserts a new sub-paragraph (da) to make it a breach of a dentist's NHS terms of service if he claims a fee, accepts payment of a fee or otherwise sets conditions which a patient must agree to in order for that patient to be accepted for treatment under general dental services.

Paragraphs (1A) and (1B) of Regulation 4 are amended where they have references to sections of the 1978 Act relating to the NHS Tribunal.

Currently an NHS Board may only refer a list applicant to the Tribunal in a fraud case. The provisions in the Smoking, Health & Social Care (Scotland) Act will enable a Board to refer to the Tribunal, where relevant, a dentist applying to join its dental list in future on grounds of fraud, prejudice to efficiency or unsuitability by reason of professional or personal misconduct. Sub-paragraph (d) of Regulation 4(1A) is amended accordingly.

A new paragraph (1C) is inserted into regulation 4 to:

- require an NHS Board to refuse entry or remove a dentist from its dental list where the dentist has already been the subject of a similar decision in England, Wales or Northern Ireland; and

- enable a Board to impose conditions on the provision of GDS in cases where a dentist wishes to be included on its dental list and he or she has had conditions relating to his or her inclusion on an equivalent list imposed already in England, Wales or Northern Ireland.

The Board may modify the conditions as required to suit Scottish circumstances, provided the dentist concerned has been given an opportunity to make representations about these. Definitions of certain terms used in (1C) - "corresponding decision", "equivalent body" and "equivalent list" - are inserted into regulation 2(1). New paragraph (1C) is inserted in consequence of the repeal of section 31.

It is Executive policy that no practitioner should work in family health services (FHS) in any area of Scotland in future where he or she is not on an NHS Board list. Paragraph (5) of regulation 32 does not fit with this since it provides for payments made to a dentist subject to suspension to be reduced to take account of any payments made to him or her while wording in GDS as a non-principal i.e. while unlisted. It is accordingly repealed.

In light of the above policy, the power of the Tribunal to declare that a person subject to disqualification is not fit to work in FHS in any capacity will no longer be required. Paragraph 35(11)(b) of Schedule 1 is amended accordingly.

Consultation

No consultation has taken place on the preparation of this instrument but the professional representative body has been made aware of its contents.

The new provision concerning breach of a dentist's terms of service where he or she claims a fee, accepts payment of a fee or otherwise sets conditions which a patient must agree to in order for that patient to be accepted for treatment under general dental services has been inserted as a result of requests for action by the Executive from a number of NHS Boards, members of the public and one dental defence body. Cases have been reported where patients have been asked to pay a "pre-registration" fee to go on practices' waiting lists for NHS treatment and where also dentists have agreed to treat children under GDS only where their parents agree to be treated privately.

Amendments to the NHS Tribunal regime were proposed in the consultation paper "Further Measures to Improve the Provision of Primary Care Services" (http://www.scotland.gov.uk/consultations/health/fmippc-00.asp) which was issued in March 2004 to a wide range of interests. The major proportion of respondees voiced support for the proposals.

Financial Effects

It is anticipated that there may be a small increase in the number of cases being referred to the NHS Tribunal as a result of the changes to the Tribunal regime provided for in the Smoking, Health & Social Care (Scotland) Act 2005. Referrals to the Tribunal will however remain rare events. Boards will pay the costs of referral from their existing allocations and the Executive will pay the costs of the Tribunal members and Chair. Dentists may pay a yearly fee for indemnity cover for a defence body.

Consolidation

The Executive is aware of the desirability of consolidating regulations when an instrument has been amended on a number of occasions. However, the time and resources required to

consolidate an instrument has to be balanced against the other demands being made on the Department. Bearing those demands in mind, it has been decided not to consolidate these particular regulations nor are there any immediate plans to do so.

SCOTTISH EXECUTIVE HEALTH DEPARTMENT
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