

DRAFT

To: Business Committee

From: Dr Brian Gibbons AM

Explanatory Memorandum:

The NHS (Performers Lists) (Wales) (Amendment) Wales Regulations 2006

Summary:

The Regulations amend the National Health Service (Performers Lists) (Wales) Regulations 2004 which provide for lists of persons performing primary medical services to be kept by Local Health Boards. The Regulations insert a new Part 4 in relation to Dental Performers Lists. Provision of primary dental services under a General Dental Services contract, a Personal Dental Services agreement or by the LHB itself requires the dental performer to be included in a performers list kept by an LHB.

1. This memorandum is submitted to the Assembly's Business Committee in relation to The NHS (Performers Lists) (Wales) (Amendment) Wales Regulations 2006 in accordance with Standing Order 24.6.
2. A copy of the final version of the draft Regulations is submitted with this draft Memorandum.

Enabling power:

3. The National Health Service (General Dental Services) Regulations 1992 (the 1992 Regulations) provide for the "listing" of dental practitioners considered by the Local Health Board (LHB) to be suitable to provide general dental services. When primary dental services under the 2003 Act are established on 1 April 2006 the 1992 Regulations will be revoked.
4. The 2003 Act inserts into the 1977 Act new section 28X, which provides for lists of persons performing primary medical and dental services. The National Health Service (Performers Lists) (Wales) Regulations 2004 provide for the listing of medical performers of primary medical services. The National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2006 (the Performers Lists Regulations) amend the principal regulations to include dental performers on similar terms to medical performers.
5. The principal regulations provide for refusal to include, conditional inclusion, contingent removal and suspension from the relevant performers list and for application for disqualification.

Effect:

6. The Shipman Enquiry reported in 2002 but the UK and Welsh Assembly Governments acted before then to take powers to ensure that medical, dental, ophthalmic and pharmaceutical lists held by LHBs included all practitioners who work under NHS arrangements in primary care. The relevant "lists" include practitioners considered suitable to be engaged in the provision of the relevant service under Part 2 of The National Health Service Act 1977 (the 1977 Act).

7. The Health and Social Care (Community Health and Standards) Act 2003 (the 2003 Act) provides the legislative framework for the establishment of primary dental services.

8. From 1 April 2006 it is intended to establish General Dental Services contracts and Personal Dental Services agreements for high street dentists to provide primary dental services. Primary dental services are dental services provided under a GDS contract, a PDS agreement or by the LHB itself.

9. To perform primary dental services, dentists must be included in a performers list of an LHB and meet the conditions prescribed in the Performers Lists Regulations. The Regulations set out the information which must be provided and the declarations a dentist must make to be included in a list. The regulations make other prescribed conditions which must be met, for example completion of a period of vocational training.

10. The listing regime includes provisions in relation to the conditional inclusion in a list, suspension from the list, contingent removal and disqualification. A national disqualification can be determined by the Family Health Services Appeal Authority established by section 49S of the 1977 Act.

Target implementation:

11. It is intended that the proposed Regulations should be made on 28 March 2006 and come into force on 1 April 2006.

Financial implications

12. A full Regulatory Appraisal is attached to this Memorandum.

13. The Dental Practice Board (DPB) is currently responsible for all payments to, and monitoring of, dentists providing services under the current GDS. The DPB is to be replaced by the NHS Business Services Authority (BSA) in 2006. The intention is that the BSA will be used in the same way in the new regime as in the old i.e. to pay and monitor providers of dental services. This will significantly reduce the impact on the public sector.

14. It is planned to delegate LHBs' administrative functions in relation to GDS Contracts and PDS Agreements to the BSA. The BSA will verify patient charges and provide the LHB with regular monitoring information. LHBs' administrative costs should not increase significantly.

15. As a by-product of this monitoring information the BSA will be able to provide information for LHBs about performers in its area and to contractors employing the performers in which LHB list the performers name is included.

Regulatory appraisal:

16. A Regulatory Appraisal has been carried out in relation to these draft Regulations and is attached.

Consultation with stakeholders:

17. The Regulations form part of the wider reform of NHS dental services which has been discussed with the dental profession on an England and Wales and Wales only basis. Consultation on the main enabling Regulations, along with accompanying guidance, has been aimed at dentists, including representative bodies such as British Dental Association Wales (BDA Wales), and LHB Directors of Primary Care who have an interest and responsibility for negotiating the new contract values and for managing the new system of local dental commissioning. In addition these Regulations have been published on the Welsh Assembly Government website and details included in updates sent to all dentists and LHBs in Wales.

Consultation with Subject Committee:

18. The draft Regulations were notified to the Health and Social Services Committee at its meeting on 3 November 2005 (HSS(2)-11-05(p.7) and were identified for scrutiny. This took place on 1 February 2006.

19. (To be completed after 1 February).

Recommended procedure:

20. Subject to the views of the Business Committee I recommend that the Regulations continue to proceed to Plenary under the standard procedure.

Compliance:

21. The proposed Regulations will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 Section 120);
- be compatible with the Assembly's scheme for sustainable development (Section 121);
- be compatible with Community law (Section 106);
- be compatible with the Assembly's human rights legislation (Section 107);
- be compatible with any international obligations binding the UK Government and the Assembly (Section 108).

22. The information in this memorandum has been cleared with the Directorate of Legal Services (DLS) and the Assembly Compliance Officer (ACO).

23. Drafting lawyer: Sarah Wakeling, ext. 3754.

24. Head of Division: John Sweeney, ext. 3570.

25. Drafting policy official: Andrew Powell-Chandler, ext. 1689.

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