

Number: WG27743



Llywodraeth Cymru
Welsh Government

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Consultation Document

The draft Private Dentistry (Wales) Regulations 2016

We are seeking your views on major changes to the way that dentists and their teams who provide private dental services are regulated.

Date of issue: 29 January 2016

Action required: Responses by 22 April 2016

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

The Welsh Government is proposing to create a new, more effective regime for the regulation of private dental practices. This consultation seeks the views of patients, the public, dental team members who provide private dentistry and other stakeholders on the major changes to the way that dentists and their teams who provide private dental services are regulated.

This consultation relates to the draft Private Dentistry (Wales) Regulations 2016 (“the 2016 Regulations”). The regulations which currently govern private dentists are the Private Dentistry (Wales) Regulations 2008 (as amended in 2011) (“the 2008 Regulations”). We now propose to introduce new Regulations and would like to consult on these.

Private dental services provided by dentists working in NHS hospitals are not regulated by the 2008 Regulations. Those dentists must comply with NHS standards and NHS hospitals are subject to Healthcare Inspectorate Wales (HIW) inspection.

Private dental services provided by dentists working solely in independent hospitals are also not regulated by the 2008 Regulations because the persons who carry on or manage independent hospitals are regulated by the Independent Health Care (Wales) Regulations 2011 and the hospitals are subject to HIW inspection.

The 2008 Regulations:

- require individual dentists who provide private dental services to register with HIW;
- do not include the standard of quality and safety requirements required of NHS dental practices;
- do not require Dental Care Professionals (DCPs) (such as dental hygienists) to register with HIW to provide private direct access services from their own practice;
- require dentists who provide private dental services to have more frequent Disclosure and Barring Service (DBS) checks than dentists and doctors who provide NHS care under the National Health Service (Performers Lists) (Wales) Regulations 2004 (as amended) (“the NHS Performers Lists Regulations”); and
- The dentist who provides private dental services needs to register under the 2008 Regulations. If a laser is used for any dental treatment the practice must also register under the Independent Health Care (Wales) Regulations 2011.

Under the proposed new system:

- the person who carries on or manages the dental practice where private dental services are provided will be required to register with HIW. In effect this will mean that the practice as a whole is registered with HIW and subject to the 2016 Regulations;
- DCPs who provide private direct access dental treatment from their own premises will be required to register their practice with HIW and the practice will be subject to the 2016 Regulations;
- dental practices where private dental services are provided will be required to have quality and safety arrangements in place which are more consistent with those required by the NHS;
- requirements for DBS checks will be aligned with those required by the NHS and will also include checks for other members of the dental team such as dental nurses, dental hygienists and dental therapists; and
- a person who carries on or manages a private dental practice in which lasers are used will only be required to register under the 2016 Regulations.

It is planned that the 2016 Regulations will come into force during July 2016. There will be a period of no more than one year for dental practices to apply to register with HIW, although private DCP direct access practices which are not currently registered should register as soon as the Regulations come into force.

How to respond

The closing date for responses is Friday 22 April 2016. You can respond to this consultation by completing the Consultation Response Form.

Your responses should be returned either electronically or by post to:

Email: dentalconsultation@wales.gsi.gov.uk

Post:

Dental Policy
Primary Care Division
Directorate for Health Policy
Welsh Government
Cathays Park
Cardiff CF10 3NQ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

You can read the current Private Dentistry (Wales) Regulations 2008 and the Private Dentistry (Wales) (Amendment) Regulations 2011 [here](#).

In addition HIW inspects dental practices which provide any private dental treatment (see s31(3) Care Standards Act 2000). HIW conducts these inspections at least every 3 years.

HIW inspects practices against the Health and Care Standards and, where applicable, the legal requirements of the Private Dentistry Regulations 2008.

You can read about the HIW dental inspection process [here](#).

The General Dental Council (GDC) allows certain DCPs to provide treatment to patients by direct access; that is without having to see a dentist first. You can read more about direct access [here](#).

Contact details

For further information:

Dental Policy
Primary Care Division
Directorate of Health Policy
Welsh Government
Cathays Park
Cardiff CF10 3NQ

Email: dentalconsultation@wales.gsi.gov.uk

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address

published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Introduction - What this consultation is about

1. The purpose of this consultation is to seek your views on the draft Private Dentistry (Wales) Regulations 2016 (“the 2016 Regulations”) and their expected regulatory impact. These are set out in the draft Regulatory Impact Assessment (RIA).

2. It is intended that the 2016 Regulations will replace the Private Dentistry (Wales) Regulations 2008 which came into force on 1 January 2009 and were amended in 2011.

What are the main changes?

3. The main changes to the current regulatory regime for private dentists are as follows.

Registration

- The 2008 Regulations will be revoked by the 2016 Regulations and private dentists will no longer be required to register individually with HIW. Instead, the person who carries on or manages the private dental practice will be required to register with HIW under Part 2 of the Care Standards Act 2000 and the practice as a whole will be subject to regulation and inspection by HIW. (Under the 2016 Regulations, a private dental practice is an undertaking which consists of or includes the provision of private dental services, or services by a dental care professional, otherwise than for the NHS).
- Some private dental practices will provide only private dental services while others will provide a mix of private and NHS dental services. As long as the practice offers some private dental services, the person who carries on or manages the practice will be required to register with HIW.
- Private dentistry carried out solely in an NHS hospital or in a hospital regulated under the Care Standards Act 2000 (an independent hospital) will be exempt from regulation under the 2016 regulations.
- At present there is no legal requirement for DCPs to register with HIW to provide private dental care under direct access arrangements. Direct access DCPs can work in a practice with dentists and other members of the dental team or they can work from their own premises without a dentist present. DCPs will no longer be able to provide private direct access dental treatment from their own premises without being subject to regulation and inspection by HIW.
- The General Dental Council (GDC) will continue to register individual dentists and clinical dental team members including DCPs. Therefore the GDC is the UK wide regulatory body for individual dentists and DCPs.

Quality and Safety

- The 2008 Regulations do not specifically identify a number of important quality and safety indicators. This needs to be addressed to ensure greater consistency with NHS dental practice and to ensure that wholly private practices are required to meet recognised quality standards set out in the [Health and Care Standards](#).

- The proposed arrangements include matters relating to:
 - **safeguarding children and adults at risk** – practices will be required to make suitable arrangements, in line with published national procedures, to ensure that patients are safeguarded against the risk of abuse and improper treatment.
 - **staff recruitment, employment and induction** - there are enough staff with the right knowledge and skills available at the right time. They are registered with the relevant bodies and are appropriately recruited, trained, qualified and competent for the work they undertake.
 - **requirements for Continuing Professional Development** - staff are enabled to learn and develop to their full potential. They can take part in activities that maintain or develop knowledge and skills.
 - **seeking feedback from patients** - using patient feedback (for example from questionnaires) to influence changes to service provision and delivery.
 - **provision of domiciliary services** – to follow guidelines on safe care when it is necessary to provide dental care in a person’s own home.
 - **dealing with medical emergencies** - all members of staff know their role if there is a medical emergency; and all members of staff who might be involved in dealing with a medical emergency are trained and prepared to do so.
 - **equality and diversity** – the needs of individuals are recognised and addressed whatever their identity and background. Patients are treated fairly as individuals and without discrimination.

Disclosure and Barring Checks

5. Dentists who want to work in NHS dental practice in Wales must have an enhanced DBS check when they apply to be included in the health board NHS Dental Performers List. They do not require another DBS check unless they move to another health board or unless required by the health board. Under the 2008 Regulations a private dentist registered with HIW must have an enhanced criminal record certificate issued within the last three years. There is no evidence that checks carried out with this frequency are more effective so we propose to align the requirements in the 2016 Regulations with the NHS Performers Lists Regulations. Other members of the dental team such as dental nurses, dental hygienists and dental therapists will also be required to have an enhanced DBS check. They will require another check if they move to a different practice or if the practice ownership changes and it registers with HIW as a different practice.

6. DBS checks will be just one part of safeguarding and the safe running of a practice. Other safeguards under the proposed 2016 Regulations include:

- proper recruitment processes;
- checking references;
- induction and ongoing training in safeguarding; and
- using national guidance on safeguarding and knowing when and how to contact local safeguarding leads.

Use of Lasers

7. A small number of dentists use lasers to provide specialised dental treatment. At present dentists have to register with HIW under the 2008 Regulations to provide private dentistry and under the Independent Health Care (Wales) Regulations 2011 to use lasers. This dual registration is unhelpful since dentists are not required to register separately to use other specialised equipment. We propose to include notification of use of lasers as part of the 2016 Regulations which will considerably simplify the process for dentists who use this equipment. DCPs who are properly trained can also use lasers as long as they are operating within their GDC Scope of Practice.

Fees

8. Individual dentists will no longer be required to pay an annual fee of £75. Instead, an annual fee of £500 will be required for each private dental practice. The proposed annual fee will contribute towards HIW's costs of on-going regulation and inspection. The 2016 Regulations include details of when fees can be refunded, when they will be collected and fees for varying a condition of regulation.

Evidence for Change

9. In *Together for Health: A National Oral Health Plan for Wales 2013-18* the Welsh Government identified a specific proposal to:

“... work with the dental profession to revisit the Private Dentistry regulations and in particular, consider whether and how dental practices – rather than individual dentists – can register to provide private dental care.”

10. The draft 2016 Regulations have been developed with input from representatives from the dental profession, HIW and other key stakeholders.

11. In 2013 the GDC made a decision to allow direct access. This permits certain DCPs particularly dental hygienists, dental therapists and clinical dental technicians to provide appropriate dental care to patients without the patient having to see a dentist first. Under direct access, DCPs must work within the GDC Scope of Practice and be suitably qualified, trained and indemnified for the role. The current regulations allow dentists to register with HIW, but not DCPs. Therefore it is possible for private direct access DCPs to operate their own practice in Wales without registration and without the safeguards registration offers to patients and the practice.

12. There is no evidence that a 3 yearly DBS check provides greater assurance, and it is anomalous with the NHS requirements. DCPs who provide private direct access services from their own premises should have DBS checks when applying for registration with HIW.

13. The proposed fee of £500 is the same as that paid by private general medical practices to register with HIW and is less than that paid by dental practices in England who register with Care Quality Commission (CQC) – currently between £600 and £1300 per annum depending on the size of the practice.

14. Welsh Government will issue guidance for dental teams to accompany the 2016 Regulations. This will support dental teams to comply with the regulations by signposting them to sources of information and support, for example the guidance on Disinfection and Decontamination in primary care dental practices.

What outcomes do we anticipate?

15. We anticipate the outcomes will:

- provide greater equity with NHS quality and safety standards;
- improve alignment between practice registration and practice inspection, providing assurance that the whole dental team is included in the registration and quality standards process;
 - practice registration brings all practice staff under the regulations rather than the dentist(s) alone which reinforces the role that all dental team members have in delivering an effective and safe service;
 - practice registration rather than individual dentist registration will better support the HIW practice inspection and reinforces the requirement for all members of the dental team to actively participate in the inspection process;
- provide assurance that private access DCPs operating from their own premises are subject to the same registration and inspection process as dental practices; and
- increase the limited scope within the 2008 Regulations for HIW to remove a dentist from the private dentist register unless the dentist fails to pay the annual fee. The 2016 Regulations will provide for a dental practice to be removed from HIW register where there are very serious failings in the standards of care and service provided which could adversely affect patient safety.

Regulatory Impact Assessment

16. A draft Regulatory Impact Assessment (RIA) has been prepared to estimate the impact of the proposed 2016 Regulations. The RIA provides an options appraisal and details of the costs and benefits of making the proposed legislation.

17. We would like your views on the draft RIA, particularly on the expected impact on dental practices from the introduction of the 2016 Regulations.

Consultation Response Form

Your name:	
Organisation (if applicable):	
Email:	
Telephone number:	
Your address:	

Consultation Questions

Question 1. Practice Registration			
Do you agree with the change from registration of individual dentists to registration of dental practices which provide any private dentistry?			
Yes		No	
Comments:			

Question 2. Direct access to Dental Care Professionals			
Do you agree that DCPs who provide private direct access dental care in their own premises must register as a private direct access practice with HIW?			
Yes		No	
Comments:			

Question 3. Quality and Safety			
Do you agree with the suggested quality and safety issues covered in the draft regulations?			
Yes		No	
Do you have any suggestions for additional quality and safety issues which should be included in the 2016 Regulations?			

Question 4. Disclosure and Barring Checks			
Do you agree with the change to DBS requirements so that dentists, the practice staff and DCPs who provide direct access services from their own premises must have an enhanced DBS check when the practice registers with HIW?			
Yes		No	
Comments:			
Question 5. Use of Lasers			

Do you agree with the proposal to change the requirements to register use of lasers?			
Yes		No	
Comments:			

Question 6. Fees			
Do you agree with the reasons for increasing the fee to register with HIW?			
Yes		No	
Do you agree with the proposed fee?			
Yes		No	
Comments:			

Question 7. Regulatory Impact Assessment (RIA)			
Do you agree with the estimated costs/benefits regarding the implementation of the 2016 Regulations?			
Yes		No	
Comments:			

Question 8. RIA – expected costs			
Do you have any comments on the expected costs to dental practices/businesses?			
Yes		No	
Comments:			

Question 9. Other comments			
We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please comment below.			
Comments:			

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: