

# GENERAL DENTAL SERVICES STATEMENT OF FINANCIAL ENTITLEMENTS 2013

## TABLE OF CONTENTS

### 1. Introduction

## **PART 1 ANNUAL CONTRACT VALUES**

### 2. Negotiated Annual Contract Values

*NACVs*  
*NACVs where a GDS contract is revised*  
*Annual uprating of NACVs*  
*Annual contract value adjustment*

### 3. Payment of Monthly Annual Contract Value Payments

*Initial value of Monthly ACVPs*  
*Revision of the initial value of Monthly ACVPs*  
*Deductions in respect of NHS charges*  
*Deductions in respect of overpayments etc.*  
*Deductions in respect of LDC levies*  
*Deductions in respect of employee's superannuation contributions*  
*Net value of the contractor's first Monthly ACVPs*  
*Conditions attached to Monthly ACVPs*  
*Monthly Payment Schedule*  
*Annual Reconciliation Report*

### 4. Superannuation contributions

*Employer's superannuation contributions of Dentist Performers*  
*Employee's superannuation contributions and Money Purchase Additional Voluntary Contributions of Dentist Performers*  
*Monthly deductions in respect of employee's superannuation contributions of Dentist Performers who are not Foundation Trainees*  
*End-year adjustments*

## **PART 2 PAYMENTS FOR SPECIFIC PURPOSES**

## 5. Domiciliary services and sedation services

*Agreeing and revising Annual Domiciliary and Sedation Services Payments*  
*Annual uprating of ADSSPs*  
*Initial value of Monthly ADSSPs*  
*Revision of the initial value of Monthly ADSSPs*  
*NHS charges and employee's superannuation contributions*  
*Deductions in respect of overpayments etc.*  
*Net value of the contractor's first Monthly ADSSPs*  
*Conditions attached to Monthly ADSSPs*

## 6. Seniority payments

*Eligibility criteria*  
*Applications for a seniority payment*  
*The percentage calculation and the maximum amount of the Monthly Seniority Payments*  
*Estimates of net monthly Pensionable Earnings*  
*Conditions attached to Monthly Seniority Payments*

## 7. Payments in respect of foundation training

*Eligibility for payments in respect of foundation training*  
*Applications for payments under this Section*  
*Foundation training payments to be made*  
*Conditions attached to foundation training payments*

## 8. Payments in respect of maternity, paternity and adoption leave

*Eligibility for maternity leave payments*  
*Eligibility for paternity leave payments - birth*  
*Eligibility for paternity leave payments - adoption*  
*Eligibility for adoption leave payments*  
*Parental leave for those who have undertaken approved foundation training*  
*Meaning of "Parental Leave Pay Period"*  
*Applications for parental leave payments*  
*Calculation of the amount of parental leave payments and the due date*  
*Conditions attached to parental leave payments*

## 9. Payments in respect of long-term sickness leave

*Eligibility for sickness leave payments*  
*Applications for sickness leave payments*  
*Calculation of the amount of sickness leave payments and the due date*  
*Conditions attached to sickness leave payments*

## 10. Reimbursement of non-domestic rates

*Eligibility for reimbursement of non-domestic rates*  
*Applications for reimbursement of non-domestic rates*  
*Amount of non-domestic rates that may be reimbursed*  
*Conditions attached to payments under this Section*

### PART 3 SUPPLEMENTARY PROVISIONS

## 11. Administrative provisions

*Payment arrangements*  
*Overpayments and withheld amounts*  
*Underpayments and late payments*  
*Payments on account*  
*Time limitation for claiming payments*  
*Payments to or in respect of suspended dentists whose suspension ceases*  
*Effect on periodic payments of termination of a GDS contract*  
*Overpayment and termination of a GDS contract*  
*Dispute resolution procedures*

## 12. Glossary of terms

*Acronyms*  
*Definitions*

### PART 4 TRANSITIONAL REVOCATIONS AND SAVINGS

## 13. Transitional revocation and savings provisions

*Interpretation*  
*Transitional provisions*  
*Revocations and savings*

### Annexes

- 1. The Performer List (Suspended Dentist' NHS Earnings) Determination 2013*
- 2. SDR Determination III – Seniority Payments*

## 1. Introduction

1.1 The Secretary of State for Health makes the following Directions set out in this Statement of Financial Entitlements (“SFE”) in exercise of the powers conferred by sections 103, 272(7) and (8) and 273(1) of the National Health Service Act 2006<sup>a</sup>. In accordance with section 103(4) of the National Health Service Act 2006<sup>b</sup>, the Secretary of State for Health has consulted both with the bodies appearing to the Secretary of State to be representative of persons to whose remuneration these directions relate and with such other persons as the Secretary of State thinks appropriate.

1.2 These Directions may be cited as the General Dental Services Statement of Financial Entitlement Directions 2013 and are referred to in the following Sections and Annexes as this SFE. This SFE relates to the payments to be made by the National Health Service Commissioning Board <sup>c</sup> to a contractor under a general dental services contract.

1.3 The directions set out in this SFE are subordinate legislation for the purposes of section 23 of the Interpretation Act 1978, and accordingly, in this SFE, unless the context otherwise requires—

- (a) words or expressions used both here and in the 2006 Act bear the meaning they bear in the 2006 Act;
- (b) references to legislation (i.e. Acts and subordinate legislation) are to that legislation as amended, extended or applied, from time to time;
- (c) words importing the masculine gender include the feminine gender, and *vice versa* (and words importing the neuter gender also include the masculine and feminine gender); and
- (d) words in the singular include the plural, and *vice versa*.

1.4 This SFE is divided into Sections, Parts, paragraphs, sub-paragraphs and heads. A Glossary of some of the words and expressions used in this SFE is provided in Section 12. Words and expressions defined in that Section are often highlighted by initial capital letters.

1.5 At various points in this SFE, reference is made to a dental practitioner being “employed or engaged” by a contractor. In this SFE, “employed or engaged”, in relation to a dental practitioner’s relationship with a contractor includes, in addition to dental practitioners who have a contract of service or for services with the contractor—

- (a) a dental practitioner who is the contractor;

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<sup>a</sup> 2006 c.41. By virtue of section 271(1) of the National Health Service Act 2006, the powers conferred by these sections are exercisable by the Secretary of State only in relation to England.

<sup>b</sup> Section 103 is amended by section 55 of, and paragraph 45 of Schedule 4 to, the Health and Social Care Act 2012 (c.7) (“the 2012 Act”).

<sup>c</sup> The National Health Service Commissioning Board is established by section 1H of the 2006 Act. Section 1H is inserted by section 9(1) of the 2012 Act.

- (b) a dental practitioner who is a partner in a partnership where that partnership is the contractor; and
- (c) a dental practitioner who is a director, chief executive or secretary of a dental corporation where that dental corporation is the contractor.

**Commencement and application**

1.6 The directions in this SFE are given to the National Health Service Commissioning Board, and apply in relation to England only.

1.7 This SFE is authorised to be given, and by an instrument in writing, on behalf of the Secretary of State for Health, by a member of the Senior Civil Service, on 28th March 2013, and comes into force on 1st April 2013.

1.8 This SFE may be revised at any time, in certain circumstances with retrospective effect.<sup>a</sup>

Signed by authority of the Secretary of State for Health

Elizabeth Lynam  
A Member of the Senior Civil Service  
Department of Health

Date: 28th March 2013

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<sup>a</sup> See section 103(3)(e) of the National Health Service Act 2006. Section 103 is amended by section 55 of, and paragraph 45 of Schedule 4 to, the Health and Social Care Act 2012 (c.7).

# **PART 1**

## **ANNUAL CONTRACT VALUES**

### **2. Negotiated Annual Contract Values**

#### *NACVs*

2.1 Payments under a GDS contract in respect of the agreed number of units of dental activity and orthodontic activity specified in the contract are to be based on a NACV.

2.2 The Board and the contractor must agree, in respect of the first financial year during which a GDS contract has effect, a NACV for the GDS contract, based on the number of units of dental activity and, where applicable, orthodontic activity that the contractor is required to provide under its GDS contract, including where a contractor transfers from providing services under a PDS agreement to providing services under a GDS contract pursuant to regulation 21 of the PDS Agreements Regulations. This paragraph also applies in a case where a PDS agreement from which a contractor has transferred has been varied to include a Capitation and Quality Scheme 2 Agreement.

2.3 If the contractor's GDS contract takes effect for payment purposes after the start of the financial year, the first NACV for that contract (which will relate to the rest of that financial year) must be an annualised amount for calculation purposes, even though only a proportion of that annualised amount will in fact be payable in the first part year.

2.4 Each GDS contract must, by virtue of regulation 16 of the GDS Contracts Regulations, specify the services to be provided by the contractor under the GDS Contract. For the most part, the arrangements for remuneration in respect of those services are to be determined locally.

#### *NACVs where a GDS contract is revised*

2.5 If the number of units of dental activity or, where applicable, orthodontic activity that a contractor is required to provide under its GDS contract is revised, a new NACV will have to be established for that contractor. If the variation takes effect during the financial year, the new or revised NACV for that contract (which will relate to the rest of that financial year) must be an annualised amount for calculation purposes, even though only a proportion of that annualised amount will in fact be payable for the first part year.

#### *Annual uprating of NACVs*

2.6 If –

- (a) at the start of a financial year, a contractor was in receipt of Monthly ACVPs in respect of the last month of the previous financial year which were based on a NACV; and
- (b) the number of units of both dental activity and, where appropriate, orthodontic activity that the contractor is required to provide in the new financial year is unchanged from the previous financial year;

the amount of its NACV for the new financial year is to be up-rated by a percentage amount to be determined by the Secretary of State.

### ***Annual contract value adjustment***

2.7 The percentage determined by the Secretary of State for the financial year commencing on 1st April 2013 is 1.5%.

2.8 It is intended that at the start of each financial year this SFE will be amended so as to include that percentage increase. In practice, these adjustments will be factored into the Monthly Annual Contract Value Payments (“Monthly ACVPs”) by the National Health Service Business Services Authority (“NHS BSA”) on a national basis. The Board must not itself, therefore, adjust the amounts that it has loaded into the NHS BSA’s computerised payment systems by these adjustments.

## **3. Payment of Monthly Annual Contract Value Payments**

3.1 At any point, there should be in respect of each GDS contract a NACV, determined in accordance with Section 2, or for GDS contracts already in place prior to this SFE coming into effect, a NACV determined in accordance with the SFE that was operative at the time that the contract value was negotiated between the parties to the contract. This, in all cases, is to be an annual (or annualised) amount, and is to provide the basis for the calculation of the Monthly ACVPs payable under the contract in respect of the units of dental activity and, where applicable, orthodontic activity that the contractor is required to provide. This NACV or CACV is known as the Actual Annual Contract Value (AACV) of that contract at that point.

### ***Initial value of Monthly ACVPs***

3.2 The first initial value of a contractor’s Monthly ACVPs is to be determined for the date on which its GDS contract takes effect for payment purposes. Once the contractor’s AACV has been established, that amount is to be divided by twelve, and subject to paragraph 3.3, the result is the first initial value of the contractor’s Monthly ACVPs.

3.3 If the contractor’s GDS contract took effect for payment purposes other than on the first day of a month, the initial value of its Monthly ACVPs in respect of the first part-month of its contract is to be produced by dividing–

- (a) the number of days during the month for which the agreement has effect for payment purposes; by
- (b) the total number of days in that month.

3.4 That initial value (expressed as a monthly value, in cases where a contract took effect for payment purposes other than on the first day of the month) will remain the basis for the calculation of the net value of the contractor's Monthly ACVPs, until that initial value is next revised.

#### ***Revision of the initial value of Monthly ACVPs***

3.5 The initial value of a contractor's Monthly ACVPs will have to be revised where, for any reason, its AACV is revised (for example, to take account of annual uprating or where the contractor's specified number of units of dental or orthodontic activity is changed).

3.6 If the contractor's AACV is revised for the start of a month, the new initial value of its Monthly ACVPs (until its AACV is next revised) is its new AACV divided by twelve. If its AACV changes during a month, the initial value of its Monthly ACVPs (until its AACV is next revised) is—

- (a) for the month after the month during which its AACV changed, its AACV divided by 12; or
- (b) for the month during which its AACV changed, the aggregate of the following amounts—
  - (i) the amount produced by dividing the number of days during the month before the change by the total number of days in that month, and multiplying that fraction by the old initial value of the contractor's Monthly ACVPs; plus
  - (ii) the amount produced by dividing the number of days during the month for which the contractor had a new AACV by the total number of days in that month, and multiplying that fraction by the new initial value of the contractor's Monthly ACVPs.

3.7 Once the initial value of a contractor's Monthly ACVPs has been established for any particular month, the Board must go on to establish the net value of the contractor's Monthly ACVPs, which is the amount actually to be paid.

#### ***Deductions in respect of NHS charges***

3.8 Patients in receipt of relevant dental treatment have to pay charges in respect of that treatment under the NHS Charges Regulations, unless they are exempt from paying the charge by virtue of either section 177 of the 2006 Act<sup>a</sup> or the NHS

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<sup>a</sup> Section 177 is amended by section 55(1) of, and paragraph 95 of Schedule 4 to, the 2012 Act.

Charges Regulations. Charges are recoverable under those Regulations in respect of specified types of treatment.

3.9 It is the contractor who collects the NHS charges from those patients. Furthermore, in accordance with its contract condition set by virtue of paragraph 38 (notification of a course of treatment, orthodontic course of treatment etc.) of Schedule 3 to the GDS Contracts Regulations, the contractor is required to make returns of information to the Board within specified time periods about the courses of NHS treatment it provides, and in those returns it has to provide information about whether an NHS charge was payable in respect of that treatment.

3.10 The Board must set the particular date each month by which these paragraph 38 returns of information will be processed. This date is known as the ‘scheduling date’.

3.11 Using the paragraph 38 returns which have been submitted by the contractor since the scheduling date in the previous month, the Board will make a determination of the amount to be deducted that month in respect of NHS charges. These NHS charges should have been collected by the contractor in respect of treatment that has counted or will count towards the number of units of dental activity or, where applicable, orthodontic activity that the contractor is to provide under its GDS contract.

3.12 The Monthly ACVP value produced after that deduction has been made is, subject to paragraph 3.13, the gross value of the contractor’s Monthly ACVPs for that month (i.e. the value before the deduction of employee’s superannuation contributions).

***Deductions in respect of overpayments etc.***

3.13 Deductions may need to be made to the amount determined in accordance with paragraph 3.11 under the administrative provisions in Section 11 of this SFE, to take account of matters such as overpayments. In accounting terms, these deductions may alter the gross value of the Monthly ACVP in question or the gross value of another payment, but either way they will alter the net value of the Monthly ACVP in question.

***Deductions in respect of LDC levies***

3.14 The Board may have recognised a LDC for an area, pursuant to section 113 of the 2006 Act. Where it has done so, that committee will represent the Dentist Performers who are employed or engaged by the contractor. In these circumstances, the Board is entitled, by virtue of section 113(10)(b) of the 2006 Act<sup>a</sup> to deduct an amount, commonly known as the levy, from the payments made to the contractor under its GDS contract in respect of the committee’s expenses<sup>b</sup>. That deduction is to be made so as to reduce the net value of the contractor’s Monthly ACVPs.

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<sup>a</sup> Section 113 is amended by section 55(1) of, and paragraph 53 of Schedule 4 to, the 2012 Act.

<sup>b</sup> In practice, the levy will then be remitted to the LDC by the NHS BSA.

### ***Deductions in respect of employee's superannuation contributions***

3.15 The Dentist Performers who are employed or engaged by the contractor are likely to be members of either the NHS Pension Scheme 1995 or the NHS Pension Scheme 2008, and their Employing Authority for the purposes of that Scheme will, for present purposes, be the Board (they may have employment in another context which also entitles them to an NHS Pension Scheme pension, but the pensionable earnings derived from that employment should be superannuated elsewhere). Unless they are Foundation Trainees, the Dentist Performers' Pensionable Earnings to be derived from that contractor's GDS contract in each financial year will be limited to a specified percentage of the value of that contract for that financial year, net of any parental leave payments, sickness leave payments, foundation trainee salary and national insurance reimbursement payments, non-domestic rates reimbursement payments or Monthly Seniority Payments payable under that agreement<sup>a</sup>. Foundation Trainee's salaries (net of any bonus, expenses or overtime payments) are fully pensionable.

3.16 The Board will need to make all the deductions in respect of employees' superannuation contributions (including Money Purchase Additional Voluntary Contributions (MPAVCs)) that are payable in respect of the Dentist Performers' Pensionable Earnings that derive from each GDS contract that it holds.

3.17 Accordingly, the Board must deduct those contributions from the contractor's Monthly ACVPs (or, in the case of Foundation Trainee's employee's superannuation contributions, from their salary reimbursement payments). The process of calculating and making all these deductions is explained in Section 4. If the Board is an Employing Authority for any Dentist Performer employed or engaged by the contractor, it may also deduct from the contractor's Monthly ACVPs any employee's superannuation contributions (including Money Purchase Additional Voluntary Contributions (MPAVCs)) that the Dentist Performer owes but which have not been superannuated elsewhere, provided that the Board has taken reasonable steps to satisfy itself that no other arrangements have been made to pay those contributions.

### ***Net value of the contractor's first Monthly ACVPs***

3.18 The gross value of a contractor's Monthly ACVPs, minus any necessary deductions as mentioned in paragraphs 3.8 to 3.17, and minus any voluntary deductions (such as contributions to the British Dental Guild<sup>b</sup>), which the contractor has asked to be made, is the net value of the contractor's first Monthly ACVPs, which is the amount actually to be paid. This amount becomes payable on the first working day of the month after the month to which the Monthly ACVP relates.

### ***Conditions attached to Monthly ACVPs***

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<sup>a</sup> It is anticipated that the percentage that the Secretary of State will determine, in accordance with paragraph 3(2B)(b) of Schedule 2 to the NHS Pension Scheme Regulations 1995 or regulation 3.A.7(4) of the NHS Pensions Scheme Regulations 2008, as the percentage for the financial year 2013 to 2014 will be 43.9%. Accordingly, 56.1% of the value of the agreement, less the specified deductions, is deemed to be spent on practice expenses.

<sup>b</sup> British Dental Guild contributions will be apportioned and remitted by the NHS BSA, as required.

3.19 Monthly ACVPs, or any part of such payments, are only payable if the contractor satisfies the following conditions–

- (a) the contractor must make available any information which the Board does not have but needs (including the returns required by virtue of paragraph 38 (notification of a course of treatment, orthodontic course of treatment) of Schedule 3 to the GDS Contracts Regulations), and which the contractor either has or could reasonably be expected to obtain, in order to calculate the contractor’s Monthly ACVPs;
- (b) the contractor must make available to the Board a reasonable estimate of the net monthly Pensionable Earnings (i.e. net of any Pensionable Earnings that are attributable to any Monthly Seniority Payment) of each Dentist Performer who is employed or engaged by it, and must notify the Board of any appropriate changes to that estimate; and
- (c) all information supplied pursuant to or in accordance with this paragraph must be accurate.

3.20 If the contractor breaches any condition of its Monthly ACVPs that is set out in this SFE (including the conditions that are set out in paragraph 3.19), the Board may, in appropriate circumstances, withhold payment of all or any part of a Monthly ACVP that is otherwise payable.

#### ***Monthly Payment Schedule***

3.21 On the due date for Monthly ACVPs, or as soon as reasonably practicable thereafter, the Board must send to the contractor a Monthly Payment Schedule which must include (but not be limited to)–

- (a) the contractor’s AACV;
- (b) the amount of the initial value of the contractor’s Monthly ACVPs, prior to any permitted deductions;
- (c) the amount of permitted deductions, which must be specified in two parts–
  - (i) the amount of the NHS charges that the Board has determined, in accordance with paragraph 3.11, that the contractor should have collected in respect of treatment that has counted or will count towards the number of units of dental activity or, where applicable, orthodontic activity that the contractor is to provide under its GDS contract; and
  - (ii) the amount of any other deductions that need to be made to the Monthly ACVPs under the contract or pursuant to this SFE (for example, the deductions mentioned in paragraphs 3.13 and 3.17), together with the reason for any such deduction;

- (d) the amount of the Monthly ACVP following the permitted deductions;
- (e) any other payments payable to the contractor pursuant to these Directions on that due date, including where relevant an indication that a particular payment is made in respect of a named Dentist Performer;
- (f) the estimated net monthly Pensionable Earnings of each Dentist Performer who performs services under the contract, i.e. net of any Pensionable Earnings that are attributable to any Monthly Seniority Payment;
- (g) the number of units of dental activity or, where applicable, orthodontic activity the contractor—
  - (i) is contracted to provide during the relevant financial year;
  - (ii) has so far provided during the financial year, based on the data submitted to the Board by the contractor, in accordance with its contract condition set by virtue of paragraph 38 of Schedule 3 to the GDS Contracts Regulations; and
  - (iii) has left to provide during the financial year; and
- (h) the number of courses of treatment involving sedation services or domiciliary services in respect of which Monthly ADSSPs have been made under section 5.

3.22 In practice, in accordance with entry 1(c) in Column 2 of the Schedule to the Functions Regulations, the Monthly Payment Schedule will be sent to the contractor by the NHS BSA, who will also need to send a copy to the Board (entry (a) in Column 3 which corresponds to paragraph 1 in Column 1 of the Schedule to the Functions Regulations).

***Annual Reconciliation Report***

3.23 The Board must, by 30th June in each financial year, send the contractor an Annual Reconciliation Report, whether as part of the annual report and review required by paragraph 39 (annual report and review) of Schedule 3 to the GDS Contracts Regulations or otherwise, which must include (but not be limited to), in respect of the previous financial year—

- (a) the total value of the contractor’s GDS contract, net of—
  - (i) any payments in respect of parental or sickness leave or any Monthly Seniority Payments (these are payments that are pensionable but not included in the calculation of the GDS contract’s Pensionable Earnings Ceiling); and
  - (ii) any foundation trainee salary payments, foundation trainee national insurance reimbursement payments, or non-domestic

rates reimbursement payments (these are payments that are neither pensionable nor included in the calculation of the GDS contract's Pensionable Earnings Ceiling);

- (b) the total of the initial values of the contractor's Monthly ACVPs;
- (c) the total value of the deductions made to Monthly ACVPs paid to the contractor which must be specified in two parts—
  - (i) the total amount of the NHS charges deducted, and
  - (ii) the total amount of any other deductions made under the contract or pursuant to this SFE;
- (d) the estimated Pensionable Earnings of each Dentist Performer who performed services under its GDS contract, net of any Pensionable Earnings that are attributable to any Monthly Seniority Payment paid in respect of the Dentist Performer;
- (e) the number of units of dental activity or orthodontic activity the contractor—
  - (i) was contracted to provide,
  - (ii) actually provided, based on the data submitted to the Board by the contractor, in accordance with its contract condition set by virtue of paragraph 38 of Schedule 3 to the GDS Contracts Regulations, and
  - (iii) where relevant, the number of units of dental activity or orthodontic activity that the contractor was contracted to provide but did not provide; and
- (f) the number of courses of treatment involving sedation services or domiciliary services in respect of which Monthly ADSSPs have been made under section 5.

3.24 The Annual Reconciliation Report will draw on an annual reconciliation statement about the payments under the GDS contract sent by the NHS BSA to the Board pursuant to entry (b) in column 3 which corresponds to entry 1 in column 1 of the Functions Regulations.

## **4. Superannuation contributions**

### ***Employer's superannuation contributions of Dentist Performers***

4.1 Under the NHS Pension Scheme Regulations 1993<sup>a</sup>, and the NHS Pension Scheme Regulations 2008<sup>b</sup>, the Board will continue to be liable for paying the employer's superannuation contributions in respect of the Pensionable Earnings of dental practitioners who are employed or engaged by a contractor, who are members of the Scheme and who are–

- (a) type 1 dental practitioners (that is, Dentist Performers, other than Foundation Trainees); or
- (b) type 2 dental practitioners (that is, Foundation Trainees);

as their Employing Authority.

4.2 In practice, by virtue of entry 26(d) and 28(d) in column 2 of the Schedule to the Functions Regulations, one part of the NHS BSA (the part that is acting, in effect, as agent of the Board), will be responsible for forwarding to another part of the NHS BSA (the part that acts as the Pension Scheme administrator) the employer's superannuation contributions that the Board owes in respect of these type 1 and type 2 dental practitioners. The Department of Health will–

- (a) make available to the part of the NHS BSA that is acting, in effect, as the agent of the Board in this matter the resources that it needs for forwarding these contributions; and
- (b) deduct from its allocations to the Board amounts equal to the Board's liabilities that have been thus discharged.

***Employee's superannuation contributions and Money Purchase Additional Voluntary Contributions of Dentist Performers***

4.3 As regards the employee superannuation contributions, and any Money Purchase Additional Voluntary Contributions ("MPAVC's"), the following arrangements will apply–

- (a) in the case of Foundation Trainees, although the contractor that employs him is legally responsible for ensuring that his employee superannuation contributions are deducted from his salary, in practice, these contributions will be deducted by the NHS BSA (i.e. the part of it acting, in effect, as the agent of the Board) from the reimbursement of salary payment under paragraph 7.5(b). It will then remit these employee superannuation contributions to the part of the NHS BSA that acts as the Pension Scheme administrator;
- (b) in the case of type 1 dental practitioner members of the Scheme–

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<sup>a</sup> S.I. 1995/300 as amended.  
<sup>b</sup> S.I. 2008/653, as amended.

- (i) their employee superannuation contributions in respect of their Pensionable Earnings will have to be deducted by the Board from the contractor's Monthly ACVPs; and
- (ii) any MPAVCs will have to be deducted by the Board from the contractor's Monthly ACVPs.

4.4 In practice, the making of the deductions referred to in paragraph 4.3(b) will generally be undertaken by the NHS BSA, which has been given the power to make these deductions by virtue of entries 26(a), 28(a) and 30(a) in column 2 of the Schedule to the Functions Regulations (although the Board remains ultimately responsible for the calculation of the deductions and ensuring that the deductions that are made are correct). These deductions are to be made in two stages.

***Monthly deductions in respect of employee's superannuation contributions of Dentist Performers who are not Foundation Trainees***

4.5 First, as is stated in paragraphs 3.15 to 3.17 above, deductions in respect of type 1 dental practitioners will need to be made each month from the contractor's Monthly ACVPs. These deductions are to be based on a reasonable estimate of the monthly proportion of the annual liability of each type 1 dental practitioner employed or engaged by the contractor in respect of–

- (a) the employee's superannuation contributions payable to the part of the NHS BSA that acts as the Pension Scheme administrator; and
- (b) any MPAVCs payable to an MPAVCs Provider.

4.6 The Board must take all reasonable steps to agree the amount of the deductions with the contractor and must, where requested to do so by the contractor, duly justify the amount of the monthly deductions. It must keep those amounts under review, to take account of significant changes to the contractor's income.

4.7 An amount equal to the monthly amount that the NHS BSA, acting in effect as the agent of the Board in this matter, deducts must be remitted to the part of the NHS BSA that acts as the Pension Scheme administrator, and to any relevant MPAVCs Provider, no later than–

- (a) in the case of employees' superannuation contributions, the nineteenth day of the month after the month to which the related earnings relate; or
- (b) in the case of MPAVCs, the seventh day after the payment from which they were deducted was paid.

***End-year adjustments***

4.8 After the end of any financial year, the Board will determine the value of the contractor's GDS contract, net of–

- (a) any payments in respect of parental or sickness leave or any Monthly Seniority Payments (these are payments that are pensionable but not included in the calculation of the GDS contract's Pensionable Earnings Ceiling); and
- (b) any foundation trainee salary payments, reimbursement of foundation trainee national insurance reimbursement payments, or non-domestic rates reimbursement payments (these are payments that are neither pensionable nor included in the calculation of the GDS contract's Pensionable Earnings Ceiling).

4.9 This amount will be included in the Annual Reconciliation Report. The Secretary of State will have established, pursuant to the NHS Pension Scheme Regulations 1995, and the NHS Pensions Scheme Regulations 2008, what percentage of that net amount can be considered as Pensionable Earnings under that contract. By applying that percentage to that net amount, the Board, and the contractor, will be able to determine the Pensionable Earnings Ceiling for that contract for that financial year.

4.10 It is a condition of a contractor's Monthly ACVPS that by the date specified in paragraph 23(5) (accounts and actuarial reports) of Schedule 2 (medical and dental practitioners) to the NHS Pension Scheme Regulations 1995<sup>a</sup>, and regulation 3.J.14(4) (employing authority and certain member record keeping and contribution estimates) of the NHS Pension Scheme Regulations 2008<sup>b</sup> the contractor must return the notice referred to in those provisions to the Board in accordance with those provisions.

4.11 Once the Pensionable Earnings in respect of that financial year of each Dentist Performer employed or engaged by a contractor have been notified to the Board, the Board (or if the adjustments can be made by varying GDS contract payments, the NHS BSA, effectively acting on its behalf) must—

- (a) if the deductions of employee's superannuation contributions (including MPAVCs) from the contractor's Monthly ACVPs during that financial year in respect of those earnings—
  - (i) did not cover the cost of all the employee's superannuation contributions payable by the contractor's Dentist Performers in respect of those earnings—
    - (aa) deduct the amount outstanding from any Monthly ACVPSs payable, or from a series of Monthly ACVPs payable, to the contractor; or
    - (bb) obtain payment (where no such deduction can be made) from the contractor of the amount outstanding, and it is a condition of all of the payments made pursuant to this

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<sup>a</sup> Relevant amendments are made by S.I. 2011/2586 and 2013/413.

<sup>b</sup> Relevant amendments are made by S.I. 2011/2586 and 2013/413.

SFE that the contractor must pay to the Board the amount outstanding; or

- (ii) were in excess of the amount payable in respect of employee's superannuation contributions, repay the excess amount to the contractor promptly (unless in the case of an excess amount in respect of MPAVCs, the Dentist Performer elects for that amount to be a further contribution and is entitled to so elect); and
- (b) forward any outstanding employee's superannuation contributions due in respect of those earnings to the part of the NHS BSA that acts as the Pension Scheme administrator or the relevant MPAVCs Provider (having regard to the payments it has already made on account in respect of those Dentist Performers for that financial year).

4.13 The functions of the Board in respect of the NHS Pension Scheme Regulations 1995 and the NHS Pension Scheme Regulations 2008 are exercisable by the NHS BSA in accordance with regulation 2(1) and (2) of, and entries 26, 28 and 29 in columns 2 and 3 of the Schedule to, the Functions Regulations (which relate to delegation of functions).

## **PART 2**

### **PAYMENTS FOR SPECIFIC PURPOSES**

#### **5. Domiciliary services and sedation services**

##### *Agreeing and revising Annual Domiciliary and Sedation Services Payments*

5.1 Where the contractor is to provide sedation services or domiciliary services under its GDS contract for or during part of a financial year, the contractor and the Board must agree an annual (or annualised for part years) number of courses of treatment involving sedations or domiciliary visits for that financial year and an annual (or annualised for part years) sum to be paid in respect of those courses of treatment. This amount is known as the Annual Domiciliary and Sedation Services Payment (ADSSP) and is to be paid in monthly instalments.

5.2 If that number of courses of treatment involving sedations or domiciliary visits is revised, a new ADSSP will have to be established for that contractor. If that variation takes effect during the year, the revised ADSSP for that contract must be an annual (or annualised for the part year) amount for calculation purposes, even though only a proportion of that annual amount will in fact be payable

##### *Annual uprating of ADSSPs*

5.3 If –

- (a) at the start of a financial year, a contractor was in receipt of Monthly ADSSPs in respect of the last month of the previous financial year; and
- (b) the number of courses of treatment involving sedations or domiciliary visits that the contractor is required to provide is unchanged;

the amount of its ADSSP is to be uprated by a percentage amount to be determined by the Secretary of State. It is intended that at the start of each financial year this SFE will be amended so as to include that percentage increase.

##### *Initial value of Monthly ADSSPs*

5.4 Once the contractor's first ADSSP has been established, that amount is to be divided by twelve, and subject to paragraphs 5.5 to 5.11, the result is the first gross value of the contractor's Monthly ADSSPs.

5.5 If the contractor's contractual arrangement to provide a specified number of courses of treatment involving sedations or domiciliary visits took effect other than on the first day of a month, the gross value of its Monthly ADSSPs in respect of the first part-month of this contractual arrangement is to be produced by dividing–

- (a) the number of days during the month for which the contractual arrangements to provide domiciliary and sedation services have effect; by

- (b) the total number of days in that month.

5.6 That gross value (expressed as a monthly value, in cases where the relevant contractual arrangement took effect other than on the first day of the month) will remain the basis for the calculation of the net value of the contractor's Monthly ADSSPs, until that initial value is next revised.

***Revision of the initial value of Monthly ADSSPs***

5.7 The gross value of a contractor's Monthly ADSSPs will have to be revised where, for any reason, its ADSSP is revised (for example, to take account of annual uprating or where the contractor's specified number of courses of treatment involving sedations or domiciliary visits is changed).

5.8 If the contractor's ADSSP is revised for the start of a month, the new gross value of its Monthly ADSSPs (until its ADSSP is next revised again) is its new ADSSP divided by twelve. If its ADSSP changes during a month, the new gross value of its Monthly ADSSPs (until its ADSSP is next revised again)–

- (a) for the month after the month during which its ADSSP changed, is its new ADSSP divided by 12; or
- (b) for the month during which its ADSSP changed, is the aggregate of the following amounts–
  - (i) the amount produced by dividing the number of days during the month before the change by the total number of days in that month, and multiplying that fraction by the old initial value of the contractor's Monthly ADSSPs, plus
  - (ii) the amount produced by dividing the number of days during the month for which the contractor had a new ADSSP by the total number of days in that month, and multiplying that fraction by the new initial value of the contractor's Monthly ADSSPs.

5.9 Once the gross value of a contractor's Monthly ADSSPs has been established for any particular month (subject to paragraph 5.11), the Board must go on to establish the net value of the contractor's Monthly ADSSPs, which is the amount actually to be paid.

***NHS charges and employee's superannuation contributions***

5.10 The NHS charges in respect of the courses of treatment involving sedations or domiciliary visits should be deducted from the contractor's Monthly ACVPs. No deduction will therefore need be made in respect of those charges from the Monthly ADSSPs. Any employee's superannuation contributions attributable to the Monthly ADSSPs will be deducted from the Monthly AVCPs rather than the ADSSPs. As both Monthly ACVPs and ADSSPs are payable at the same time, this distinction will generally only have accounting rather than practical implications.

***Deductions in respect of overpayments etc.***

5.11 Deductions may need to be made from Monthly ADSSPs under the administrative provisions in Section 11 of this SFE, to take account of matters such as overpayments. In accounting terms, these deductions may alter the gross value of the Monthly ADSSP in question or the gross value of another payment, but either way it will alter the net value of the Monthly ADSSP in question.

***Net value of the contractor's first Monthly ADSSPs***

5.12 The gross value of a contractor's Monthly ADSSPs, minus any deductions as mentioned in paragraph 5.11, is the net value of the contractor's first Monthly ADSSPs, which is the amount actually to be paid. This amount becomes payable on the first working day of the month after the month to which the Monthly ADSSP relates.

***Conditions attached to Monthly ADSSPs***

5.13 Monthly ADSSPs, or any part of such payments, are only payable if the contractor satisfies the following conditions—

- (a) the contractor must make available any information which the Board does not have but needs (including the returns required by virtue of paragraph 38 of Schedule 3 to the GDS Contracts Regulations), and which the contractor either has or could reasonably be expected to obtain, in order to calculate the contractor's Monthly ADSSPs;
- (b) all information supplied pursuant to or in accordance with this paragraph must be accurate.

5.14 If the contractor breaches any condition of its Monthly ADSSPs that is set out in this SFE (including the conditions that are set out in paragraph 5.13), the Board may, in appropriate circumstances, withhold payment of any or any part of a Monthly ADSSP that is otherwise payable.

## **6. Seniority payments**

6.1 Seniority payments are monthly payments to a contractor in respect of individual Dentist Performers who satisfy the eligibility criteria.

***Eligibility criteria***

6.2 A contractor is entitled to receive a seniority payment in respect of a Dentist Performer employed or engaged by it if the Dentist Performer—

- (a) reached the age of 55 years—

- (i) before 1st January 2006, and was entitled to and in receipt of a seniority payment pursuant to Determination III of the SDR (set out in Annex 2 to this SFE) in respect of the last quarter of the financial year 2005 to 2006, or
  - (ii) between 1st January 2006 and 31st March 2006 inclusive, and would have been entitled to a seniority payment pursuant to Determination III of the SDR in respect of the last quarter of the financial year 2005 to 2006 had the Dentist Performer reached the age of 55 years in the previous quarter of that financial year;
- (b) reached the age of 55 years before 1st April 2006, and–
- (i) in the last quarter of the financial year 2005 to 2006, the Dentist Performer was employed or engaged by a pilot scheme provider, and
  - (ii) would have been entitled to a seniority payment pursuant to Determination III of the SDR in respect of that quarter had the Dentist Performer–
    - (aa) instead provided services under section 35 of the NHS Act 1977 in that quarter; and
    - (bb) reached the age of 55 years before 1st January 2006 (whether or not the Dentist Performer did in fact do so; or
- (c) reached the age of 55 years between 1st April 2006 and 31st March 2011 inclusive (although the Dentist Performer’s eligibility is treated as starting in the month after the month during which the Dentist Performer’s birthday falls), and–
- (i) in the last quarter of the financial year 2005 to 2006, the Dentist Performer provided services under section 35 of the 1977 Act or a pilot scheme agreement; and
  - (ii) would have been entitled to a seniority payment pursuant to Determination III of the SDR in respect of that quarter had the Dentist Performer–
    - (aa) in the case of a person who provided services under a pilot scheme agreement in that quarter, provided services under section 35 of the 1977 Act in that quarter; and
    - (bb) reached the age of 55 years in the previous quarter of that financial year.

6.3 Additionally, a contractor is entitled to receive a seniority payment in respect of a Dentist Performer employed or engaged by it only if–

- (a) the person in respect of whom the payment is made remains included in the Dental Performers List;
- (b) the person in respect of whom the payment is made is not in receipt of a pension payment under the NHS pension scheme in any month in which the contractor claims a Monthly Seniority Payment in respect of him; and
- (c) the amount of the payment, together with the amount of any other Monthly Seniority Payment received by any other contractor or PDS Agreement Holder who may in fact be a Scheme 2 Agreement Holder in respect of that Dentist Performer for the same month is less than £662.

***Applications for a seniority payment***

6.4 Where a Dentist Performer satisfies the eligibility criteria specified in paragraph 6.2(a) or (b), in order to obtain its first Monthly Seniority Payment in respect of that Dentist Performer, the contractor must notify the Board in writing–

- (a) that the Dentist Performer is employed or engaged by the contractor; and
- (b) of any other Monthly Seniority Payments which any other contractor or PDS Agreement Holder who may in fact be a Scheme 2 Agreement Holder is claiming in respect of that Dentist Performer for any month to which the contractor’s claim relates.

6.5 Where a Dentist Performer satisfies the eligibility criteria specified in paragraph 6.2(c), in order to obtain its first Monthly Seniority Payment in respect of that Dentist Performer, the contractor must make an application to the Board on a standard form (set nationally and available electronically), and that application must include–

- (a) details of how the Dentist Performer satisfies the eligibility criteria set out in paragraph 6.2(c);
- (b) details of the Dentist Performer’s estimated net monthly Pensionable Earnings (which should be the amount that features in respect of that Dentist Performer on the contractor’s Monthly Payment Schedule); and
- (c) details of any other Monthly Seniority Payments which any other contractor or GDS Contract Holder who may in fact be a Scheme 2 Agreement Holder is claiming in respect of that Dentist Performer for any month to which the contractor’s claim relates.

### ***The percentage calculation and the maximum amount of Monthly Seniority Payments***

6.6 The amount to which the contractor is entitled as a Monthly Seniority Payment in respect of a Dentist Performer that it employs or engages and in respect of whom the eligibility criteria are satisfied is 21.72% of the Dentist Performer's net monthly Pensionable Earnings under the contractor's GDS contract in the month to which the payment relates, but the maximum amount payable in respect of each Dentist Performer in any month is £662.

6.7 This paragraph applies where a Monthly Seniority Payment may be payable in respect of a particular Dentist Performer to more than one contractor or PDS Agreement Holder (one or more of whom may in fact be Scheme 2 Agreement Holders). Where the totals payable under each contract or agreement (including where the contract or agreement has been varied to include a Capitation and Quality Scheme 2 Agreement), taken together, would (if there were no maximum amounts) exceed £662, the maximum amount payable under all the contracts and agreements under which Monthly Seniority Payments may be payable in respect of that Performer is £662. The £662 must be distributed proportionately between each GDS contract and PDS agreement.

6.8 So, if the Dentist Performer earns 60% of his net monthly Pensionable Earnings from a GDS contract (including a GDS contract that has been varied to include a Capitation and Quality Scheme 2 Agreement), 30% from one PDS agreement (including a PDS agreement which has been varied to include a Capitation and Quality Scheme 2 Agreement) and 10% from another PDS agreement (including a PDS Agreement that has been varied to include a Capitation and Quality Scheme 2 Agreement), the Monthly Seniority Payment under the GDS contract would be £397 (including any that have been varied) and under the two PDS agreements (including any which has been varied) would be £199 and £66 respectively.

6.9 In practice, the apportionment will be made by the NHS BSA, as it is they who will have the necessary data about each of the relevant contracts or agreements.

### ***Estimates of net monthly Pensionable Earnings***

6.10 For the purposes of this Section, a Dentist Performer's net monthly Pensionable Earnings in respect of any month are one twelfth of his Pensionable Earnings for the financial year into which the month falls, having excluded from those earnings any Pensionable Earnings for that financial year which are attributable to a Monthly Seniority Payment.

6.11 This means that it will be impossible to know, until sometime after the end of a financial year, what the true value of the Monthly Seniority Payments during that financial year should be. Accordingly, the Board must pay, each month, an estimate of what the true value of the Monthly Seniority Payments should be, and that estimate must be the estimate of the net monthly Pensionable Earnings (i.e. net of any Pensionable Earnings that are attributable to any Monthly Seniority Payments) that appears in respect of the Dentist Performer on the contractor's Monthly Payment Schedule.

6.12 The amount of this monthly estimate becomes payable on the first working day of the month after the month to which the Monthly Seniority Payment relates. Any excess that falls due once the true value of the Monthly Seniority Payments is ascertained becomes payable once that true value is ascertained by the Board.

***Conditions attached to Monthly Seniority Payments***

6.13 Monthly Seniority Payments, or any part of such payments, are only payable if the following conditions are satisfied—

- (a) the contractor must make available to the Board any information which the Board does not have but needs, and the contractor either has or could reasonably be expected to obtain, in order to calculate the payment;
- (b) the contractor must notify the Board of any change in the amount of the net monthly Pensionable Earnings (i.e. net of any Pensionable Earnings that are attributable to any Monthly Seniority Payments) of the Dentist Performers employed or engaged by it; and
- (c) all information provided pursuant to or in accordance with this paragraph must be accurate.

6.14 If the contractor breaches any condition of its payments under this Section that is set out in this SFE (including the conditions that are set out in paragraph 6.13), the Board may, in appropriate circumstances, withhold payment of any or any part of a payment under this Section that is otherwise payable.

## **7. Payments in respect of foundation training**

7.1 Payments in respect of foundation training are payments to a contractor who employs a Foundation Trainee. They are intended to meet the salary costs of employing the Foundation Trainee, provide payment to the Dentist Performer who is providing the foundation training to the Foundation Trainee and to provide a payment to the contractor to cover service costs. The payments are only intended to meet the costs of providing foundation training to those graduates who are required to complete 12 months foundation training to remain on the Dental Performers Lists (apart from any “relevant period of employment” determined in accordance with Regulation 30(2) (interpretation: foundation training) of the Performers Lists Regulations).

***Eligibility for payments in respect of vocational training***

7.2 A contractor will be eligible to receive payments under this Section where—

- (a) the contractor employs or engages a Dentist Performer who is a Foundation Trainer;

- (b) the contractor has employed a Foundation Trainee under a contract of employment for—
  - (i) a period of one year’s full-time employment (or an equivalent period of part-time employment), or
  - (ii) any other period which is a “relevant period of employment” for the purposes of regulation 30(2) (interpretation: foundation training) of the Performers Lists Regulations;
- (c) under that contract of employment, the contractor has agreed to pay the Foundation Trainee a monthly salary at a full-time (at least 35 hours per week) rate of £2,511 per month or the amount specified for that period *pro rata* if the Foundation Trainee is part-time; and
- (d) the Foundation Trainee is not exempt from the requirement to complete 12 months foundation training to remain on the performers lists (apart from any “relevant period of employment” determined in accordance with regulation 30(2) (interpretation: foundation training) of the Performers Lists Regulations) .

7.3 Any attendance by a Foundation Trainee at a day release course in connection with the foundation training scheme is to be included in the calculation of his contracted hours.

***Applications for payments under this Section***

7.4 Where a contractor satisfies the eligibility criteria specified in paragraph 7.2, read with paragraph 7.3, in order to obtain payments in respect of foundation training, it must make an application to the Board on a standard form (set nationally and available electronically), and that application must include—

- (a) the following information—
  - (i) the name of the Foundation Trainee appointed,
  - (ii) the date when the Foundation Trainee’s employment commenced,
  - (iii) the number of hours to be worked by the Foundation Trainee per week,
  - (iv) the date when the Foundation Trainee’s employment will end, and
  - (v) the date of the month on which payment of the salary will be made to the Foundation Trainee;

- (b) a certificate provided by a postgraduate dental dean or director of postgraduate dental education (as the case may be) verifying that the information provided pursuant to paragraph (a) is correct;
- (c) a declaration in writing that the contractor will pay the Foundation Trainee a monthly salary at a full-time (at least 35 hours per week) rate of £2,511 per month or the amount specified for that period *pro rata* if the Foundation Trainee is part-time; and
- (d) confirmation in writing from a postgraduate dental dean or director of postgraduate dental education (as the case may be) that the Foundation Trainee must-
  - (i) complete 12 months foundation training to remain on the Dental Performers List, or
  - (ii) that the dentist must complete a “relevant period of employment” by virtue of regulation 30(2) (interpretation: foundation training) Performers Lists Regulations.

***Foundation training payments to be made***

7.5 Provided the contractor satisfies the eligibility criteria set out in paragraph 7.2, and has applied in accordance with paragraph 7.4, the contractor is entitled to receive the following four types of foundation training payment during the currency of a training contract with a Foundation Trainee–

- (a) a training grant of £753 per month, if the Foundation Trainee is full-time (i.e. has contracted hours of at least 35 hours per week), or the amount specified for that period *pro rata* if the Foundation Trainee is part-time;
- (b) reimbursement of the salary which the contractor has paid to the Foundation Trainee, which is to be £2,511 per month; less-
  - (i) the Foundation Trainee’s employee superannuation contributions (if the Foundation Trainee is a member of an NHS Pension Scheme) in respect of that Foundation Trainee’s salary (see paragraph 5.3(a)), if the Foundation Trainee is full-time (i.e. has contracted hours of at least 35 hours per week); or
  - (ii) the amount specified for that period *pro rata* if the Foundation Trainee is part-time;
- (c) where a salary is reimbursed pursuant to sub-paragraph (b), reimbursement of the amount of any employer’s national insurance contributions which are payable by the contractor in respect of that salary; and
- (d) a sum that represents the service cost to the contractor of employing

the Foundation Trainee, of £5,347 per month, if the Foundation Trainee is full-time (i.e. has contracted hours of at least 35 per week), or the amount specified for that period *pro rata* if the Foundation Trainee is part-time.

7.6 Any attendance by a Foundation Trainee at a day release course in connection with the foundation training scheme is to be included in the calculation of his contracted hours.

7.7 The payments due to a contractor under this Section become payable on the first working day of the month after the month to which the claim for the payments relates, which need not be a calendar month. Only one application for payments need be made in respect of each agreed training period, and where appropriate, *pro rata* claims may be made in respect of part months.

***Conditions attached to foundation training payments***

7.8 Payments under paragraph 7.5(a), or any part of such payments, are only payable if the contractor gives that training grant to the Foundation Trainee's Foundation Trainer—

- (a) within one calendar month of receiving the training grant; and
- (b) as an element of the personal income of the Foundation Trainer, subject to any lawful deduction of income tax, national insurance and superannuation contributions.

7.9 Payments under paragraph 7.5(b) or (c), or any part of such payments, are only payable if the contractor pays the Foundation Trainee's salary under the contract of employment.

7.10 The payments under paragraph 7.5, or any part of such payments, are only payable if the following conditions are satisfied—

- (a) the Foundation Trainer in respect of whom the payments are made must remain a Foundation Trainer;
- (b) the Foundation Trainee in respect of whom the payments are made must remain employed by the contractor;
- (c) the contractor must inform the Board if there is any change of circumstances which may affect its entitlement to payments under this Section (including changes which may affect the level of the payments to which it is entitled under this Section);
- (d) the contractor must make available to the Board any information which the Board does not have but needs and the contractor either has or could reasonably be expected to obtain in order to calculate the payment; and

- (e) all information provided by the contractor pursuant to or in accordance with sub-paragraphs (c) or (d) must be accurate.

7.11 If the contractor breaches any condition of its payments under this Section that is set out in this SFE (including the conditions that are set out in paragraphs 7.8 to 7.10), the Board may, in appropriate circumstances, withhold payment of any or any part of a payment under this Section that is otherwise payable.

7.12 If there is a breach to the condition that is set out in paragraph 7.10(b), the Board may require repayment of any payment paid to which the condition relates, or may withhold payment of any other payment payable to the contractor under this SFE, to the value of the payment paid. However, if the contract of employment is terminated by either party before it has run its full course and the Foundation Trainee does not serve out a period of notice but is instead paid an amount equal to the salary due in respect of the period of notice, the contractor will be entitled to receive payments under paragraph 7.5(b) and (c) in respect of the amount of the salary which it has paid to the Foundation Trainee in respect of the period of notice, up to a maximum of one month's salary.

## **8. Payments in respect of maternity, paternity and adoption leave**

8.1 Employees of contractors will have rights to time off for ante-natal care, maternity leave, paternity leave, adoption leave, parental leave, time off for dependants and the right to request flexible working if they satisfy the relevant entitlement conditions under employment legislation for those types of leave. The right of partners in partnerships to these types of leave is a matter for their partnership agreement.

8.2 If an employee, a partner in a partnership, or a contractor is a Dentist Performer, the contractor that employs or engages that Dentist Performer will be entitled under this Section to payments from the Board in respect of a period of maternity leave, paternity leave or adoption leave taken by that Dentist Performer, provided the eligibility criteria are satisfied and the relevant payment conditions are not breached. However, nothing in the conditions for payments to contractors under this Section must be interpreted as qualifying a Dentist Performer's statutory rights. In any event, even if the Board is not directed in this SFE to make payments to a contractor in respect of parental leave, it may provide assistance and support as a matter of discretion. The powers to do so are set out in section 112 (assistance and support: primary dental services) of the 2006 Act **a**.

### ***Eligibility for maternity leave payments***

8.3 A contractor is entitled to receive a maternity leave payment in respect of a Dentist Performer that it employs or engages if–

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**a** Section 112 is amended by section 55(1) of, and paragraphs 52 (1) to (3) of Schedule 4 to, the 2012 Act.

- (a) the Dentist Performer's name has been included in the Dental List for a period of at least 2 years, (subject to paragraph 8.7) and the last 26 weeks of that period must have been continuous, and must have been a period of continuous employment or engagement that required the performance of dental services as part of the NHS and must have immediately preceded the 15th week before the expected week of confinement;
- (b) the Dentist Performer has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement;
- (c) the Dentist Performer has ceased to perform dental services under the contractor's GDS contract in order to take maternity leave (which for these purposes includes leave for ante-natal care) excluding any optional keeping in touch days on which it has been agreed between the contractor and the Dentist Performer that the Dentist Performer will work; and
- (d) the payment relates to a Parental Leave Pay Period and not to a period of sickness absence.

***Eligibility for paternity leave payments - birth***

8.4 A contractor is entitled to receive a paternity leave payment in respect of a Dentist Performer that it employs or engages if—

- (a) the Dentist Performer's name has been included in the Dental List for a period of at least 2 years, (subject to paragraph 8.7) and the last 26 weeks of that period must have been a period of continuous employment or engagement that required the performance of dental services as part of the NHS ending with the week immediately preceding the child's date of birth;
- (b) the Dentist Performer is either—
  - (i) the father of the child, or
  - (ii) married to or the partner of the child's mother, but not the child's father,
  - (iii) has, or expects to have—
    - (aa) if the Dentist Performer is the child's father, responsibility for the upbringing of the child; or
    - (bb) if the Dentist Performer is the mother's husband or partner but not the child's father, the main

responsibility, (apart from any responsibility of the mother) for the upbringing of a child;

- (c) the Dentist Performer has ceased to perform dental services under the contractor's GDS contract in order to take paternity leave; and
- (d) the payment relates to a Parental Leave Pay Period and not to a period of sickness absence.

***Eligibility for paternity leave payments – adoption***

8.5 A contractor is entitled to receive a paternity leave payment in respect of a Dentist Performer that it employs or engages if—

- (a) the Dentist Performer's name has been included in the Dental List for a period of at least 2 years (subject to paragraph 8.7) and the last 26 weeks of that period must have been a period of continuous employment or engagement that required the performance of dental services as part of the NHS ending with the week in which the child is adopted;
- (b) the Dentist Performer is either—
  - (i) married to, or the partner of the child's adopter, and
  - (ii) has, or expects to have, the main responsibility (apart from the responsibility of the adopter) for the upbringing of the child;
- (c) the Dentist Performer has ceased to perform dental services under the contractor's GDS contract in order to take paternity leave, and
- (d) the payment relates to a Parental Leave Pay Period and not to a period of sickness absence.

***Eligibility for adoption leave payments***

8.6 A contractor is entitled to receive an adoption leave payment in respect of a Dentist Performer that it employs or engages if—

- (a) the Dentist Performer's name has been included in the Dental List for a period of at least 2 years, (subject to paragraph 8.7) and the last 26 weeks must have been a period of continuous employment or engagement that required the performance of dental services as part of the NHS and must have immediately preceded the date of the adoption;
- (b) the Dentist Performer has become the adoptive parent of a child and is the main care provider for that child;

- (c) the Dentist Performer has ceased to provide dental services under the contractor’s GDS contract in order to take adoption leave excluding any optional keeping in touch days on which it has been agreed between the contractor and the Dentist Performer that the Dentist Performer will work; and
- (d) the payment relates to a Parental Leave Pay Period and not to a period of sickness absence.

***Parental leave for those who have undertaken approved vocational training***

8.7 In the case of a Dentist Performer who has undergone one year’s approved foundation training, the 2 years mentioned in paragraphs 8.3(a), 8.4(a), 8.5(a) and 8.6(a) must be reduced to one year.

***Meaning of “Parental Leave Pay Period”***

8.8 In this Section, “Parental Leave Pay Period” means—

- (a) in the case of a maternity leave payment, a period not exceeding 26 weeks commencing—
  - (i) not earlier than the 11th week before the expected week of confinement, nor later than the expected week of confinement, or
  - (ii) if confinement occurs prior to the eleventh week before the expected week of confinement, on the Monday immediately before the actual date of confinement,

in respect of which a claim for payments is made by or in respect of a person taking maternity leave (which for these purposes includes leave for ante-natal care) under this Section;

- (b) in the case of a paternity payment, a period not exceeding 2 weeks commencing within 26 weeks of the date of the relevant birth or adoption and in respect of which a claim for payments is made by or in respect of a person taking paternity leave under this Section;
- (c) in the case of an adoption leave payment, a period not exceeding 26 weeks which immediately follows the date of the adoption and in respect of which a claim for payments is made by or in respect of a person taking adoption leave under this Section.

***Applications for parental leave payments***

8.9 Where a Dentist Performer satisfies the eligibility criteria specified in paragraphs 8.3, 8.4, 8.5, or 8.6 in order to obtain parental leave payments in respect of that Dentist Performer, the contractor must make an application to the Board on a

standard form (set nationally and available electronically), and that application must include—

- (a) the intended dates of the Dentist Performer’s Parental Leave Pay Period (i.e. the Parental Leave Pay Period in respect of which the application is being made); and
- (b) details of the Dentist Performer’s estimated net monthly Pensionable Earnings (which should be the amount that features in respect of that Dentist Performer on the contractor’s Monthly Payment Schedule).

8.10 If the application is in respect of maternity leave payments, the application must also include—

- (a) a maternity certificate or other statement completed by a registered medical practitioner or registered midwife, giving the expected week of confinement of the Dentist Performer or, as the case may be, the date of confinement; and
- (b) a declaration in writing from the contractor that to the best of its knowledge, with regard to the period to which the claim relates, no claim for sickness leave payments has been made under Section 9 by it or any other contractor under this SFE, or by a PDS Agreement Holder under the PDS SFE or by a Scheme 2 Agreement Holder under the Scheme 2 SFE.

8.11 If the application is in respect of paternity leave payments, the application must also include—

- (a) in respect of the birth of a child, written confirmation from the contractor—
  - (i) of the expected or actual date of birth, and
  - (ii) that the Dentist Performer is the husband or partner of the mother, will share responsibility for the child’s upbringing and is taking time off to support the mother or to care for the child;
- (b) in respect of the adoption of a child, documents showing the date on which the child is expected to be placed for adoption or the actual date of the placement, the date the adopter was notified of having been matched with the child and written confirmation from the contractor that the Dentist Performer—
  - (i) is the partner of the main care provider,
  - (ii) will share responsibility for the child’s upbringing, and
  - (iii) is taking time off to support his partner or to care for the child; and

- (c) a declaration in writing from the contractor that to the best of its knowledge, with regard to the period to which the claim relates, no claim for sickness leave payments has been made under Section 9 by it or any other contractor under this SFE, or by a PDS Agreement Holder under the PDS SFE or by a Scheme 2 Agreement Holder under the Scheme 2 SFE.

8.12 If the application is in respect of adoption leave payments, the application must also include—

- (a) in the case of an adoption within the United Kingdom-
  - (i) the date on which the child is expected to be placed for adoption,
  - (ii) the actual date of the placement,
  - (iii) the date the adopter was notified of having been matched with the child endorsed by the appropriate adoption agency with its name and address, or
  - (iv) a matching certificate giving equivalent details;
- (b) in the case of an inter-country adoption—
  - (i) the date on which the adopter received official notification,
  - (ii) the expected date the child will enter the United Kingdom or the date upon which the child did so enter, and
  - (iii) a copy of the official notification and evidence of the date of the child's arrival;
- (c) written confirmation from the contractor that the Dentist Performer is or will be the main care provider for the child; and
- (d) a declaration in writing from the contractor that to the best of its knowledge, with regard to the period to which the claim relates, no claim for sickness leave payments has been made under Section 9 by it or any other contractor under this SFE, or by a PDS Agreement Holder under the PDS SFE or by a Scheme 2 Agreement Holder under the Scheme 2 SFE.

***Calculation of the amount of parental leave payments and the due date***

8.13 The amount to which the contractor is entitled in respect of parental leave payments is a weekly amount, calculated on the basis of the Dentist Performer's estimated monthly Pensionable Earnings (which should usually be the amount that features in respect of that Dentist Performer on the contractor's Monthly Payment

Schedule, plus the Dentist Performer's estimated monthly Pensionable Earnings in respect of any Monthly Seniority Payment to which the Dentist Performer is entitled) immediately before the parental leave is taken. This monthly amount is to be multiplied by 12 and then divided by 52 to produce the weekly amount of the parental leave payments.

8.14 That weekly amount is the amount to which the contractor is entitled in respect of each complete week of the Dentist Performer's Parental Leave Pay Period. If the last day of a week of the Dentist Performer's Parental Leave Pay Period falls in a particular calendar month, the weekly parental leave payment in respect of that week is to fall due on the first working day of the following month.

***Conditions attached to parental leave payments***

8.15 Payments under this Section, or any part of such payments, are only payable if the following conditions are satisfied—

- (a) the Dentist Performer must not perform any dental services during the Parental Leave Pay Period under any GDS contract (including where the GDS contract has been varied to include a Capitation and Quality Scheme 2 Agreement), or PDS agreement (including where the PDS agreement has been varied to include a Capitation and Quality Scheme 2 Agreement) (other than any optional keeping in touch days on which it has been agreed between the contractor and the Dentist Performer that the Dentist Performer will work), except with the written approval of the Board;
- (b) unless the performer dies, the Dentist Performer in respect of whom the payments are made must continue to be a Dentist Performer and continue to be employed or engaged by the contractor (if the performer does die, parental leave payments may continue to be paid to the contractor for the balance of the Parental Leave Pay Period, provided these are forwarded by the contractor to the performer's estate); and
- (c) the contractor must continue to pay the Dentist Performer an amount equivalent to the Dentist Performer's estimated net Pensionable Earnings (which provided the basis for the calculation of the parental leave payment) during the Parental Leave Pay Period (or pay this to the Dentist Performer's estate if the Dentist Performer dies).

8.16 If the contractor breaches any condition of its payments under this Section that is set out in this SFE (including the conditions that are set out in paragraph 8.15), the Board may, in appropriate circumstances, withhold payment of any or any part of a payment under this Section that is otherwise payable.

8.17 The computation of periods of entitlement under this section is to take into account periods of leave before this SFE comes into force. Therefore, in the case of a claim for maternity leave payment in respect of a Dentist Performer who has taken a 10 weeks period of maternity leave immediately before this SFE comes into force,

there will be an entitlement to a further 16 weeks of maternity leave payment under this SFE.

## **9. Payments in respect of long-term sickness absence**

9.1 Employees of contractors will, if they qualify for it, be entitled to statutory sick pay for 28 weeks of absence on account of sickness in any three years. The right of partners in partnership agreements to paid sickness leave is a matter for their partnership agreement.

9.2 If an employee, a partner in a partnership or a contractor is a Dentist Performer, the contractor that employs or engages that Dentist Performer will be entitled under this Section to payments from the Board in respect of a period of long term sickness absence taken by that Dentist Performer, provided the eligibility criteria are satisfied and the relevant payment conditions are not breached. However, nothing in the conditions for payments to contractors under this Section must be interpreted as qualifying a Dentist Performer's statutory rights. In any event, even if the Board is not directed in this SFE to make payments to a contractor in respect of sickness absence, it may do so as a matter of discretion. The powers to do so are set out in section 112 of the 2006 Act.

### ***Eligibility for sickness leave payments***

9.3 A contractor is entitled to receive sickness leave payments in respect of a Dentist Performer that it employs or engages if, in respect of a complete week of sickness absence—

- (a) subject to paragraph 9.4, the Dentist Performer's name has been included in the Dental List for a period of at least 2 years, which need not be a continuous period and part or all of that period need not immediately precede the period of sickness, but during those 2 years (or that aggregate of 2 years) that Performer must have been performing dental services as part of the NHS;
- (b) the Dentist Performer has been unable to provide dental services under the contractor's GDS contract because of sickness, but sickness leave payments are not payable in respect of the first 4 weeks of absence;
- (c) the Dentist Performer has been in receipt of payments under this Section for less than the maximum of 22 weeks during a period of sickness; and
- (d) the contractor is not in receipt of payments under Section 8 in respect of the Dentist Performer.

9.4 In the case of a Dentist Performer who has undergone one year's approved vocational training, the 2 years mentioned in paragraph 9.3(a) must be reduced to one year.

9.5 Sickness leave payments are only payable in respect of a maximum of 22 weeks in any period of 52 weeks. So, for example, once sickness leave payments have been made in respect of a Dentist Performer for a continuous period of 22 weeks, it will be a further 30 weeks before the Board could again be obliged to make sickness leave payments in respect of that Dentist Performer. However, the Board may waive the eligibility criterion set out in this paragraph in any case where it considers it is reasonable in all the circumstances to do so. The computation of periods of sickness leave is to take into account periods of sickness leave before this SFE comes into force.

#### ***Applications for sickness leave payments***

9.6 Provided a Dentist Performer satisfies the eligibility criteria specified in paragraphs 9.3 to 9.5, the contractor must make an application to the Board on a standard form (set nationally and available electronically) in order to obtain a sickness leave payment in respect of that Dentist Performer. That application must include–

- (a) a medical certificate, or other statement, completed by a registered medical practitioner to the effect that the Dentist Performer is incapable of work by reason of sickness; and
- (b) a declaration in writing from the contractor that to the best of its knowledge, with regard to the period to which the claim relates, no claim for parental leave payments has been made under Section 8 by it or any other contractor under this SFE, or by a PDS Agreement Holder under the PDS SFE, or by a Scheme 2 Agreement Holder under the Scheme 2 SFE.

#### ***Calculation of the amount of sickness leave payments and the due date***

9.7 The amount to which the contractor is entitled in respect of sickness leave payments is a weekly amount, calculated on the basis of the Dentist Performer's estimated monthly Pensionable Earnings (which should usually be the amount that features in respect of that Dentist Performer on the contractor's Monthly Payment Schedule, plus the estimated monthly Pensionable Earnings in respect of any Monthly Seniority Payment to which the Dentist Performer is entitled) immediately before the sickness leave is taken. This amount is to be multiplied by 12 and then divided by 52 to produce, subject to paragraph 9.8, the weekly amount of the sickness leave payments.

9.8 The weekly amount determined in accordance with paragraph 9.7 is the amount to which the contractor is entitled in respect of each complete week during which the Dentist Performer is absent and continues to satisfy the eligibility criteria. If the last day of such a week falls in a particular calendar month, the weekly sickness leave payment in respect of that week is to fall due on the first working day of the following month.

#### ***Conditions attached to sickness leave payments***

9.9 Payments under this Section, or any part of such payments, are only payable if the following conditions are satisfied—

- (a) the contractor must, if the Board so requests, provide the Board with medical certificates or other statements to the effect that the Dentist Performer is incapable of work by reason of sickness, completed by a registered medical practitioner, covering any period of absence in respect of which a sickness leave payment is being claimed;
- (b) the Dentist Performer must not perform any dental services under a GDS contract (including where the GDS contract has been varied to include a Capitation and Quality Scheme 2 Agreement) or PDS agreement (including where the PDS agreement has been varied to include a Capitation and Quality Scheme 2 Agreement) during any period of absence in respect of which a sickness leave payment is claimed, except with the written approval of the Board;
- (c) unless the Dental Performer dies, the Dentist Performer in respect of whom the payments are made continues to be a Dentist Performer and continues to be employed or engaged by the contractor (if the Dentist Performer does die, sickness leave payments may continue to be paid to the contractor for the balance of the 22 weeks for which sickness leave payments would otherwise have been payable, provided these are forwarded by the contractor to the Dentist Performer's estate); and
- (d) the contractor must continue to pay the Dentist Performer at least the Dentist Performer's estimated net Pensionable Earnings during the Dentist Performer's absence (or pay this to the Dentist Performer's estate if the Dentist Performer dies).

9.10 If the contractor breaches any condition of its sickness leave payments that is set out in this SFE (including the conditions that are set out in paragraph 9.9), the Board may, in appropriate circumstances, withhold payment of any or any part of a payment under this Section that is otherwise payable.

## **10. Reimbursement of non-domestic rates**

10.1 Under this Section, a contractor may be able to claim reimbursement of the Non-domestic Rates payable in relation to any premises at which it provides services under its GDS contract.

### ***Eligibility for reimbursement of non-domestic rates***

10.2 A contractor is entitled to receive reimbursement of payments in respect of its non-domestic rates for practice premises if, in any financial year—

- (a) it is a Non-Domestic Ratepayer or, where the contractor is a partnership, one of the partners comprising the partnership is the Non-Domestic Ratepayer, as regards the hereditament that comprises or

includes the practice premises and in respect of which the claim is made (“the Hereditament”); and

- (b) subject to paragraph 10.3, the total value of the primary dental services provided at the practice premises as part of the NHS is not less than £25,000.

10.3 The Board may waive the eligibility criterion in paragraph 10.2(b) in any case where it considers it is reasonable in all the circumstances to do so.

***Applications for reimbursement of non-domestic rates***

10.4 Provided the contractor satisfies the eligibility criteria specified in paragraph 10.2, read with paragraph 10.3, it must make an application to the Board on a standard form (set nationally and available electronically) in order to obtain reimbursement in respect of its non-domestic rates. That application must include–

- (a) the Demand Notice for the financial year to which the claim relates, or a copy of it certified by the Billing Authority;
- (b) in respect of the Hereditament–
  - (i) a receipt from the Billing Authority for the whole amount or, if the contractor pays the annual amount in two instalments, half the amount of the contractor’s (or the partner’s) annual liability for non-domestic rates, specified in the Demand Notice, or
  - (ii) if the contractor (or the partner) pays its non-domestic rates by monthly instalments, details of the amount to be paid each month, the date the payments are due to commence and the date the payments are due to cease, together with the Demand Notice specifying the monthly instalments due; and where the contractor wishes to be reimbursed in a lump sum after payment of all the instalments, it must provide proof of payment for the whole amount specified in the Demand Notice;
- (c) a declaration in writing from the contractor specifying the proportion, expressed as a percentage, which its income under its GDS contract bears to the gross income of the Hereditament from the provision of dental services (i.e. from both NHS and private work) during the last 6 months of the financial year preceding the financial year in respect of which the claim for reimbursement is being made; and
- (d) a declaration in writing from the contractor undertaking, if requested to do so by the Board, within three months of receiving such a request to provide to the Board documentary evidence sufficient to demonstrate accurately the proportion that its income under its GDS contract bore to the gross income of the Hereditament from the provision of dental services (i.e. from both NHS and private work) in the last 6 months of

the financial year preceding the financial year in respect of which the claim for reimbursement is being made.

10.5 Where the contractor seeks reimbursement of an amount in respect of non-domestic rates in relation to more than one Hereditament, it must submit to the Board a separate claim in respect of each such Hereditament.

10.6 For the purposes of this Section, the gross income of a Hereditament from the provision of dental services means the gross income from any dental services provided at or associated with the Hereditament by either the contractor or any dental practitioner that the contractor employs or engages.

***Amount of non-domestic rates that may be reimbursed***

10.7 The amount to which the contractor is entitled in respect of a reimbursement payment in any financial year is the amount specified in the Demand Notice for that financial year less, where the gross income of the Hereditament from the provision of dental services includes any income which is not derived from its GDS contract, any amount (“the abatement”) calculated in accordance with paragraph 10.8.

10.8 The amount of the abatement must be based on the percentage that the contractor is required to declare in accordance with paragraph 10.4(c). Wherever that percentage features in column 1 of the table below (as adjusted, where appropriate, in the light of further information received by the contractor, as requested in accordance with paragraph 10.4(c)) the corresponding percentage opposite that entry in column 2 is the amount, in percentage terms, of the abatement.

<b>COLUMN 1</b>	<b>COLUMN 2</b>
<b>Proportion which the GDS contract income bears to the gross income of the Hereditament</b>	<b>Proportion of Non-domestic Rates to be abated</b>
90% or more	No abatement
80% or more but less than 90%	10%
70% or more but less than 80%	20%
60% or more but less than 70%	30%
50% or more but less than 60%	40%
40% or more but less than 50%	50%
30% or more but less than 40%	60%
20% or more but less than 30%	70%
10% or more but less than 20%	80%
Less than 10%	90%

10.9 The amount to which the contractor is entitled falls due once the Board receives a valid application for the amount.

***Conditions attached to payments under this Section***

10.10 Payments under this Section, or any part of such payments, are only payable if the following conditions are satisfied—

- (a) the contractor must, as regards the Hereditament to which the payment relates, comply with its contract condition set by virtue of paragraph 12 (premises, facilities and equipment) of Schedule 3 to the GDS Contracts Regulations;
- (b) the contractor must make available any information which the Board does not have but needs, and which the contractor either has or could reasonably be expected to obtain, in order to calculate the amount of the contractor's reimbursement payments;
- (c) the contractor must inform the Board of any changes to its circumstances which may affect its eligibility for reimbursement payments or the level of the reimbursement payments to which it may be entitled; and
- (d) all information supplied pursuant to or in accordance with sub-paragraphs (b) and (c) must be accurate.

10.11 If the contractor breaches any condition of its payments under this Section that is set out in this SFE (including the conditions that are set out in paragraph 10.10), the Board may, in appropriate circumstances, withhold payment of all or any part of a payment under this Section that is otherwise payable.

## **PART 3**

### **SUPPLEMENTARY PROVISIONS**

#### **11. Administrative provisions**

##### *Payment arrangements*

11.1 Payment under this SFE will be undertaken on the Board's behalf by the NHS BSA and will be paid on the due date. The making of the payments which are required to be paid under these Directions was made a function of the NHS BSA by virtue of entry (a) of column 2 that corresponds to entry 1 in column 1 in the Schedule to the Functions Regulations. By virtue of regulation 2(3)(a) (functions of the Board exercisable by the Authority) of those Regulations, the Board may exercise that function itself only in the event that the NHS BSA is unable to do so for reasons other than a failure by the Board to co-operate in a reasonable manner with the NHS BSA.

11.2 This means that although it remains the responsibility of the Board to determine the correct amount of the payment (subject to the specific arrangements for making the annual adjustments determined by the Secretary of State which are set out in paragraph 2.8), it must be the NHS BSA that actually makes the payment to the contractor.

11.3 In practice, the Board will be responsible for loading payment data into the NHS BSA's computerised payment system, and this system will normally generate the amount of the payments to be made.

11.4 The NHS BSA has a responsibility (under entry 5 in column 3 that corresponds to entry 5 in column 1 of the Schedule to the Functions Regulations) for reporting to the Board evidence that it discovers in the course of carrying out its functions which it considers might be evidence of a breach of contract, an unlawful activity or an irregularity – or a matter which is otherwise unusual – but ultimate responsibility for ensuring that contractors are paid the correct amount rests with the Board. Indeed, the Board is responsible for any acts or omissions of the NHS BSA with regard to the payment functions that it has under the Functions Regulations, including the payment functions that the NHS BSA must perform on the Board's behalf (see regulation 2(4) (functions of the Board exercisable by the Authority) of the Functions Regulations).

11.5 Therefore, because the NHS BSA is effectively acting as the agent of the Board as regards the making of payments, the making of payments is referred to elsewhere in this SFE (see for example paragraph 11.8) as a function of the Board, even though the function is performed by the NHS BSA. As mentioned in the previous paragraph, this reflects the underlying legal liability, but in practice, references in this SFE to the Board making payments will need to be construed in accordance with the arrangements for making payments described in the preceding paragraphs of this Section.

11.6 However, where reference is made in this SFE to decisions with regard to the withholding of payments or the making of deductions (see for example the next

paragraph), these will need to be decisions of the Board, although the NHS BSA will be putting the decision into effect on the Board's behalf.

### ***Overpayments and withheld amounts***

11.7 Without prejudice to the specific provisions elsewhere in this SFE relating to overpayments of particular payments, if the Board makes a payment to a contractor under its GDS contract pursuant to this SFE and—

- (a) the contractor was not entitled to receive all or part thereof, whether because—
  - (i) it or a person employed or engaged by it did not meet the eligibility criteria for the payment, or
  - (ii) the payment was calculated incorrectly (including where a payment on account overestimates the amount that is to fall due);
- (b) the Board was entitled to withhold all or part of the payment because of a breach of a condition attached to the payment, but is unable to do so because the money has already been paid; or
- (c) the Board is entitled to repayment of all or part of the money paid,

the Board may recover the money paid by deducting an equivalent amount from any payment payable pursuant to this SFE (in instalments, where that is appropriate), and where no such deduction can be made, it is a condition of the payments made pursuant to this SFE that the contractor must pay to the Board that equivalent amount.

11.8 Where the Board is entitled pursuant to this SFE to withhold all or part of a payment because of a breach of a payment condition, and the Board does so or recovers the money by deducting an equivalent amount from another payment in accordance with paragraph 11.7, it may, where it sees fit to do so, reimburse the contractor the amount withheld or recovered, if the breach is cured.

### ***Underpayments and late payments***

11.9 Without prejudice to the specific provisions elsewhere in this SFE relating to underpayments of particular payments, if the full amount of a payment that is payable pursuant to this SFE has not been paid before the date on which the payment falls due, then unless—

- (a) this is with the consent of the contractor; or
- (b) the amount of, or entitlement to, the payment, or any part thereof, is in dispute;

once it falls due, it must be paid promptly (see regulation 21(1) (finance) of the GDS Contracts Regulations).

11.10 If the contractor's entitlement to the payment is not in dispute but the amount of the payment is in dispute, then once the payment falls due, pending the resolution of the dispute, the Board must—

- (a) pay to the contractor, promptly, an amount representing the amount that the Board accepts that the contractor is at least entitled to; and
- (b) thereafter pay any shortfall promptly, once the dispute is finally resolved.

11.11 However, if a contractor has—

- (a) not claimed a payment to which it would be entitled pursuant to this SFE if it claimed the payment; or
- (b) claimed a payment to which it is entitled pursuant to this SFE but the Board is unable to calculate the payment until after the payment is due to fall due because it does not have the information it needs in order to calculate that payment (all reasonable efforts to obtain the information having been undertaken);

that payment is (instead) to fall due on the first working day of the month after the month during which the Board obtains the information it needs in order to calculate the payment.

#### ***Payments on account***

11.12 Where the Board and the contractor agree (but the Board's agreement may be withdrawn where it is reasonable to do so and if it has given the contractor reasonable notice thereof), the Board must pay to a contractor on account any amount that is—

- (a) the amount of, or a reasonable approximation of the amount of, a payment that is due to fall due pursuant to this SFE; or
- (b) an agreed percentage of the amount of, or a reasonable approximation of the amount of, a payment that is due to fall due pursuant to this SFE;

and if that payment results in an overpayment in respect of the payment, paragraph 11.7 applies.

#### ***Time limitation for claiming payments***

11.13 Subject to paragraphs 11.14 and 11.15, contractors are only eligible for payments under this SFE if the payments are claimed within three months of the date on which they could first have fallen due.

11.14 Subject to paragraph 11.15, a contractor is only eligible to receive reimbursement in respect of non-domestic rates under Section 10—

- (a) where it is claiming a single payment of the full amount due as a reimbursement in respect of any financial year, if it makes a valid application within three months of the date in the Demand Notice on which the full amount of its non-domestic rates for that financial year falls due;
- (b) where it is claiming two payments, each of half the full amount due as a reimbursement in respect of any financial year, if in relation to each application for a payment it has made a valid application within three months of the date in its Demand Notice on which the corresponding six-monthly amount of its non-domestic rates for that financial year falls due; or
- (c) where it is claiming reimbursement of monthly instalments of non-domestic rates in monthly instalments, if it has made a valid application within three months of the date on which the first of the monthly instalments of non-domestic rates falls due.

11.15 The Board may waive the eligibility criteria in paragraph 11.13 and 11.14 in any case where it considers it is reasonable in all the circumstances to do so.

***Payments to or in respect of suspended dentists whose suspension ceases***

11.16 If the suspension of a dental practitioner from the Dental Performers List ceases, and—

- (a) that dental practitioner enters into a GDS contract any payments that the dental practitioner received under a determination made under regulation 13(1) (payments during suspension) of the Performers Lists Regulations<sup>a</sup> may be set off, equitably, against the payments that the dental practitioner is entitled to receive under the GDS contract pursuant to this SFE; or
- (b) a contractor is entitled to any payments in respect of that dental practitioner pursuant to this SFE and a payment was made to the dental practitioner pursuant to a determination made under regulation 13(1) of the Performers Lists Regulations<sup>b</sup> but the dental practitioner was not entitled to receive all or any part thereof, the amount to which the dental practitioner was not entitled may be set off, equitably, against the payments that the contractor is entitled to in respect of that dental practitioner pursuant to this SFE.

***Effect on periodic payments of termination of a GDS contract***

11.17 If a GDS contract is terminated before the end of the period to which it relates, under which a periodic payment (generally, the monthly contract payments) is

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<sup>a</sup> See The Performers Lists (Suspended Dentists' NHS Earnings) Determination 2013 attached to this SFE at Annex 1.

<sup>b</sup> See The Performers Lists (Suspended Dentists' NHS Earnings) Determination 2013 attached to this SFE at Annex 1.

payable pursuant to this SFE, a proportion of that payment is to fall due on the last day on which the contract has effect. The amount of the periodic payment payable is to be adjusted by the fraction produced by dividing—

- (a) the number of days during the period to which the payment relates for which the GDS contract has effect; by
- (b) the total number of days in that period.

11.18 This is without prejudice to any arrangements for the recovery of money paid under the GDS contract that is recoverable as a result of the contract terminating or any breach thereof.

#### ***Overpayment and termination of a GDS contract***

11.19 If a GDS contract is terminated before the end of the period to which it relates, under which a periodic payment (generally, the monthly contract payments) is payable pursuant to this SFE, the Board must perform a reconciliation of the payments made by the Board to the Contractor under the contract. The Board must serve the Contractor with written details of the reconciliation as soon as reasonably practicable, and in any event no later than four months after the termination of the contract, in respect of all outstanding payments due to the contractor from the Board and any patient charges due to be paid by the contractor to the Board.

11.20 Payments pursuant to this SFE and the reconciliation statement referred to in 11.19 above —

- (a) payable to the contractor by the Board, must be paid in accordance with 11.17(a) and (b) above in respect of the amount of periodic payment payable; and
- (b) that have been made to a contractor by the Board to which that contractor was not entitled, may be recovered by the Board by deducting an equivalent amount from any payment payable pursuant to this SFE.

11.21 If after 2 months of the reconciliation statement being produced the contractor has not disputed the reconciliation statement, that reconciliation statement will be the amount either payable to the contractor or recoverable from the contractor, whether or not, if the reconciliation statement had been disputed, that would have led to an amended reconciliation.

11.22 Where payments pursuant to this SFE have been paid by the Board to the contractor and it is not possible for the Board to recover the money paid by deducting an equivalent amount from any payment payable pursuant to this SFE, the contractor must pay to the Board that equivalent amount in accordance with regulation 21(1)(b) of the GDS Contract Regulations, and 11.7 above.

#### ***Dispute resolution procedures***

11.23 Any dispute arising out of or in connection with this SFE between the Board and a contractor is to be resolved as a dispute arising out of or in connection with the contractor's GDS contract, i.e. in accordance with the NHS dispute resolution procedures or by the courts (see Part 7 of Schedule 3 to the GDS Contracts Regulations).

11.24 The procedures require the contractor and the Board to make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute between themselves before referring it for determination.

(a) 12. Glossary of Terms

***Acronyms***

12.1 The following acronyms are used in this document—

AACV – Actual Annual Contract Value  
ACVP – Annual Contract Value Payment  
ADSSP – Annual Domiciliary and Sedation Services Payment  
GDS – General Dental Services  
LDC – Local Dental Committee  
MPAVC – Money Purchase Additional Voluntary Contribution  
NACV – Negotiated Annual Contract Value  
NHS – National Health Service  
NHS BSA – National Health Service Business Services Authority  
PCT – Primary Care Trust  
PDS – Personal Dental Services  
SFE – Statement of Financial Entitlements  
SDR – Statement of Dental Remuneration

***Definitions***

12.2 Unless the context otherwise requires, words and expressions used in this SFE and the GDS Contract Regulations bear the meaning they bear in the GDS Contracts Regulations.

12.3 The following words and expressions used in this SFE have, unless the context otherwise requires, the meanings ascribed below.

“2006 Act” means the National Health Service Act 2006.

“Annual uprating of NACVs” is the percentage amount by which the NACV is to be uprated to be determined by the Secretary of State which is specified in paragraph 2.7.

“Actual Annual Contract Value” is to be construed in accordance with paragraph 3.1.

“Annual Reconciliation Report” is to be construed in accordance with paragraph 3.23.

“Annual Domiciliary and Sedation Service Payment” is to be construed in accordance with paragraphs 5.1 to 5.4.

“Billing Authority” has the same meaning as in Schedule 9 to the Local Government Finance Act 1988 (generally, district councils and London Borough Councils).

“the Board” means the National Health Service Commissioning Authority<sup>a</sup>.

“Capitation and Quality Scheme 2 Agreement” means an Agreement which forms a temporary part of a GDS contract or PDS agreement and which is entered into as part of the Capitation and Quality Scheme 2 and in accordance with the Scheme 2 Directions.

“Capitation and Quality Scheme Statement of Financial Entitlements” means the directions made by the Secretary of State under section 103(1) and 109(4) of the 2006 Act, which applied to payments made to contractors who elected to enter into a Capitation and Quality Scheme Agreement<sup>b</sup>.

“Confinement” means the birth of a living child, or the birth of a child, whether living or not, after 24 weeks of pregnancy.

“Contractor” means a person other than the Board who is a party to a GDS Contract.

“Demand Notice” means the notice served by the Billing Authority stating, in accordance with regulations under paragraph 2(2)(g) of Schedule 9 to the Local Government Finance Act 1988, the payment by way of Non-Domestic Rates that a Non-Domestic Ratepayer is required to make in respect of a financial year.

“Dental List” means the Dental Performers List.

“Dental Performers List” means the list prepared, maintained and published by the Board pursuant to regulation 3(1)(b) (performers lists) of the Performers Lists Regulations.

“Dentist” means a person registered in accordance with section 14 (the dentists register and the registrar) of the Dentists Act 1984<sup>c</sup>.

“Dentist Performer” means a dental practitioner–

- (a) whose name is included in the Dental Performers List;
- (b) who performs dental services under a GDS Contract; and
- (c) who is employed or engaged by a contractor.

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<sup>a</sup> The National Health Service Commissioning Board was established by section 1H of the 2006 Act. Section 1H was inserted by section 9(1) of the 2012 Act.

<sup>b</sup> Capitation and Quality Scheme Statement of Financial Entitlements signed on 24th May 2011 is available on the Department of Health website [www.dh.gov.uk](http://www.dh.gov.uk).

<sup>c</sup> 1984 c.24.

“Employed or engaged” is to be construed in accordance with paragraph 1.5.

“Employing Authority” has the same meaning as in the NHS Pension Scheme Regulations 1995 and the NHS Pension Scheme Regulations 2008.

“Expected date of confinement” means the date on which the birth of a child is expected.

“Expected week of confinement” means the week in which the birth of a child is expected.

“Financial year” means a period of 12 months ending with 31st March in any year.

“Foundation Trainee” means a dental practitioner who is employed by a contractor as a Foundation Trainee as a consequence of a placement arrangement made by a postgraduate dental dean or director of postgraduate dental education.

“Foundation Trainer” means a Dentist Performer–

- (a) who is employed or engaged by a contractor; and
- (b) whose application to act as a Foundation Trainer in a foundation training scheme for general dental practice has been approved by a selection committee established by a Postgraduate Dental Education Committee, and who remains an approved person by such a committee.

“Functions Regulations” means the Functions of the National Health Service Commissioning Board and the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Primary Dental Services) (England) Regulations 2013<sup>a</sup>.

“GDS contract” means a general dental services contract under section 100 of the 2006 Act<sup>b</sup>.

“GDS Contracts Regulations” means the National Health Service (General Dental Services Contracts) Regulations 2005<sup>c</sup>.

“Hereditament” must be construed in accordance with paragraph 10.2(a).

“Money Purchase Additional Voluntary Contributions” means contributions to a Money Purchase Additional Voluntary Contributions Provider in respect of what, for the purposes of the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000<sup>d</sup>, is a free-standing additional voluntary contributions scheme.

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<sup>a</sup> S.I. 2013/469.

<sup>b</sup> Section 100 is amended by section 55(1) of, and paragraphs 43(1) to (4) of Schedule 4 to, the 2012 Act.

<sup>c</sup> S.I. 2005/3361, as amended by S.I. 2006/563, 2007/544, 2008/528, 1514 and 1700, 2009/309 and 462, 2010/22 and 1881, 2011/1182, 2012/502, 2273 and 2404, and 2013/235 and 364.

<sup>d</sup> S.I. 2000/619 as amended.

“Money Purchase Additional Voluntary Contributions Provider” means an insurance company providing what, for the purposes of the National Health Service (Additional Voluntary Contributions) Regulations 2000, is a free-standing additional voluntary contributions scheme.

“Monthly Annual Contract Value Payments” are the payments, based on the Actual Annual Contract Value of a GDS contract, which are to be determined in accordance with Section 2.

“Monthly Annual Domiciliary and Sedation Services Payment” is the amount determined in accordance with paragraphs 5.4 to 5.12.

“Monthly Payment Date” must be construed in accordance with paragraph 3.18.

“Monthly Payment Schedule” must be construed in accordance with paragraph 3.21.

“Monthly Seniority Payment” is a payment under Section 6.

“Negotiated Annual Contract Value” is the amount determined in accordance with Section 2.

“Net monthly Pensionable Earnings” means a Dentist Performer’s monthly Pensionable Earnings (i.e. one twelfth of his Pensionable Earnings for the financial year into which the month falls), net of any Pensionable Earnings that are attributable to any Monthly Seniority Payment.

“NHS Business Services Authority” means the NHS Business Services Authority established by the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005**a**.

“NHS Act 1977” means the National Health Service Act 1977**b**

“NHS charge” means a charge made to the patient for provision of services pursuant to the NHS Charges Regulations.

“NHS Charges Regulations” means the National Health Service (Dental Charges) Regulations 2005**c**.

“NHS Pension Scheme Regulations 1995” means the National Health Service (Pension Scheme) Regulations 1995**d**.

“NHS Pensions Scheme Regulations 2008” means the National Health Service Pension Schemes Regulations 2008**e**.

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**a** S.I. 2005/2414, as amended by S.I. 2006/632, 2007/1201 and 2013/235.

**b** 1977 c.49.

**c** S.I. 2005/3377, as amended by S.I. 2006/1837, 2007/544, 2008/547, 2009/404, 2011/519, 2012/502, 2013/235 and 364.

**d** S.I. 1995/300, as amended.

**e** S.I.2008/653 as amended.

“Non-Domestic Ratepayer” means the person who is liable under section 43 (occupied hereditaments: liability) of the Local Government Finance Act 1988 to pay an amount in respect of Non-Domestic Rates.

“Non-Domestic Rates” means the non-domestic rates payable under Part III of the Local Government Finance Act 1988.

“Parental Leave Pay Period” is to be construed in accordance with paragraph 8.8.

“Partner”, in the context of a personal relationship (as opposed to a partner to a partnership agreement), means a member of a couple who are living as husband and wife or as civil partners, or who are living in like family arrangements.

“Paternity leave payment” includes payment for adoption leave for an adoptive parent who is not the main care provider.

“PDS agreement” is an agreement under which primary dental services are provided under section 107 of the 2006 Act (arrangements by the Board for the provision of primary dental services)**a**.

“PDS Agreement Regulations means the National Health Service (Personal Dental Services Agreements) Regulations 2005**b**.

“PDS Agreement Holder” means a person who is a party to a PDS agreement.

“PDS SFE” means the directions given under section 109(4) of the 2006 Act in respect of PDS agreements signed on 31st March 2009.

“Pensionable Earnings” means the earnings derived from a GDS contract or PDS agreement which are treated as the pensionable earnings of a Dentist Performer under the NHS Pension Scheme Regulations 1995, or as the case may be the NHS Pension Scheme Regulations 2008.

“Pensionable Earnings Ceiling” has the meaning given in paragraph 1 of Schedule 2 to the NHS Pension Scheme Regulations 1995 (medical and dental practitioners – additional definitions) and in regulation 3.A.1 of the NHS Pension Scheme Regulations 2008 (interpretation of Part 3; general).

“Performers Lists Regulations” means the National Health Service (Performers Lists) (England) Regulations 2013**c**.

“Period of sickness” means a period beginning with the date on which a Dentist Performer ceases to provide dental services under the contract because of sickness and ending with the date on which that Dentist Performer is once again available to provide dental services under the contract.

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**a** Section 107 is amended by section 55(1) of, and paragraph 48 of Schedule 4 to the 2012 Act.

**b** S.I. 2005/3373 as amended by S.I. 2006/563, 2007/544, 2008/528 and 1514, 2009/309 and 462, 2010/22 and 1881, 2011/1182, 2012/502, 2273 and 2404, and 2013/235 and 364.

**c** S.I. 2013/335.

“Postgraduate dental dean or director of postgraduate dental education” means a dental practitioner appointed to that position to assist in the provision of a suitable learning environment for dental practitioners performing primary dental services to meet the requirements and standards of the Dental Faculties of the Royal College of Surgeons of England and the Department of Health.

“Scheme 2 Agreement Holder” means a person who is party to a Capitation and Quality Scheme 2 Agreement.

“Scheme 2 SFE” means the Capitation and Quality Scheme 2 Agreements Statement of Financial Entitlements<sup>a</sup>.

“SDR” means the Statement of Dental Remuneration under regulation 19(3) of the National Health Service (General Dental Services) Regulations 1992, as it had effect on 31st March 2006.

“the 2009 SFE” means the General Dental Services Statement of Financial Entitlements signed on 31st March 2009<sup>b</sup>.

“Type 1 dental practitioner” has the meaning given in regulation A2 of the NHS Pension Scheme Regulations 1995 (interpretation) and in regulation 3.A.1 (interpretation of Part 3: general) of the NHS Pension Scheme Regulations 2008.

Type 2 dental practitioner” has the meaning given in regulation A2 of the NHS Pension Scheme Regulations 1995 and in regulation 3.A.1 (interpretation of Part 3: general) of the NHS Pension Scheme Regulations 2008.

## **PART 4**

### **TRANSITIONAL, REVOCATION AND SAVINGS PROVISIONS**

#### **13. Interpretation**

**13.1** For the purposes of this Section—

- (b) “2012 Act” means the Health and Social Care Act 2012<sup>c</sup>;
- (c) “PCT” means a reference to a Primary Care Trust which was established and subsisted on 31st March 2013 immediately before the coming into force of section 34 (abolition of Primary Care Trusts) of the 2012 Act.

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<sup>a</sup> The Capitation and Quality Scheme 2 Statement of Financial Entitlements signed on 28th March 2013 and published on the Department of Health website at [www.dh.gov.uk](http://www.dh.gov.uk)

<sup>b</sup> The General Dental Services Statement of Financial Entitlements signed on 31st March 2009 by Chris Audrey is available on the Department of Health website at [www.dh.gov.uk](http://www.dh.gov.uk).

<sup>c</sup> 2012 c.7.

## **Transitional provisions**

**13.2** Subject to any other preceding provision in this SFE, any act or omission by or in relation to, a PCT before 1st April 2013 in respect of—

(a) the exercise of any function of a PCT under or in connection with a provision of the 2009 SFE as in force on 31st March 2013; or

(b) any rights or liabilities of a PCT transferred as a consequence of a property transfer scheme made under section 300 of the 2012 Act in relation to the 2009 SFE,

is deemed to have been an act or omission of, or in relation to the Board.

**13.3** Anything which, when this SFE takes effect, is in the process of being done by, or in relation to, the PCT in respect of, or in connection with—

(a) the exercise by the PCT of any of its functions under or in connection with a provision of the 2009 SFE as in force on 31st March 2013, or

(b) any rights or liabilities of the PCT transferred as a consequence of a property transfer scheme made under section 300 of the 2012 Act in relation to the 2009 SFE,

is deemed to have effect as if done by, or in relation to, and may be continued by, or in relation to, the Board.

**13.4** Where it is necessary for the contractor or the Board—

(a) to take account of a period of time; or

(b) to calculate a period of time which is required in accordance with this SFE,

any period of time that occurred before 1st April 2013 and which is relevant to the matter under consideration is to be taken into account or used in order to calculate any time period for the purposes of that consideration or applying provisions in these Directions on or after the 1st April 2013 only if that period of time could have been taken into account or used in a calculation of a time period in respect of those mirror provisions as in force immediately before 1st April 2013.

**13.5** Notwithstanding paragraph 13.1, any provision which has continuing operation after 31st March 2013 and which refers to a PCT or requires action by a PCT, is to be treated, so far as that provision falls to be applied to any act, omission occurring after that date, as if it referred to the Board.

## **Revocations and Savings**

**13.6** Subject to paragraph 13.7—

- (a) the 2009 SFE signed on 31st March 2009;
- (b) the General Dental Services Statement of Financial Entitlements (Amendment) Directions 2010 signed on 8th April 2010;
- (c) the General Dental Services Statement of Financial Entitlements and the Personal Dental Services Statement of Financial Entitlements (Amendment) Directions 2011 signed on 4th May 2011;
- (d) the General Dental Services Statement of Financial Entitlements and the Personal Dental Services Statement of Financial Entitlements (Amendment No 2) Directions 2011 signed on 20th October 2011; and
- (e) the General Dental Services Statement of Financial Entitlements, the Personal Dental Services Statement of Financial Entitlements and the Capitation and Quality Scheme Statement of Financial Entitlements (Amendment) Directions 2012 signed on 25th April 2012;

are revoked.

**13.7** Notwithstanding the revocation provided for in paragraph 13.6, the 2009 SFE as in force immediately before 1st April 2013 continues to apply to the extent necessary to assess any entitlement to payment or recovery of payment arising under the terms of a GDS contract.

**13.8** For the purposes of paragraph 13.7 and for the resolution of any matter which is pending as at 31st March 2013—

- (a) the Board may do or continue to do anything which a PCT could have done in relation to the 2009 SFE; and
- (b) the transitional provisions in Schedule 1 to the National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013 apply in so far as is necessary.

## NATIONAL HEALTH SERVICE, ENGLAND

### The Performers Lists (Suspended Dentists' NHS Earnings) Determination 2013

The Secretary of State for Health makes the following determination in exercise of the powers conferred by regulation 13(1) of the National Health Service (Performers Lists) (England) Regulations 2013(a).

#### Citation, commencement and application

1.—(1) This Determination may be cited as the Performers Lists (Suspended Dentists' NHS Earnings) Determination 2013 and comes into force on 1st April 2013.

(2) This Determination applies in England only.

#### Interpretation

2. In this Determination—

“2012 Act” means the Health and Social Care Act 2012(b);

“2006 Act” means the National Health Service Act 2006(c);

“the Board” means the National Health Service Commissioning Board(d)

“contractor” means—

(a) a person (including a corporation, partnership, or a limited liability partnership) who has entered into a GDS contract with the Board under section 102 of the 2006 Act(e) or as a consequence of section 300 of the 2012 Act is a party to a GDS contract; or

(b) a person who has entered into a PDS agreement made under section 107 of the 2006 Act(f) with the Board or as a consequence of section 300 of the 2012 Act is a party to a PDS agreement;

“employed or engaged” in relation to a dental practitioner's relationship with a contractor, includes, in addition to a dental practitioner who has a contract of service or for services with a contractor—

(a) a dental practitioner who is a contractor;

(b) a dental practitioner who is a partner in a partnership or a member of a limited liability partnership and the partnership is the contractor; and

(c) a dental practitioner who is a director of a dental corporation and that corporation is the contractor;

“GDS contract” means a contract made under section 102 of the 2006 Act;

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(a) S.I. 2013/335.

(b) 2012 c.7.

(c) 2006 c.41.

(d) The National Health Service Commissioning Board was established by section 1H of the 2006 Act. Section 1H was inserted by section 9(1) of the 2012 Act.

(e) Section 102 is amended by sections 55(1) and 203 of, and paragraph 44 of Schedule 4 to, the 2012 Act.

(f) Section 107 is amended by section 55(1) of, and paragraph 48 of Schedule 4 to, the 2012 Act.

“NHS Pension Scheme Regulations 2008” means the National Health Service Pension Scheme Regulations 2008 (a);

“NHS Pension Scheme Regulations 1995” means the National Health Service Pension Scheme Regulations 1995(b);

“monthly pensionable earnings” as regards any month, means one twelfth of the earnings that are the pensionable earnings of the dental practitioner from general dental services or primary dental services for the financial year in which the month falls;

“PDS agreement” means an agreement entered into under section 107 of the 2006 Act;

“Primary Care Trust” means the Primary Care Trust which was established and which subsisted immediately before the coming into force of section 34 (abolition of Primary Care Trusts) of the Health and Social Care Act 2012(c);

“pensionable earnings” has the same meaning as in paragraph 1 of Schedule 2 to the NHS Pensions Schemes Regulations 1995 or, as the case may be, regulation 3.A.1 of the NHS Pensions Schemes Regulations 2008, and accordingly—

(d) as regards type 1 dental practitioners, means practitioner income, including earnings derived from monthly seniority payments, but taking into account any relevant pensionable earnings ceiling, or

(e) as regards type 2 dental practitioners, means fees or regular payments (including salary or wages) paid to the practitioner by a contractor in respect of the performance of primary dental services, excluding bonuses and payments to cover expenses or for overtime;

“Performers Lists Regulations” means the National Health Service (Performers Lists) (England) Regulations 2013(d);

“suspended dentist” means a dental practitioner who is suspended by the Board in accordance with regulation 12 of the Performers Lists Regulations;

“type 1 dental practitioner” has the same meaning as in the NHS Pension Schemes Regulations 1995 or as the case may be, as in NHS Pensions Scheme Regulations 2008; and

“type 2 dental practitioner” has the same meaning as in the NHS Pension Schemes Regulations 1995 or as the case may be, as in the NHS Pensions Scheme Regulations 2008.

### **Entitlement to payments by virtue of this determination**

3.—(1) A person may be entitled to payments from the Board if—

(a) that person is a suspended dentist; or

(b) that person is a contractor by whom that suspended dentist is employed or engaged, and

immediately prior to the dentist’s suspension or the circumstances that precipitated that dentist’s suspension the dentist was employed or engaged by the contractor, and apart from the suspension under regulation 12 of the Performers Lists Regulations, that dentist would be able and would be permitted to perform primary dental services.

(2) Subject to the following paragraphs of this Determination, where a dentist falls within the circumstances referred to in sub-paragraph (1), that suspended dentist must be entitled to payments from the Board in respect of each complete calendar month or part month for which the dentist is suspended, if—

(a) in the case of a dentist who is a contractor—

(i) the suspended dentist holds a GDS contract or a PDS agreement and the normal monthly payments under the dentist’s GDS contract or PDS agreement (or a *pro rata* amount in the case of part months) have been suspended, or

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(a) S.I. 2008/653, as amended.

(b) S.I. 1995/300, as amended.

(c) 2012 c.7.

(d) 2013/335.

- (ii) the suspended dentist is still paid the normal monthly payments under the dentist's GDS contract or PDS agreement but, notwithstanding the dentist's suspension, the dentist is required to provide units of dental or orthodontic activity under the dentist's GDS contract or PDS agreement during the period of suspension; or
- (b) the dentist is a dental practitioner to whom (a) does not apply but—
  - (i) the dentist is, or immediately prior to the circumstances that precipitated the dentist's suspension was, employed or engaged by the contractor, and
  - (ii) the dentist is not entitled to the normal monthly remuneration from the contractor (or a *pro rata* amount in the case of part months).

(3) Subject to the following paragraphs of this Determination, where by virtue of sub-paragraph (1) a contractor may be entitled to payments in respect of a suspended dentist from the Board, that contractor must be entitled to payments from the Board in respect of the suspended dentist, in respect of each complete calendar month or part month during the suspension, if the suspended dentist is not entitled to payments pursuant sub-paragraph (2) but—

- (a) the suspended dentist is, or immediately prior to the circumstances that precipitated the dentist's suspension was, employed or engaged by the contractor; and
- (b) the suspended dentist is entitled to the dentist's normal monthly NHS remuneration from the contractor but the Board is satisfied that—
  - (i) the contractor has incurred costs in providing primary dental services that would have been provided by the suspended dentist, had that dentist not been suspended, and
  - (ii) it is unreasonable for the contractor to have to bear all those costs itself.

(4) For the purposes of paragraph (3)(b) for calculating the suspended dentist's normal monthly NHS remuneration, the Board must—

- (a) have regard only to remuneration relating to the performance by the suspended dentist of primary dental services provided under Part 5 of the 2006 Act; and
- (b) determine an amount which, in the Board's view, represents a reasonable amount having regard to the pensionable earnings of the suspended dentist in the most recently available six complete months of data relating to that suspended dentist's earning.

### **Amount of payments**

4.—(1) Subject to the following paragraphs of this Determination, if a suspended dentist is entitled to a payment from the Board by virtue of paragraph 3(2), the amount to which the dentist is entitled, in respect of each complete calendar month or part month for which the dentist is suspended, is the dentist's monthly pensionable earnings (or a *pro rata* amount in the case of part months).

(2) If in respect of any month or part month for which a suspended dentist is entitled to a payment from the Board by virtue of paragraph 3(2)—

- (a) the dentist is entitled to receive—
  - (i) any remuneration from any alternative work that the dentist has taken on following the dentist's suspension; or
  - (ii) any insurance payments by reason of the dentist's cessation or reduction of work or income,

the sum which the dentist is entitled to receive pursuant to sub-paragraph (1) must be reduced by £1 for each complete £2 which the dentist is entitled to receive in respect of the alternative work or as an insurance payment; or

- (b) the dentist is entitled to receive any remuneration which relates to the provision of primary dental services from any contractor by which the dentist was employed or engaged immediately prior to—
  - (i) the dentist's suspension, or

- (ii) the circumstances which gave rise to the dentist's suspension,
- (c) the sum which the dentist is entitled to receive pursuant to sub-paragraph (1) shall be reduced by £9 for each complete £10 which the dentist is entitled to receive from the contractor.

(3) In a case to which paragraph 3(3) applies, the amount to which the contractor is entitled in respect of the suspended dentist in respect of each complete calendar month or part month for which the dentist is suspended, is the amount of the additional costs that the Board is satisfied that—

- (a) the contractor has incurred in providing primary dental services during that month or part month that would have been provided by the suspended dentist, had the dentist not been suspended; and
- (b) it would be unreasonable for the contractor to have to bear,

having regard to the suspended dentist's normal monthly NHS remuneration in accordance with direction 3(4).

### **Arrangements for payment**

**5.**—(1) Any sum payable under this Determination must be paid subject to any lawful deductions of income tax, national insurance and superannuation contributions by the Board.

(2) Any sum payable under this Determination to a suspended dentist who is employed or engaged by a contractor may be paid to that contractor (contractor payments will in any event be paid to the contractor)(a).

### **Conditions of payment**

**6.** No payment must be made pursuant to this Determination unless—

- (a) the Board is satisfied that the suspended dentist or, contractor that is otherwise entitled to a payment, is entitled to that specific sum;
- (b) the Board has been provided by the suspended dentist (unless received from another source) with accurate and reliable details of—
  - (i) the suspended dentist's monthly pensionable earnings immediately prior to the dentist's suspension and immediately prior to the circumstances that led to the dentist's suspension;
  - (ii) any insurance policy the suspended dentist has taken out in order to provide the dentist with payments if the dentist's work ceases or is reduced,
 and the suspended dentist has warranted that the information provided in accordance with this paragraph is accurate;
- (c) the suspended dentist provides the Board with accurate and reliable information about any alternative work the dentist undertakes during the period of suspension, and undertakes to inform the Board immediately where—
  - (i) the dentist takes on any such work, or
  - (ii) there is any other change to the dentist's circumstances that might affect the dentist's entitlement to payments under this Determination,

but the Board may make payments on account to or in respect of a suspended dentist of amounts that are likely to be payable to or in respect of the dentist under this Determination, in appropriate circumstances.

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(a) In practice, payments made to a contractor under a GDS contract or PDS agreement will generally be made by the NHS Business Services Authority on behalf of the Board.

## Overpayments

7. If the Board makes a payment to or in respect of a suspended dentist pursuant to this Determination but the suspended dentist or the contractor was not entitled to receive all or any part of it, whether because—

- (a) the conditions relating to or underlying entitlement to the payment are or were not met; or
- (b) the payment was calculated incorrectly (including where a payment on account overestimates the amount that is to fall due),

the Board may recover the amount of the overpayment by deducting an equivalent amount from any other payment payable under this Determination to the person who received the overpayment (without prejudice to its other powers to recover the overpayment).

## Revocation and saving

8.—(1) Subject to paragraph (2), the Performers Lists (Suspended Dentists' NHS Earnings) Determination 2006 made on 29th March 2006 (“2006 Determination”) is revoked.

(2) In a case where—

- (a) a determination was made before 1st April 2013 which would have continuing effect but for paragraph (1), or
- (b) a determination is pending immediately before 1st April 2013 in respect of a suspension made under the National Health Service (Performers Lists) Regulations 2004(a),
- (c) the 2006 Determination continues to apply to the extent necessary to enable payments to be made, continued to be made and recovered in the case of any overpayment.

(3) For the purposes of the continued application of the 2006 Determination in accordance with paragraph (2), references to a Primary Care Trust must be read as if it were a reference to the Board.

Signed by authority of the Secretary of State for Health

27 March 2013

Elizabeth Lynam  
A member of the Senior Civil Service  
Department of Health

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(a) S.I. 2004/585 relevant amendment 2005/3491.

## ANNEX 2

### DETERMINATION III – SENIORITY PAYMENTS

*(See section 6.2(a)(i). This Determination is annexed to this SFE for historical reference.)*

#### INTERPRETATION

1. (1) In this Determination, unless the context otherwise requires -

“accumulated gross fees” means gross fees authorised for payment by the Board in respect of a period since 1 April 2005;

“approved postgraduate education session” means a session of not less than two-and-a-half hours' duration which forms the whole or a part of a course approved by the regional Postgraduate Dental Dean / Director of postgraduate dental education;

“Board” means the Dental Practice Board;

“Financial Year” means the period beginning on 1 April in one year and ending on 31 March in the next year;

“PCT” means a Primary Care Trust;

“payment period” means a period since 1 April 2005;

“pensionable earnings” means that remuneration defined -

(a) in Schedule 2 to the National Health Service Pension Scheme Regulations 1995 (\*); or

(b) in Schedule 1 to the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (#);

which is paid to a dentist for the provision of general dental services whether or not such a dentist is entitled to participate in the benefits provided under those Regulations, as if that definition -

(i) excluded payments made under this Determination and remuneration as a salaried practitioner; and

(ii) disregarded any limit on remuneration of which account must be taken under those Regulations;

"quarter" means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December;

"seniority payment" has the meaning assigned to it in paragraph 2 of this Determination;

"superannuation benefit" means any payment, other than a refund of contributions, made to a dentist by virtue of the application of

- (a) the National Health Service Pension Scheme Regulations 1995; or
- (b) the National Health Service Superannuation Scheme (Scotland) Regulations 1995; or
- (c) the corresponding provisions of the law in force in Northern Ireland or the Isle of Man;

as a result of his providing general dental services.

(2) In this Determination a reference to any enactment or statutory instrument is to that enactment or statutory instrument as amended or re-enacted by any subsequent enactment or statutory instrument.

(3) In this Determination a reference to a numbered paragraph is to the paragraph bearing that number in this Determination and a reference in a paragraph to a numbered sub-paragraph is to the sub-paragraph bearing that number in that paragraph.

(4) This Determination applies to England only, must come into force on 1 April 2005.

## **ENTITLEMENT**

2. (1) Subject to the provisions of sub-paragraph (5), a PCT must, with effect from the first day of a quarter on which a dentist must have fulfilled the conditions set out in sub-paragraphs (2) and (3) and complied with the requirements set out in sub-paragraph (4), authorise the Board to pay to the dentist in accordance with the provisions of paragraph 4 such additional remuneration as is appropriate. This additional remuneration will be referred to as a seniority payment.

(2) The conditions referred to in sub-paragraph (1) are -

- (a) the dentist has reached the age of 55 years on or before the first day of the relevant quarter;
- (b) the dentist has provided general dental services other than as a salaried dentist or as an assistant for a period of not less than 10 years since July 1948, of which not less than a period of 5 years (whether or not either of such periods has been continuous) has been within the period of 10 years ending on the first day of the relevant quarter; and
- (c) the dentist has, within the 10 years ending 31 March 2005, received pensionable earnings of not less than £207,000.

(3) A dentist, who becomes entitled to seniority payments for the first time on or after 1 April 1992, must have undertaken not less than two approved postgraduate education sessions in the five financial quarters prior to the first day of the quarter to which the claim relates.

(4) The requirements referred to in sub-paragraph (1) are that an application for a seniority payment must be made on a form which must be obtained from a PCT, on whose dental list the dentist is included, must be made by recorded delivery to that PCT, and must include particulars of the fulfilment by the dentist of the conditions set out in sub-paragraphs (2) and (3).

(5) A PCT must not authorise the Board to pay a seniority payment to a dentist

(a) to whom a seniority payment has by virtue of the preceding sub-paragraphs of this paragraph been authorised by another PCT; and

(b) for a quarter in which he ceases to be on that PCT's dental list and in respect of which a seniority payment is authorised by another PCT.

3. A dentist must cease from being entitled to a seniority payment from the beginning of the first day of -

(a) the quarter in which his name is removed from the dental list pursuant to regulation 9 of the National Health Service (General Dental Services) Regulations 1992, as amended; or

(b) the quarter immediately following any quarter in which he receives a superannuation benefit.

## **PAYMENTS**

4. A seniority payment must be calculated and payable as follows -

(a) for the period from 1 April 2005, where a dentist is or becomes entitled to seniority payments on or after 1 April 2005 by virtue of the provisions of paragraph 2, a seniority payment must be payable in the first and each subsequent quarter in which he is entitled, provided -

(i) that his accumulated gross fees to the end of the relevant quarter amount to at least the sums listed below -

<b>Quarter ending</b>	<b>Accumulated gross fees</b>
30 June 2005	£6,250
30 September 2005	£12,500
31 December 2005	£18,750
31 March 2006	£25,000

Or;

- (ii) that his accumulated gross fees are less than the minimum figure stipulated in sub-paragraph (a), but at least 90% of his earnings from dentistry was attributable to accumulated gross fees; and he applies for a seniority payment by completing the form provided to him, for that purpose, by the PCT and returning it to the PCT.

The seniority payments must be 10% of accumulated gross fees in the relevant quarter, less any seniority payment already made in respect of any previous quarter or quarters in the payment period (or in the case of a dentist who becomes eligible for seniority payments after 1 April 2005, less an amount equal to any seniority payment that would have been made if he had been entitled to seniority payments on 1 April 2005), up to a maximum accumulated gross fee income by the end of the relevant quarter as listed below;

<b>Quarter ending</b>	<b>Accumulated gross fees</b>
30 June 2005	£18,750
30 September 2005	£37,500
31 December 2005	£56,250
31 March 2005	£75,000

(b) subject to sub-paragraph (c), a seniority payment must be payable at the end of the quarter following the one to which it relates;

(c) no seniority payment must be made by the Board to a dentist in respect of any period before the quarter immediately preceding the quarter in which his application for a seniority payment is delivered to a PCT.

## **INTERPRETATION**

1. (1) In this Determination, unless the context otherwise requires -

“accumulated gross fees” means gross fees authorised for payment by the Board in respect of a period since 1 April 2005;

“approved postgraduate education session” means a session of not less than two-and-a-half hours' duration which forms the whole or a part of a course approved by the regional Postgraduate Dental Dean / Director of postgraduate dental education;

“Board” means the Dental Practice Board;

“Financial Year” means the period beginning on 1 April in one year and ending on 31 March in the next year;

“PCT” means a Primary Care Trust;

“payment period” means a period since 1 April 2005;

“pensionable earnings” means that remuneration defined -

(a) in Schedule 2 to the National Health Service Pension Scheme Regulations 1995 (\*); or

(b) in Schedule 1 to the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (#);

which is paid to a dentist for the provision of general dental services whether or not such a dentist is entitled to participate in the benefits provided under those Regulations, as if that definition -

(i) excluded payments made under this Determination and remuneration as a salaried practitioner; and

(ii) disregarded any limit on remuneration of which account must be taken under those Regulations;

"quarter" means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December;

"seniority payment" has the meaning assigned to it in paragraph 2 of this Determination;

"superannuation benefit" means any payment, other than a refund of contributions, made to a dentist by virtue of the application of

(a) the National Health Service Pension Scheme Regulations 1995; or

(b) the National Health Service Superannuation Scheme (Scotland) Regulations 1995; or

(c) the corresponding provisions of the law in force in Northern Ireland or the Isle of Man;

as a result of his providing general dental services.

(2) In this Determination a reference to any enactment or statutory instrument is to that enactment or statutory instrument as amended or re-enacted by any subsequent enactment or statutory instrument.

(3) In this Determination a reference to a numbered paragraph is to the paragraph bearing that number in this Determination and a reference in a paragraph to a numbered sub-paragraph is to the sub-paragraph bearing that number in that paragraph.

(4) This Determination applies to England only, must come into force on 1 April 2005.

## ENTITLEMENT

2. (1) Subject to the provisions of sub-paragraph (5), a PCT must, with effect from the first day of a quarter on which a dentist must have fulfilled the conditions set out in sub-paragraphs (2) and (3) and complied with the requirements set out in sub-paragraph (4), authorise the Board to pay to the dentist in accordance with the provisions of paragraph 4 such additional remuneration as is appropriate. This additional remuneration will be referred to as a seniority payment.
  - (2) The conditions referred to in sub-paragraph (1) are -
    - (a) the dentist has reached the age of 55 years on or before the first day of the relevant quarter;
    - (b) the dentist has provided general dental services other than as a salaried dentist or as an assistant for a period of not less than 10 years since July 1948, of which not less than a period of 5 years (whether or not either of such periods has been continuous) has been within the period of 10 years ending on the first day of the relevant quarter; and
    - (c) the dentist has, within the 10 years ending 31 March 2005, received pensionable earnings of not less than £207,000.
  - (3) A dentist, who becomes entitled to seniority payments for the first time on or after 1 April 1992, must have undertaken not less than two approved postgraduate education sessions in the five financial quarters prior to the first day of the quarter to which the claim relates.
  - (4) The requirements referred to in sub-paragraph (1) are that an application for a seniority payment must be made on a form which must be obtained from a PCT, on whose dental list the dentist is included, must be made by recorded delivery to that PCT, and must include particulars of the fulfilment by the dentist of the conditions set out in sub-paragraphs (2) and (3).
  - (5) A PCT must not authorise the Board to pay a seniority payment to a dentist
    - (a) to whom a seniority payment has by virtue of the preceding sub-paragraphs of this paragraph been authorised by another PCT; and
    - (b) for a quarter in which he ceases to be on that PCT's dental list and in respect of which a seniority payment is authorised by another PCT.
3. A dentist must cease from being entitled to a seniority payment from the beginning of the first day of -
  - (a) the quarter in which his name is removed from the dental list pursuant to regulation 9 of the National Health Service (General Dental Services) Regulations 1992, as amended; or

(b) the quarter immediately following any quarter in which he receives a superannuation benefit.

## **PAYMENTS**

4. A seniority payment must be calculated and payable as follows -

(b) for the period from 1 April 2005, where a dentist is or becomes entitled to seniority payments on or after 1 April 2005 by virtue of the provisions of paragraph 2, a seniority payment must be payable in the first and each subsequent quarter in which he is entitled, provided -

(j) that his accumulated gross fees to the end of the relevant quarter amount to at least the sums listed below -

<b>Quarter ending</b>	<b>Accumulated gross fees</b>
30 June 2005	£6,250
30 September 2005	£12,500
31 December 2005	£18,750
31 March 2006	£25,000

Or;

(ii) that his accumulated gross fees are less than the minimum figure stipulated in sub-paragraph (a), but at least 90% of his earnings from dentistry was attributable to accumulated gross fees; and he applies for a seniority payment by completing the form provided to him, for that purpose, by the PCT and returning it to the PCT.

The seniority payments must be 10% of accumulated gross fees in the relevant quarter, less any seniority payment already made in respect of any previous quarter or quarters in the payment period (or in the case of a dentist who becomes eligible for seniority payments after 1 April 2005, less an amount equal to any seniority payment that would have been made if he had been entitled to seniority payments on 1 April 2005), up to a maximum accumulated gross fee income by the end of the relevant quarter as listed below;

<b>Quarter ending</b>	<b>Accumulated gross fees</b>
30 June 2005	£18,750
30 September 2005	£37,500
31 December 2005	£56,250
31 March 2005	£75,000

(b) subject to sub-paragraph (c), a seniority payment must be payable at the end of the quarter following the one to which it relates;

(c) no seniority payment must be made by the Board to a dentist in respect of any period before the quarter immediately preceding the quarter in which his application for a seniority payment is delivered to a PCT.