

# PERSONAL DENTAL SERVICES STATEMENT OF FINANCIAL ENTITLEMENTS

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# 1. Introduction

1.1 The Secretary of State for Health gives the directions set out in this Statement of Financial Entitlements (“SFE”) in exercise of the powers conferred by section 28E(3A) and 126(4) of the National Health Service Act 1977<sup>1</sup>.

1.2 This SFE relates to the payments to be made by Relevant Bodies (RBs) to a contractor under a PDS agreement. However, the payment arrangements under this SFE do not relate to circumstances where a PCT, an NHS Trust or an NHS Foundation Trust is a provider of primary dental services under the PDS agreement. In these circumstances, the arrangements for the payments under the PDS agreement are for the parties to determine (within the usual NHS framework).

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 1977 Act bear the meaning they bear in the 1977 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 Parts, Sections, 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 (or by a pilot scheme provider or a provider of services under section 35 of the 1977 Act). In this SFE, “employed or engaged”, in relation to a dental practitioner’s relationship with a contractor (or a pilot scheme provider etc.) 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>1</sup> 1977 c.49. Section 28E was inserted by section 22(1) of the National Health Service (Primary Care) Act 1997 (1997 c.46), and subsection (3A) was inserted by 177(8) of the Health and Social Care (Community Health and Standards) Act 2003 (c.43). Section 126(4) has been amended by section 65(2) of the National Health Service and Community Care Act 1990 (c.19), by paragraph 37 of Schedule 4 to the Health Act 1999 (c.8) and by paragraph 5(13)(b) of Schedule 5 to the Health and Social Care Act 2001 (c.15).

- (b) a dental practitioner who is a partner in a contractor that is a partnership; and
- (c) a dental practitioner who is a director of a dental corporation.

1.6 The directions given in this SFE apply in relation to England only. They were authorised to be given, and by an instrument in writing, on behalf of the Secretary of State for Health, by Chris Audrey, a member of the Senior Civil Service, on 29 March 2006, and shall come into force on 1st April 2006.

1.7 Although not part of the directions given in this SFE, included in Annex 1, for ease of reference, is a determination made under regulation 13(17) of the Performers Lists Regulations, which is the Performer Lists (Suspended Dentists' NHS Earnings) Determination 2006. The determination relates to all NHS dental practitioners providing primary dental services, whether under a PDS agreement, a GDS contract or PCT led arrangements – and deals with possible entitlement to payments from a PCT, and the amount of such payments, during a dental practitioner's suspension from a PCT's Dental Performers List.

1.8 This SFE may be revised at any time, in certain circumstances with retrospective effect.<sup>1</sup> For the most up-to-date information, contact the Dental and Ophthalmic Services Division, the Department of Health, New King's Beam House, 22 Upper Ground, London SE1 9BW, or visit the following web-site: [www.dh.gov.uk](http://www.dh.gov.uk).

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<sup>1</sup> See section 28E(3B) of the NHS Act 1977, inserted by section 177(8) of the Health and Social Care (Community Health and Standards) Act 2003.

# **PART 1**

## **ANNUAL AGREEMENT VALUES**

### **2. Calculated Annual Agreement Values**

2.1 This section applies in circumstances where a contractor, or the Dentist Performers that are employed or engaged by a contractor, were providing services under section 35 of the 1977 Act prior to 1st April 2006 but the contractor, from 1st April 2006, has chosen (and is entitled) to provide primary dental services under a PDS agreement rather than a GDS contract.

2.2 A Calculated Annual Agreement Value (“CAAV”) is an amount based essentially on historic earnings derived from fees and allowances under the Statement of Dental Remuneration (“SDR”) which were received by the dentists who are employed or engaged by the contractor. It is intended that calculations based on this amount will be used to protect income levels for a three year period, starting on 1st April 2006. The arrangements set out in this Section are therefore due to end on 31st March 2009.

#### ***Entitlement to a Calculated Annual Agreement Value***

2.2 A contractor is only entitled to payments based on a CAAV if it was not a pilot scheme provider before 1st April 2006 but–

- (a) it is entitled to a PDS agreement by virtue of Part 3 of the First Transitional Provisions Order;
- (b) its PDS agreement is entered into pursuant to that Part and the number of units–
  - (i) of dental activity to be provided by the contractor is determined in accordance with article 22(2) to (7) of the First Transitional Provisions Order, and
  - (ii) where applicable, of orthodontic activity to be provided by the contractor is determined in accordance with article 23(2) to (5) of the First Transitional Provisions Order;
- (c) its PDS agreement takes effect for payment purposes on 1st April 2006; and
- (d) thereafter (as a continuing entitlement condition), its PDS agreement is not varied to change the number of units of dental or orthodontic activity to be undertaken by the contractor.

#### ***Baseline numbers of units of dental and orthodontic activity***

2.3 Each PDS agreement that includes provision of dental or orthodontic activity must specify the number of units of dental or orthodontic activity to be provided by

the contractor (regulations 13 and 14 of the PDS Agreements Regulations). In the case of contractors who are entitled to payments based on a CAAV, for the start of the financial year 2006 to 2007, a calculation must be made–

- (a) if the agreement includes the provision of mandatory or advanced mandatory services, of a baseline number of units of dental activity, which is to be calculated in accordance with article 22(2) to (7) of the First Transitional Provisions Order (based on data in respect of the year ending on 30th September 2005). The total number of units of dental activity determined in accordance with article 22(2) to (7) is the contractor’s Baseline Number of Units of Dental Activity (BNUDA); and
- (b) if the agreement includes the provision of orthodontic services, of a baseline number of units of orthodontic activity, which is to be calculated in accordance with article 23(2) to (6) of the First Transitional Provisions Order (based on data in respect of the year ending on 30th September 2005). The total number of units of orthodontic activity determined in accordance with article 23(2) to (6) is the contractor’s Baseline Number of Units of Orthodontic Activity (BNUOA).

***Requirement to establish the contractor’s first CAAV***

2.4 Once the contractor’s BNUDA and BNUOA have been established for the financial year 2006 to 2007, the RB will need to establish the first value of the contractor’s CAAV. The first value of the contractor’s CAAV is the amount that is properly attributable, with regard to the year ending 30th September 2005, to the contractor’s BNUDA and any BNUOA that it has, subject (where appropriate) to the adjustments that are set out below. This amount is to be determined by as follows.

***Calculation of the baseline value of the contractor’s CAAV***

2.5 Firstly, the RB is to establish the earnings received by the dentists who are employed or engaged by the contractor, (that is, the gross amounts paid to them) between 1st October 2004 and 30th September 2005 inclusive (“the baseline year”) pursuant to the following provisions of the SDR (seniority is dealt with separately)–

- (a) Determination I (scale of fees), including Annex I to that Determination;
- (b) Determination V (commitment payments);
- (c) Determination VIII (continuing professional development allowances);
- (d) Determination X (clinical audit allowances).

2.6 This initial baseline value is then to be subject, potentially, to four types of adjustment to produce the first value of the contractor’s CAAV.

### ***Vocational Trainee earnings adjustment***

2.7 Where a dentist who is employed or engaged by the contractor was a Trainer during all or part of the baseline year, a deduction must be made from the earnings received pursuant to Determination I during the baseline year so as to exclude receipts from earnings properly attributable to any Vocational Trainees for whom the Trainer was responsible during the baseline year (i.e. item of service fees earned by the Vocational Trainees). The units of activity associated with these earnings should also have been removed from the calculation of the contractor's BNUDA and, where applicable, BNUOA.

### ***Practice configuration adjustment***

2.8 In determining the contractor's BNUDA and, where applicable, BNUOA, the RB may take into account changes to the configuration of the dental practice which the contractor was, or which the dentists who are employed or engaged by the contractor worked for, during the baseline year. Examples of factors that may be taken into account include: vacancies or absences during the baseline period; movement of associates during the baseline period; mergers or splits during the baseline period; and practices being newly established during the baseline period. Where the RB adjusts a contractor's BNUDA or, where applicable, BNUOA, to take account of this type of configuration change, a parallel adjustment must also be made to the baseline value of the contractor's CAAV.

2.9 Where one or more of the dentists employed or engaged by the contractor has received gross GDS earnings of more than £1,000 during the baseline year in respect of recalled attendance, an adjustment will be made to the contractor's BNUDA or BNUOA to take account of the fact that the provision of out of hours services has become the responsibility of RBs from 1st April 2006. However, there should be no changes to the baseline value of a contractor's CAAV, as part of the practice configuration adjustment, to reflect this change in responsibility.

### ***Time lag adjustments***

2.10 Any changes in accordance with paragraphs 2.7 to 2.9 will have reflected parallel adjustments in the calculation of the contractor's BNUDA and, where applicable BNUOA. There is a further adjustment to the contract value that is unrelated to the BNUDA and BNUOA calculations, known as the time lag adjustments.

2.11 The time lag adjustments are adjustments to the baseline value of a contractor's CAAV, as adjusted in accordance with paragraphs 2.7 to 2.9. The underlying purpose of these adjustments is to ensure that a calculation based on cash receipts in the baseline period is adjusted to an appropriate level for resource accounting purposes, and to reflect the delay between the end of the baseline period and the start of the financial year 2006 to 2007. Accordingly, the aim of these adjustments is to produce an appropriate baseline value for the financial year 2006 to 2007.

2.12 The manner of these adjustments will depend on the way in which the baseline value of the contractor's CAAV, as adjusted in accordance with paragraphs 2.7 to 2.9, is actually or notionally based on different payments under the SDR. This is because different time lag adjustments are appropriate for different payments. The Department of Health has produced guidance on to what extent, and if so how, it considers that the elements that make up the baseline value of a contractor's CAAV, as adjusted in accordance with paragraphs 2.7 to 2.9, should be adjusted to produce an appropriate baseline values for the financial year 2006 to 2007.

### ***2006/7 Adjustment***

2.13 It is intended to uplift the amount determined in accordance with paragraph 2.11 following consideration of a recommendation of the Doctors' and Dentists' Review Body (DDRB) Report 2006. In practice, and in accordance with entry 1(b) of column 2 in the Schedule to the Functions Regulations, this adjustment will be made by the NHS BSA on a national basis, after the RB has loaded the contractor's annual contract value (not including the 2006/7 Adjustment) onto its computerised payment systems. The RB must not, therefore, adjust the amounts that it loads into the NHS BSA's computerised payment systems by the 2006/7 Adjustment.

### ***First CAAV***

2.14 The contractor's initial baseline value for its CAAV, as adjusted (as appropriate) in accordance with paragraphs 2.7 to 2.12, is the first value of the contractor's CAAV. For the financial year 2006 to 2007, this amount is to form the basis of the contractor's Monthly Annual Agreement Value Payments ("Monthly AAVPs"), subject to the following provisions of this Part.

### ***Second and third CAAVs***

2.15 It is intended that, at the start of the financial year 2007 to 2008 and the financial year 2008 to 2009, the Monthly AAVPs of any contractor entitled to payments based on a CAAV will be uprated. It is intended that this SFE will be amended so that—

- (a) for the start of the financial year 2007 to 2008, a 2007/8 Adjustment, which will be the uprating factor for that financial year, will be included in it; and
- (b) for the start of the financial year 2008 to 2009, a 2008/9 Adjustment, which will be the uprating factor for that financial year, will be included in it.

2.16 The first of these Adjustments will be used to uprate the first value of a contractor's CAAV, producing for that contractor a second value of its CAAV, and the second of these Adjustments will be used to uprate the second value of its CAAV to produce a third value. The second and third values of the contractor's CAAVs will then be used to calculate the contractor's Monthly AAVPs for the financial year to which they relate (i.e. the second value for the financial year 2007 to 2008 and the

third value for the financial year 2008 to 2009), subject to the following provisions of this Part.

2.17 In practice, and in accordance with entry 2(b) of column 2 in the Schedule to the Functions Regulations, the 2007/8 Adjustment and the 2008/9 Adjustment will be factored into Monthly AAVPs by the NHS BSA on a national basis. The RB must not itself, therefore, adjust the amounts that it has loaded into the NHS BSA's computerised payment systems by these adjustments.

### **3. Negotiated Annual Agreement Values**

3.1 Each PDS agreement must, by virtue of regulation 12 of the PDS Agreements Regulations, specify the services to be provided by the contractor under the PDS agreement. For the most part, the arrangements for remuneration in respect of those services are to be determined locally.

3.2 However, even in cases where a contractor is not being remunerated on the basis of a CAAV, a degree of standardisation is necessary in order to achieve certain objectives, which include having standard arrangements for the following–

- (a) making deductions in respect of NHS charges, employees' superannuation contributions and Local Dental Committee (LDC) levies. The standard arrangements for making the payments that are to be the subject of the aforementioned deductions are set out in this Part; and
- (b) making seniority payments, parental leave payments, sickness leave payments and vocational training payments, and reimbursement of business rates. These are covered in Part 2.

#### ***Nomination of the first Negotiated Annual Agreement Value***

3.3 The contractor and the RB will need to agree the arrangements for the remuneration of all the services provided under the agreement. Typically, these remuneration arrangements are likely to include a basic payment in respect of a majority of, if not all, the services that the contractor is required to provide. Such a payment is likely, for example to cover remuneration in respect of any units of dental or orthodontic activity that the contractor is required to provide.

3.4 In cases where a contractor is not being remunerated on the basis of a CAAV, the contractor and the RB must agree to nominate a particular payment or aggregate of payments to be the Negotiated Annual Agreement Value (NAAV) for the PDS agreement for the financial year in which the PDS agreement first takes effect for payment purposes. That payment or aggregate of payments must be of sufficient size to bear the likely deductions of NHS charges, employees' superannuation contributions and LDC levies under this Part in that financial year.

3.5 If the payment, or any of the payments in the aggregate of payments, only relates to part of that financial year – for example, because the PDS agreement takes

effect for payment purposes after the start of the financial year, or is due to end before the end of the financial year – the part year payment or payments are to be annualised. The annualised amount of the nominated payment or aggregate of payments is to be the first NAAV for the contractor's PDS agreement.

***NAAVs for PDS agreements that replace services provided under section 35 of the 1977 Act***

3.6 If a contractor would have been entitled to a CAAV had it not contracted to provide fewer units of dental or orthodontic activity than would have been taken into account in the calculation of its CAAV, its NAAV must be lower than its CAAV would have been by an amount that reflects any reduced level of activity.

3.7 If a contractor has entered into a PDS agreement on the basis of entitlement under article 16 or 17 of the First Transitional Provisions Order (that is, contractors that were providing orthodontic services only under section 35 arrangements and will be providing orthodontic services only under their PDS agreement), their NAAV must be 55 times the number of units of orthodontic activity to be provided under their PDS agreement (see article 23(6) of the First Transitional Provisions Order) and so the RB and the contractor will have to agree the number of units of orthodontic activity to be provided under the agreement and the NAAV simultaneously.

***NAAVs for PDS agreements that replace pilot scheme agreements***

3.8 If the contractor provided services under a pilot scheme agreement, it is likely that the agreement value for its pilot scheme agreement will form the basis of the negotiation of its NAAV. In such circumstances, as part of the process of ensuring that the PDS agreement represents value for money, the RB is to have regard to the following factors when negotiating the NAAV–

- (a) the annual (or annualised) agreement value for the pilot scheme agreement during the financial year 2005 to 2006, uprated by the 2006/7 Adjustment (an amount specified by the Secretary of State, following a recommendation of the DDRB), is to provide the benchmark value for the contractor's NAAV;
- (b) adjustments may need to be made to that benchmark value to take account of changes to the configuration of the contractor and to exclude receipts, in the financial year 2005 to 2006, from earnings properly attributable to Vocational Trainees (but also, a suitable number of units of dental activity may have been added to the contractor's total for the year to reflect the additional services that will be provided as a result of employing a Vocational Trainee);
- (c) the payments for specific purposes under Part 2 should be deemed sufficient for those purposes, and so any amount in respect of those purposes that was included in the calculation of the annual agreement value for the pilot scheme agreement should be excluded from the calculation of the contractor's NAAV;

- (d) the annual agreement value of the pilot scheme agreement may also have had built into it other amounts that are separately remunerated under the PDS agreement, and these amounts should also be excluded from the calculation of the contractor's NAAV. It is also possible that the pilot scheme agreement may have had built into it costs in respect of employer's superannuation contributions under the NHS pension scheme. If this is the case, those amounts should also be excluded from the calculation of the contractor's NAAV, as RBs will be responsible for any employer's superannuation contributions of dentist performers under the NHS pension scheme. The RB has an overriding duty to take all reasonable steps to ensure that it does not remunerate–
  - (i) twice for the same item of expenditure under the PDS agreement, or
  - (ii) under the PDS agreement for items of expenditure that are separately remunerated elsewhere.

***New NAAVs where a PDS agreement is revised***

3.9 If the services, or service levels, that a contractor is required to provide under its PDS agreement is revised (for example, if the number of units of dental or orthodontic activity that the contractor is required to provide is revised), a new NAAV will have to be established for that contractor. If the variation takes effect during the financial year, the new NAAV for that agreement must be an annualised amount for calculation purposes, even though only a proportion of that annualised amount will in fact be payable for the remaining part year.

***Annual uprating of NAAVs***

3.10 If–

- (a) at the start of a new financial year, a contractor was in receipt of Monthly AAVPs in respect of the last month of the previous financial year; and
- (b) the contractor will continue to be under an obligation to provide the same services, at the same levels, in the new financial year as it had in the previous financial year,

the amount of its NAAV for the new financial year is to be uprated by a percentage amount to be determined by the Secretary of State.

3.11 It is intended that at the start of each financial year this SFE will be amended so as to include that percentage increase, which in the case of the financial years 2007 to 2008 and 2008 to 2009, will be the same as the 2007/8 Adjustment and the 2008/9 Adjustment mentioned in paragraph 2.15. In practice, these adjustments will be factored into Monthly AAVPs by the NHS BSA on a national basis. The RB must not itself, therefore, adjust the amounts that it has loaded into the NHS BSA's computerised payment systems by these adjustments.

## **4. Payment of Monthly Annual Agreement Value Payments**

4.1 At any point, there should be in respect of each PDS agreement a CAAV, determined in accordance with Section 2, or a NAAV, determined in accordance with Section 3. This, in all cases, is to be an annual (or annualised) amount, and is to provide the basis for the calculation of the Monthly AAVPs payable under the agreement. This CAAV or NAAV is known as the Actual Annual Agreement Value (AAAV) of that agreement at that point.

### ***Initial value of Monthly AAVPs***

4.2 The first initial value of a contractor's Monthly AAVPs is to be determined for the date on which its PDS agreement takes effect for payment purposes. Once the contractor's AAAV has been established, that amount is to be divided by twelve, and subject to paragraph 4.3, the result is the first initial value of the contractor's Monthly AAVPs.

4.3 If the contractor's PDS agreement took effect for payment purposes other than on the first day of a month, the initial value of its Monthly AAVPs in respect of the first part-month of its agreement 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.

4.4 That initial value (expressed as a monthly value, in cases where an agreement 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 AAVPs, until that initial value is next revised.

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

4.5 The initial value of a contractor's Monthly AAVPs will have to be revised where, for any reason, its AAAV 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).

4.6 If the contractor's AAAV is revised for the start of a month, the new initial value of its Monthly AAVPs (until its NAAV is next revised again) is its new NAAV divided by twelve. If its AAAV changes during a month, the initial value of its Monthly AAVPs (until its AAAV is next revised again)—

- (a) for the month after the month during which its NAAV changed, is its AAAV divided by 12; or
- (b) for the month during which its AAAV 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 AAVPs, plus
- (ii) the amount produced by dividing the number of days during the month for which the contractor had a new AAV by the total number of days in that month, and multiplying that fraction by the new initial value of the contractor's Monthly AAVPs.

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

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

4.8 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 Schedule 12ZA to the 1977 Act or the NHS Charges Regulations. Charges are recoverable under those Regulations in respect of specified types of treatment.

4.9 It is the contractor who collects the NHS charges from those patients. Furthermore, in accordance with its agreement term set by virtue of paragraph 39 of Schedule 3 to the PDS Agreements Regulations, the contractor is required to make returns of information to the RB 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.

4.10 Using the paragraph 39 returns which have been submitted by the contractor by a particular date each month (known as the "scheduling date", which is to be set by the RB) since the scheduling date in the previous month, the RB will make a determination of the amount to be deducted that month in respect of NHS charges that the contractor should have collected in respect of treatment that has counted or will count towards the volume of activity that the contractor is to provide under its PDS agreement. The Monthly AAVP value produced after that deduction has been made is, subject to paragraph 4.11, the gross value of the contractor's Monthly AAVPs for that month (i.e. the value before the deduction of employee's superannuation contributions).

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

4.11 Deductions may need to be made to the amount determined in accordance with paragraph 4.10 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 AAVP in question or the gross value of another payment, but either way they will alter the net value of the Monthly AAVP in question.

### *Deductions in respect of LDC levies*

4.12 An RB which is a PCT may have recognised a LDC for its area, pursuant to section 45B of the 1977 Act<sup>1</sup>. Where it has done so, a performer of services under a PDS agreement may have notified the PCT that he wishes to be represented by that committee. In these circumstances, the performer's contractor may also have agreed with the RB that the levy that the performer is due to pay in respect of that representation, pursuant to directions of the committee under section 45B(12) of the 1977 Act, will be deducted by the RB from the contractor's Monthly AAVPs. Where such an agreement has been reached, the levy in respect of that performer is to be so deducted<sup>2</sup>.

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

4.13 The Dentist Performers who are employed or engaged by the contractor are likely to be members of the NHS Pension Scheme, and their Employing Authority for the purposes of that Scheme will, for present purposes, be the RB (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 Vocational Trainees, the Dentist Performers' Pensionable Earnings to be derived from that contractor's PDS agreement in each financial year will be limited to a specified percentage of the value of that agreement for that financial year, net of any parental leave payments, sickness leave payments, vocational trainee salary and national insurance reimbursement payments, non domestic rates reimbursement payments or Monthly Seniority Payments payable under that agreement<sup>3</sup>. Vocational Trainee's salaries (net of any bonus, expenses or overtime payments) are fully pensionable.

4.14 Each RB will need to make all the deductions in respect of employee's superannuation contributions (including Money Purchase Additional Voluntary Contributions (MPAVCs)) that are payable in respect of the Dentist Performers' Pensionable Earnings that derive from each PDS agreement that it holds.

4.15 Accordingly, it must deduct those contributions from the contractor's Monthly AAVPs (or, in the case of Vocational Trainee's employee's superannuation contributions, from their salary reimbursement payments). The process of calculating and making all these deductions is explained in Section 5. If it is an Employing Authority for any Dentist Performer employed or engaged by the contractor, it may also deduct from the contractor's Monthly AAVPs any employee's superannuation contributions (including Money Purchase Additional Voluntary Contributions (MPAVCs)) that the Dentist Performer owes but which have not been superannuated

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<sup>1</sup> Section 45B was inserted by section paragraph 23 of Schedule 11 to the Health and Social Care (Community Health and Standards) Act 2003 (c.43).

<sup>2</sup> In practice, the levy will then be remitted to the LDC by the NHS BSA.

<sup>3</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, as the percentage for the financial year 2006 to 2007 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.

elsewhere, provided that the RB 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 AAVPs***

4.16 The gross value of a contractor's Monthly AAVPs, minus any necessary deductions as mentioned in paragraphs 4.11 to 4.15, and minus any voluntary deductions (such as contributions to the British Dental Guild<sup>1</sup>) which the contractor has asked to be made, is the net value of the contractor's first Monthly AAVPs. That amount, subject to paragraphs 4.18 to 4.20, is the amount actually to be paid. It becomes payable on the contractor's Monthly Payment Date, which—

- (a) except for a contractor to which paragraph 4.17 applies, is the first working day of the month after the month to which the Monthly AAVP relates.
- (b) in the case of a contractor to which paragraph 4.17 applies, is the same as the contractor's monthly payment date under its pilot scheme.

***Monthly Payment Dates for contractors that were pilot scheme providers***

4.17 If a contractor, immediately before 1st April 2006, was a pilot scheme provider, then it will be entitled to keep the same monthly payment date for its payments under its PDS agreement as it had under its pilot scheme agreement, but only if—

- (a) the monthly payments under its pilot scheme agreement were made by the Dental Practice Board;
- (b) its monthly payment date under its pilot scheme agreement fell into one of group numbers 1 to 15a of the group numbers for payment dates used by the Dental Practice Board<sup>2</sup> in its arrangements for making payments under pilot scheme agreements; and
- (c) it has not agreed with its RB to move its payment date to the first working day of the month after the month to which the Monthly AAVPs relates (once the contractor and the RB have made an agreement to that effect, which is reflected in the contractor's PDS agreement, the contractor cannot revert to its payment date under its pilot scheme agreement).

4.18. Subject to paragraphs 4.19 and 4.20, where a contractor has as its Monthly Payment Date under its PDS agreement the monthly payment date that it had under its pilot scheme agreement, its Monthly AAVPs will fall due on its Monthly Payment Date in the month to which the payment relates.

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<sup>1</sup> British Dental Guild contributions will be apportioned and remitted by the NHS BSA, as required.

<sup>2</sup> These scheduling groups are available on the website [www.dpb.nhs.uk](http://www.dpb.nhs.uk). The Dental Practice Board has become subsumed into the NHS BSA.

4.19 However, if paragraph 4.18 were not qualified, it would mean that a contractor to which paragraph 4.17 applies would be paid partly in advance, which does not accord with principles of Government accounting. Accordingly, subject to paragraph 4.20, RBs must withhold the “advance” part of any Monthly AAVP until the contractor’s Monthly Payment Date in the following month, at which point that “advance” part of the previous month’s payment becomes payable, along with the “arrears” portion of the payment due in respect of that following month (so, for example, the payment in May 2006 will represent the “arrears” portion of the contractor’s May payment and the previously unpayable “advance” portion of the contractor’s April payment).

4.20 In practice, in these circumstances, to avoid unnecessary variations to monthly payments because of the differing numbers of days in different months, the gross value of Monthly AAVPs should, except in April and March of each financial year, be left as a constant amount (so, for example, the January 2007 and February 2007 gross values will be the same, even though the balance of “arrears” and “advance” days will be different). As regards the first and last months of the financial year, however–

- (a) the amounts will have to be paid and identifiable as *pro rata* amounts (and see also the special arrangements for April 2006 in paragraphs 11.21 to 11.23); and
- (b) the RB will also need to ensure that, where appropriate, an adjustment is made to ensure that there is no inadvertent underpayment or overpayment of the annual contract value as a result of the differing number of days in April and March.

***Conditions attached to Monthly AAVPs***

4.21 Monthly AAVPs, 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 RB does not have but needs (including the returns required by virtue of paragraph 39 of Schedule 3 to the PDS Agreements Regulations), and which the contractor either has or could reasonably be expected to obtain, in order to calculate the contractor’s Monthly AAVPs;
- (b) the contractor must make available to the RB 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 RB of any appropriate changes to that estimate; and
- (c) all information supplied pursuant to or in accordance with this paragraph must be accurate.

4.22 If the contractor breaches any condition of its Monthly AAVPs that is set out in this SFE (including the conditions that are set out in paragraph 4.21), the RB may,

in appropriate circumstances, withhold payment of all or any part of a Monthly AAVP that is otherwise payable.

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

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

- (a) the contractor’s AAVV;
- (b) the amount of the initial value of the contractor’s Monthly AAVPs, prior to any permitted deductions;
- (c) the amount of permitted deductions, which shall be specified in two parts–
  - (i) the amount of the NHS charges that the RB has determined, in accordance with paragraph 4.10, that the contractor should have collected in respect of treatment that has counted or will count towards the volume of activity that the contractor is to provide under its PDS agreement, and
  - (ii) the amount of any other deductions that need to be made to the Monthly AAVPs under the agreement or pursuant to this SFE (for example, the deductions mentioned in paragraphs 4.11 to 4.15), together with the reason for any such deduction;
- (d) the amount of the Monthly AAVP 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; and
- (f) the estimated net monthly Pensionable Earnings of each Dentist Performer who performs services under the agreement, i.e. net of any Pensionable Earnings that are attributable to any Monthly Seniority Payment.

4.24 In practice, in accordance with entry 2(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 RB (entry 2(a) of column 3 of the Schedule to the Functions Regulations).

### ***Annual Reconciliation Report***

4.25 The RB must, by 30th June in each financial year except the financial year 2006 to 2007, send the contractor an Annual Reconciliation Report, whether as part of the annual report and review required by paragraph 39 of Schedule 3 to the PDS

Agreements Regulations or otherwise, which shall include (but not be limited to), in respect of the previous financial year–

- (a) the total value of the contractor’s PDS agreement, 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 PDS agreement’s Pensionable Earnings Ceiling), and
  - (ii) any vocational trainee salary payments, vocational 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 PDS agreement’s Pensionable Earnings Ceiling);
- (b) the total of the initial values of the contractor’s Monthly AAVPs;
- (c) the total value of the deductions made to Monthly AAVPs paid to the contractor, which shall 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 agreement or pursuant to this SFE; and
- (c) the estimated Pensionable Earnings of each Dentist Performer who performed services under its PDS agreement, net of any Pensionable Earnings that are attributable to any Monthly Seniority Payment paid in respect of the Dentist Performer.

4.26 The Annual Reconciliation Report will draw on an annual reconciliation statement about the payments under the PDS agreement sent by the NHS BSA to the RB pursuant to entry 2(b) in column 3 of the Functions Regulations.

## **5. Superannuation contributions**

5.1 The arrangements whereby certain dental pilot scheme employees, other than dental practitioners, were able to be members of the NHS Pension Scheme ceased with the abolition of dental pilot schemes as from 1st April 2006.

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

5.2 However, under the NHS Pension Scheme Regulations, RBs 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 (for these purposes, Dentist Performers, other than Vocational Trainees); or
- (b) type 2 dental practitioners (for these purposes, Vocational Trainees),

as their Employing Authority.

5.3 In practice, by virtue of entry 26(a) 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 RB), 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 RB 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 agent of RBs in this matter the resources that it needs for forwarding these contributions;
- (b) deduct from its allocations to RBs amounts equal to the RBs' liabilities that have been thus discharged.

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

5.4 As regards the employee superannuation contributions, and any MPAVCs, the following arrangements will apply–

- (a) in the case of Vocational 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 PCT) 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–
  - (i) their employee superannuation contributions in respect of their Pensionable Earnings will have to be deducted by the RB from the contractor's Monthly AAVPs; and
  - (ii) any MPAVCs will have to be deducted by the RB from the contractor's Monthly AAVPs.

5.5 In practice, the making of the deductions referred to in paragraph 5.4(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) and 28(a) of the Schedule to the Functions Regulations (although the RB 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 Vocational Trainees***

5.6 First, as is stated in paragraphs 4.13 to 4.15 above, deductions in respect of type 1 dental practitioners will need to be made each month from the contractor's Monthly AAVPs. These deductions are to be based on a reasonable estimate of a 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.

5.7 The RB 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.

5.8 An amount equal to the monthly amount that the NHS BSA, acting in effect as agent of RBs 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 employee superannuation contributions–
  - (i) if the contractor's Monthly Payment Date is the first working day of the month, the nineteenth day of the month after the month in respect of which the earnings to which the contributions relate were paid, or
  - (ii) if the contractor's Monthly Payment Date is any other date, the nineteenth day after the Monthly Payment Date on which the earnings to which the contributions relate were paid; and
- (b) in the case of MPAVCs, the seventh day after the payment from which they were deducted was paid.

***End-year adjustments***

5.9 After the end of any financial year, it should be possible for the RB to determine the value of the contractor's PDS agreement, 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 PDS agreement's Pensionable Earnings Ceiling); and

- (b) any vocational trainee salary payments, reimbursement of vocational 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 PDS agreement's Pensionable Earnings Ceiling).

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

5.11 If any Dentist Performer who is employed or engaged by a contractor is a member of the NHS Pension Scheme, it is a condition of that contractor's Monthly AAVPs that, by the date specified by the Secretary of State in accordance with paragraph 5A(1) of Schedule 2 to the NHS Pension Scheme Regulations<sup>1</sup>, the contractor sends to the RB a standard return (set nationally<sup>2</sup> and available electronically) specifying, for the financial year to which the return relates, the Pensionable Earnings derived from the contractor's PDS agreement of each Dentist Performer that it employed or engaged during that financial year. Those totals in respect of each individual performer must not, taken together, amount to more, but may amount to less, than the contractor's Pensionable Earnings Ceiling for that financial year.

5.12 The functions of–

- (a) receiving these returns;
- (b) extending the deadline for the reception of these returns;
- (c) accepting replacement returns in appropriate circumstances;
- (d) varying the amounts specified in the returns in appropriate circumstances; and
- (e) determining the validity of the returns,

are all functions that may now be performed by the NHS BSA, acting in effect as agent of the RB (entry 26 in columns 2 and 3 of the Schedule to the Functions Regulations).

5.13 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 RB, the RB

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<sup>1</sup> It is anticipated that this date will be one month from the date of receiving the Annual Reconciliation Report.

<sup>2</sup> This return is in a format determined by the Secretary of State in accordance with paragraph 5A(1) of Schedule 2 to the NHS Pension Scheme Regulations.

(or if the adjustments can be made by varying PDS agreement 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 AAVPs during that financial year in respect of those earnings–
  - (i) did not cover the cost of all the employee’s superannuation contributions payable in respect of those earnings–
    - (aa) deduct the amount outstanding from any Monthly AAVPs payable, or from a series of Monthly AAVPs 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 SFE that the contractor must pay to the RB 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).

## **PART 2**

### **PAYMENTS FOR SPECIFIC PURPOSES**

#### **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 the Annex 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 he 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, he was employed or engaged by a pilot scheme provider, and
  - (ii) he would have been entitled to a seniority payment pursuant to Determination III of the SDR in respect of that quarter had he—
    - (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 he did in fact do so); or
- (c) reaches the age of 55 years between 1st April 2006 and 31st March 2008 inclusive (although his eligibility is treated as starting in the month after the month during which his birthday falls), and—
  - (i) in the last quarter of the financial year 2005 to 2006, he provided services under section 35 of the 1977 Act or a pilot scheme agreement, and

- (ii) he would have been entitled to a seniority payment pursuant to Determination III of the SDR in respect of that quarter had he–
  - (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 a 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 in respect of that Dentist Performer for the same month is less than £625.

#### ***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 RB 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 GDS Contract 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 RB on a standard form (set nationally and available electronically), and that application must include–

- (a) details of how the Dentist Performer satisfies the eligibility 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 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 PDS agreement in the month to which the payment relates, but the maximum amount payable in respect of each Dentist Performer in any month is £625.

6.7 Where a Monthly Seniority Payment may be payable in respect of a particular Dentist Performer to more than one contractor or GDS Contract Holder, but the totals payable under each contract or agreement, taken together, would (if there were no maximum amounts) exceed £625, the maximum amount payable under all the contracts or agreements under which Monthly Seniority Payments may be payable in respect of him is £625. The £625 must therefore be distributed proportionately between each PDS agreement or GDS contract.

6.8 So, if the Dentist Performer earns 60% of his net monthly Pensionable Earnings from a PDS Agreement, 30% from one GDS contract and 10% from another GDS contract, his Monthly Seniority Payment under the PDS agreement would be £375, and under the two GDS contracts would be £187.50 and £62.50 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 agreements or contracts.

***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, RB's 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 contractor's Monthly Payment Date—

- (a) except for a contractor to which paragraph 4.17 applies, in the month after the month to which the Monthly Seniority Payment relates;
- (b) in the case of a contractor to which paragraph 4.17 applies, subject to paragraphs 6.11 and 6.12, in the same month as the month to which the Monthly Seniority Payment relates.

6.13 If a contractor is a contractor to which paragraph 4.17 applies, then the same issue that arises in respect of Monthly AAVPs arises in relation to Monthly Seniority Payments: although the payment is in respect of a calendar month, because the contractor's payment date in respect of that month falls in that month, unless paragraph 6.12(b) is qualified, Monthly Seniority Payments will be paid partly in advance, which does not accord with principles of Government accounting. Accordingly, subject to paragraph 6.14, RBs must withhold the "advance" part of any Monthly Seniority Payment until the contractor's Monthly Payment Date in the following month, at which point that "advance" part of the previous month's payment becomes payable, along with the "arrears" portion of the payment due in respect of that month.

6.14 In practice, if the Dentist Performer's net monthly pensionable earnings remain constant, to avoid unnecessary variations to agreement payments because of the differing numbers of days in different months, the amount of the Monthly Seniority Payment may also be left as a constant amount, provided any appropriate adjustments are made in due course. In any event, in the first and last months of the financial year, the amounts will have to be paid and identifiable as *pro rata* amounts, given that the liability to make the payments relates to a particular financial year.

6.15 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 RB.

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

6.16 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 RB any information which the RB 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 RB 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.

6.17 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 6.16), the RB 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 vocational training**

7.1 Payments in respect of vocational training are payments to a contractor who employs a Vocational Trainee. They are intended to meet the salary costs of employing the Vocational Trainee, provide payment to the Dentist Performer who is providing the vocational training to the Vocational Trainee and to provide a payment to the contractor to cover service costs.

### ***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 Trainer;
- (b) the contractor has employed a Vocational 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 28(3) of the Performers Lists Regulations; and
- (c) under that contract of employment, the contractor has agreed to pay the Vocational Trainee a monthly salary at a full-time (at least 35 hours per week) rate of £2,281 per month (so for a part-time Vocational Trainee, that amount *pro rata*).

7.3 Any attendance by a Vocational Trainee at a day release course in connection with the vocational 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 vocational training, it must make an application to the RB on a standard form (set nationally and available electronically), and that application must include—

- (a) the name of the Vocational Trainee appointed, the date when the Vocational Trainee's employment commenced, the number of hours to be worked by the Vocational Trainee per week, the date when the Vocational Trainee's employment will end, and the date of the month on which payment of the salary will be made to the Vocational Trainee;
- (b) a certificate provided by the local Postgraduate Dental Dean or Director or Postgraduate Dental Education (as the case may be) verifying that the information provided pursuant to paragraph (a) is correct; and
- (c) a declaration in writing that the contractor will pay the Vocational Trainee a monthly salary at a full-time (at least 35 hours per week) rate of £2,281 per month (so for a part-time Vocational Trainee, that amount *pro rata*).

***Vocational training payments to be made***

7.5 There are four types of vocational training payment that a contractor who satisfies the eligibility criteria and who has applied in accordance with paragraph 7.4 is entitled to receive during the currency of a training contract with a Vocational Trainee–

- (a) a training grant of £684.50 per month, if the Vocational Trainee is full-time (i.e. has contracted hours of at least 35 hours per week), or that amount *pro rata* if the Vocational Trainee is part-time;
- (b) reimbursement of the salary which the contractor has paid to the Vocational Trainee, which is to be £2,281 per month, less (if the Vocational Trainee is a member of the NHS Pension Scheme) the Vocational Trainee's employee superannuation contributions in respect of his salary (see paragraph 5.4(a)), if the Vocational Trainee is full-time (i.e. has contracted hours of at least 35 hours per week), or that amount *pro rata* if the Vocational 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 Vocational Trainee, of £4,750 per month, if the Vocational Trainee is full-time (i.e. has contracted hours of at least 35 hours per week), or that amount *pro rata* if the Vocational Trainee is part-time.

7.6 Again, any attendance by a Vocational Trainee at a day release course in connection with the vocational 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 contractor's next Monthly Payment Date after the end of 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 vocational 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 Vocational Trainee's Trainer–

- (a) within one calendar month of receiving the training grant; and
- (b) as an element of the personal income of the 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 Vocational Trainee his salary under his 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 Trainer in respect of whom the payments are made must remain a Trainer;
- (b) the Vocational Trainee in respect of whom the payments are made must remain employed by the contractor;
- (c) the contractor must inform the RB 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 RB any information which the RB does not have but needs and 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 RB 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 of the condition that is set out in paragraph 7.10(b), the RB 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 Vocational 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 Vocational 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 and parental leave 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 RB 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 shall be interpreted as qualifying a Dentist Performer's statutory rights. In any event, even if the RB is not directed in this SFE to make payments to a contractor in respect of parental leave, it may do so as a matter of discretion. The powers to do so are set out in section 28Y of the 1977 Act.

### ***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–

- (a) subject to paragraph 8.6, the Dentist Performer's name has been included in a Dental List for a period of at least 2 years, 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 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 PDS agreement in order to take maternity leave (which for these purposes includes leave for ante-natal care); and
- (d) the payment relates to a Parental Leave Pay Period.

### ***Eligibility for paternity leave payments***

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) subject to paragraph 8.6, the Dentist Performer's name has been included in a Dental List for a period of at least 2 years, 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 and must have immediately preceded the date of birth or adoption; and
- (b) the Dentist Performer's wife or partner has—
  - (i) given birth, or
  - (ii) adopted a child and will be the main care provider and the Dentist Performer is also an adoptive parent of that child;
- (c) the Dentist Performer has ceased to perform dental services under the contractor's PDS agreement in order to take paternity leave; and
- (d) the payment relates to a Parental Leave Pay Period.

***Eligibility for adoption leave payments***

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

- (a) subject to paragraph 8.6, the Dentist Performer's name has been included in a Dental List for a period of at least 2 years, 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 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 PDS agreement in order to take adoption leave; and
- (d) the payment relates to a Parental Leave Pay Period.

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

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

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

8.7 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 actually 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 or Determination VI of the SDR;

- (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 or Determination VI of the SDR;
- (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 or Determination VI of the SDR.

### ***Applications for parental leave payments***

8.8 Where a Dentist Performer satisfies the eligibility criteria specified in paragraph 8.3, 8.4 or 8.5, in order to obtain parental leave payments in respect of that Dentist Performer, the contractor must make an application to the RB 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).

8.9 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 no other claim for maternity leave payments has been made under this Section by any other contractor, or by a GDS Contract Holder under the GDS SFE, in respect of the same Dentist Performer's maternity leave.

8.10 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 no other claim for paternity leave payments has been made under this Section by any other contractor or by a GDS Contract Holder under the GDS SFE, in respect of the same Dentist Performer's paternity leave.

8.11 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, 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 endorsed by the appropriate adoption agency

with its name and address or 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 no other claim for adoption leave payments has been made under this Part by any other contractor or by a GDS Contract Holder under the GDS SFE, in respect of the same Dentist Performer's adoption leave.

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

8.12 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 his estimated monthly Pensionable Earnings in respect of any Monthly Seniority Payment to which he is entitled)—

- (a) immediately before the parental leave is taken; or
- (b) in the case of a Dentist Performer whose parental leave started on or before 1st April 2006, in March 2006.

This monthly amount is to be multiplied by 12 and then divided by 52 to produce the weekly amount of the parental leave payments.

8.13 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 month, the weekly parental leave payment in respect of that week is to fall due on the contractor's Monthly Payment Date in the following month. For these purposes, "month" means a calendar month, unless the contractor is a contractor to which paragraph 4.17 applies, in which case "month" means the month between the day before the contractor's Monthly Payment Date and the day before its Monthly Payment Date in the next calendar month.

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

8.14 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 PDS agreement or GDS contract, except with the written approval of the RB; and
- (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 at least her 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 performer’s estate if the Dentist Performer dies).

8.15 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 8.14), the RB may, in appropriate circumstances, withhold payment of any or any part of a payment under this Section that is otherwise payable.

## **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 RB 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 shall be interpreted as qualifying a Dentist Performer’s statutory rights. In any event, even if the RB 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 28Y of the NHS Act 1977.

### ***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 a 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) he 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 PDS agreement 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 or Determination VII of the SDR 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 has undergone one year's approved vocational training, the 2 years mentioned in paragraph 9.3(a) shall 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 RB could again be obliged to make sickness leave payments in respect of that Dentist Performer. However, the RB 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

***Applications for sickness leave payments***

9.6 Where a Dentist Performer satisfies the eligibility criteria specified in paragraphs 9.3 to 9.5, in order to obtain a sickness leave payment in respect of that Dentist Performer, the contractor must make an application to the RB on a standard form (set nationally and available electronically), and 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 no other claim for sickness leave payments has been made under this Section by any other contractor, or by a GDS contractor under the GDS SFE, in respect of the same Dentist Performer's sickness absence.

***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 his estimated monthly Pensionable Earnings in respect of any Monthly Seniority Payment to which he is entitled)–

- (a) immediately before the sickness leave is taken; or
- (b) in the case of a Dentist Performer whose sickness leave started on or before 1st April 2006, in March 2006.

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 month, the weekly sickness leave payment in respect of that week is to fall due on the contractor's Monthly Payment Date in the following month. For these purposes, "month" means a calendar month, unless the contractor is a contractor to which paragraph 4.17 applies, in which case "month" means the month between the day before the contractor's Monthly Payment Date and the day before its Monthly Payment Date in the next calendar 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 RB so requests, provide the RB 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 PDS agreement or GDS contract during any period of absence in respect of which a sickness leave payment is claimed, except with the written approval of the RB;
- (c) unless he 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 he 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 his estimated net Pensionable Earnings during his absence (or pay this to his estate if he dies).

9.10 If the contractor breaches any condition of his sickness leave payments that is set out in this SFE (including the conditions that are set out in paragraph 9.9), the RB 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 PDS agreement.

### *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 RB 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 Where the contractor satisfies the eligibility criteria specified in paragraph 10.2, read with paragraph 10.3, in order to obtain reimbursement in respect of its non-domestic rates, it must make an application to the RB on a standard form (set nationally and available electronically), and 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, unless the contractor wishes to be reimbursed in a lump sum after payment of all the instalments, in which case 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 PDS agreement 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 RB, within three months of receiving such a request to provide to the RB documentary evidence sufficient to demonstrate accurately the proportion that its income under its PDS agreement 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 For the purposes of a claim for reimbursement of non-domestic rates that are due in the financial year 2006 to 2007, a contractor's income under its PDS agreement for the last six months of the financial year 2005 to 2006 shall be deemed to be its income under the SDR during that period.

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

10.7 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***

10.8 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 PDS agreement, any amount ("the abatement") calculated in accordance with paragraph 10.9.

10.9 The amount of the abatement shall 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 PDS agreement 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%

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

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

10.11 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 agreement term set by virtue of paragraph 13 of Schedule 3 to the PDS Agreements Regulations;
- (b) the contractor must make available any information which the RB 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 contractor’s reimbursement payments;
- (c) the contractor must inform the RB 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) or (c) must be accurate.

10.12 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 10.11), the RB 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 The making of payment under this SFE, on the due date, will in fact be undertaken on the RB's behalf by the NHS BSA. 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 2(a) of column 2 in the Schedule to the Functions Regulations – and by virtue of regulation 2(3)(b) of those Regulations, an RB may only itself exercise that function where the NHS BSA is unable to do so for reasons other than a failure by the RB to co-operate in a reasonable manner with the NHS BSA.

11.2 This means that although it remains the responsibility of the RB to determine the correct amount of the payment (subject to the specific arrangements for making the annual DDRB adjustments which are set out in paragraphs 2.13, 2.17 and 3.11), it must be the NHS BSA that actually makes the payment to the contractor.

11.3 In practice, the RB 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 15 in column 3 of the Schedule to the Functions Regulations) for reporting to the RB 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 RB. Indeed, the RB 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 RB's behalf (see regulation 2(4) of the Functions Regulations).

11.5 Therefore, because the NHS BSA is effectively acting as the agent of the RB as regards the making of payments, the making of payments is referred to elsewhere in this SFE (see for example paragraph 11.7) as a function of the RB, 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 RBs 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 RB, although the NHS BSA will be putting the decision into effect on the PCT'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 a RB makes a payment to a contractor under its PDS agreement 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 RB 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 RB is entitled to repayment of all or part of the money paid,

the RB 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 RB that equivalent amount.

11.8 Where a RB is entitled pursuant to this SFE to withhold all or part of a payment because of a breach of a payment condition, and the RB 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 17(1) of the PDS Agreements 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 RB must—

- (a) pay to the contractor, promptly, an amount representing the amount that the RB 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 a RB 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 contractor's Monthly Payment Date in the month after the month during which the RB obtains the information it needs in order to calculate the payment.

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

11.12 Where the RB and the contractor agree (but the RB's agreement may be withdrawn where it is reasonable to do so and if it has given the contractor reasonable notice thereof), the RB 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 they 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;
- (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 first of the monthly instalments of non-domestic rates falls due.

11.15 The RB may waive the eligibility criteria in paragraphs 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 a Dental Performers List ceases, and—

- (a) that dental practitioner enters into a PDS agreement that takes effect for payment purposes on 1st April 2006, any payments that the dental practitioner received under a determination made under regulation 13(17) of the Performers Lists Regulations<sup>1</sup> may be set off, equitably, against the payments that he is entitled to receive under his PDS agreement 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(17) of the Performers Lists Regulations<sup>2</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 him pursuant to this SFE.

***Effect on periodic payments of termination of a PDS agreement***

11.17 If a PDS agreement under which a periodic payment (generally, the monthly agreement payments) is payable pursuant to this SFE is terminated before the end of the period to which it relates, a proportion of that payment is to fall due on the last day on which the agreement has effect. The amount of the period payment payable is to be adjusted by the fraction produced by dividing—

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<sup>1</sup> See Annex 1.

<sup>2</sup> See Annex 1.

- (a) the number of days during the period to which the payment relates for which the PDS agreement 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 PDS agreement that is recoverable as a result of the agreement terminating or any breach thereof.

***Recovery of charges relating to work done under pilot schemes***

11.19 If a contractor was a pilot scheme provider, the RB may recover from the contractor by withholding all or part of any payment under this SFE any amount that represents an NHS charge payable under the National Health Service (Dental Charges) Regulations 1989<sup>1</sup> that would have been deducted from a payment due under the pilot scheme, had the charge been made and recovered before 1st April 2006.

11.20 Similarly, if any dentist performer who is employed or engaged by the contractor—

- (a) provided services under a pilot scheme agreement held by a person other than the contractor; and
- (b) an NHS charge payable under the National Health Service (Dental Charges) Regulations 1989 was payable in respect of the services that he provided that would have been deducted from a payment due under the pilot scheme agreement, had the charge been made and recovered before 1st April 2006,

the RB may, where it is equitable to do so, recover from the contractor by withholding all or part of any payment under this SFE the amount of the charge.

***Payments in and for April 2006***

11.21 If a contractor was a pilot scheme provider, once its pilot scheme agreement has terminated on 31st March 2006, it will have due to it an amount that represents the settling up of that pilot scheme agreement. Some of these contractors (see paragraph 4.17) will be entitled to keep their pilot scheme agreement monthly payment date as the monthly payment date for their PDS agreement. Where they do so, the monthly payment that they receive on their monthly payment date in April 2006 will be in two parts: an amount that represents the settling up of their old pilot scheme agreement; and the “arrears” portion of their April 2006 payment (see paragraph 4.19).

11.22 However, if the contractor was a pilot scheme provider but they have a new monthly payment date (i.e. their monthly payment date becomes first working day of the month after the month to which the payment relates), it should receive—

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<sup>1</sup> S.I. 1989/394, as amended.

- (a) on its old monthly payment date (i.e. at some point in April 2006) the amount that represents the settling up of its pilot scheme agreement; and
- (b) on its new payment date (i.e. on 2nd May 2006) the full amount of its first monthly payment under the PDS agreement.

11.23 In practice, because processing the April 2006 monthly payments of former pilot scheme providers will involve a significant degree of manual intervention, it is likely that at least some former providers will receive estimated amounts in respect of the settling up of their pilot scheme agreements. Where this results in an overpayment under the pilot scheme agreement, the RB may, where it is equitable to do so, recover the amount of the overpayment by deducting an equivalent amount from any payment payable to the former pilot scheme provider, now a contractor, under to this SFE (in instalments, where that is appropriate). Where it is not equitable to do so, the overpayment will need to be recovered in accordance with regulation 24(2) of the Second Transitional Provisions Order.

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

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

11.25 The procedures require the contractor and the RB 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.

## **12. Glossary of Terms**

### ***Acronyms***

12.1 The following acronyms are used in this document–

- AAAV – Actual Annual Agreement Value
- AAVP – Annual Agreement Value Payment
- BSA – Business Services Authority
- BNUDA – Baseline Number of Units of Dental Activity
- BNUOA – Baseline Number of Units of Orthodontic Activity
- CAAV – Calculated Annual Agreement Value
- DDRB – Doctors' and Dentists' Review Body
- GDS – General Dental Services
- MPAVC – Money Purchase Additional Voluntary Contribution
- NAAV – Negotiated Annual Agreement Value
- NHS – National Health Service
- PCT – Primary Care Trust
- PDS – Personal Dental Services

RB – Relevant Body  
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 PDS Agreements Regulations bear the meaning they bear in the PDS Agreements Regulations.

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

“The 1977 Act” means the National Health Service Act 1977, as amended<sup>1</sup>.

“2006/7 Adjustment” is an amount specified by the Secretary of State, following a recommendation of the DDRB, and which is included in paragraph 2.13.

“Actual Annual Agreement Value” is to be construed in accordance with paragraph 4.1.

“Annual Reconciliation Report” is to be construed in accordance with paragraph 4.25.

“Baseline Number of Units of Dental Activity” is to be construed in accordance with paragraph 2.3(a).

“Baseline Number of Units of Orthodontic Activity” is to be construed in accordance with paragraph 2.3(b).

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

“Calculated Annual Agreement Value” is the amount determined in accordance with Section 2.

“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 who is a party to, or persons who are parties to, a PDS agreement but who is or are not the commissioner of the services provided under that agreement. However, as per paragraph 1.2, the payment arrangements under this SFE do not relate to circumstances where a PCT, an NHS Trust or an NHS Foundation Trust is the provider of primary dental services under a PDS agreement. In these circumstances, the arrangements for the payments under the PDS agreement are for the parties to determine (within the usual NHS framework).

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<sup>1</sup> This Act was significantly amended (insofar as is relevant to this SFE) by the Health and Social Care (Community Health and Standards) Act 2003.

“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 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—

- (a) a Dental Performers List;
- (b) a list of persons undertaking to provide general dental services prepared in accordance with regulations made under section 36 of the 1977 Act; or
- (c) a list of persons approved for the purposes of assisting in the provision of general dental services prepared in accordance with regulations made under section 43D of the 1977 Act,

or an equivalent list in Scotland or Northern Ireland.

“Dental Performers List” means a list of dental practitioners prepared in accordance with the Performers Lists Regulations.

“Dentist” means a person registered in the dentists register under the Dentists Act 1984.

“Dentist Performer” means a dental practitioner—

- (a) whose name is included in a Dental Performers List of a PCT;
- (b) who performs dental services under a PDS agreement; and
- (c) who is employed or engaged by a contractor.

“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.

“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.

“First Transitional Provisions Order” means the General Dental Services and Personal Dental Services Transitional Provisions Order 2005<sup>1</sup>.

“Functions Regulations” means the Functions of Primary Care Trusts and Strategic Health Authorities and the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Primary Dental Services) (England) Regulations 2006<sup>2</sup>.

“GDS Contract Holder” means a person who has entered into a GDS contract with a PCT.

“GDS contract” means a general dental services contract under section 28K of the 1977 Act.

“GDS Contract Holder” means a person who has entered into a GDS contract with a PCT.

“GDS SFE” means the directions given under section 28N of the 1977 Act in respect of GDS contracts.

“Hereditament” shall 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>3</sup>, is a free-standing additional voluntary contributions scheme.

“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 Agreement Value Payments” are the payments, based on the Negotiated Annual Agreement Value of a PDS agreement, which are to be determined in accordance with Section 3.

“Monthly Payment Date” shall be construed in accordance with paragraphs 4.16 and 4.17.

“Monthly Payment Schedule” shall be construed in accordance with paragraph 4.23.

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

“Negotiated Annual Agreement Value” is the amount determined in accordance with Section 3.

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<sup>1</sup> 2005/3435.

<sup>2</sup> S.I. 2006/596.

<sup>3</sup> S.I. 2000/619, as amended.

“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<sup>1</sup>.

“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<sup>2</sup>.

“NHS Pension Scheme” means the pension scheme continued under the NHS Pension Scheme Regulations.

“NHS Pension Scheme Regulations” means the National Health Service (Pension Scheme) Regulations 1995<sup>3</sup>.

“Non-Domestic Ratepayer” means the person who is liable under section 43 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 8.7.

“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” means section 28C arrangements for the provision of primary dental services.

“PDS Agreements Regulations” means the National Health Service (Personal Dental Services Agreements) Regulations 2005<sup>4</sup>.

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

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<sup>1</sup> S.I. 2005/2414.

<sup>2</sup> S.I. 2005/3373.

<sup>3</sup> S.I. 1995/300, as amended.

<sup>4</sup> S.I. 2005/3373, as amended by S.I. 2006/563.

“Pensionable Earnings Ceiling” has the meaning given in paragraph 1 of Schedule 2 to the NHS Pension Scheme Regulations (medical and dental practitioners – additional definitions).

“Performers Lists Regulations” means the National Health Service (Performers Lists) Regulations 2004<sup>1</sup>.

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

“Pilot scheme agreement” means an agreement made under Part 1 of the National Health Service (Primary Care) Act 1997<sup>2</sup>.

“Pilot scheme provider” means a person, other than a PCT, who is a party to a pilot scheme agreement.

“Relevant Body” means the party to a PDS agreement that is commissioning the services provided under the agreement (usually a Primary Care Trust).

“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.

“Second Transitional Provisions Order” means the General Dental Services, Personal Dental Services and Abolition of the Dental Practice Board Transitional and Consequential Provisions Order 2006<sup>3</sup>.

“Trainer” means a Dentist Performer–

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

“Type 1 dental practitioner” has the meaning given in regulation A2 of the NHS Pension Scheme Regulations (interpretation).

“Type 2 dental practitioner” has the meaning given in regulation A2 of the NHS Pension Scheme Regulations.

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<sup>1</sup> S.I. 2004/585, as amended.

<sup>2</sup> 1997 c.46.

<sup>3</sup> S.I. 2006/562.

“Vocational Trainee” means a dental practitioner who is employed by a contractor as a Vocational Trainee as a consequence of a placement arrangement made by the local Postgraduate Dental Dean or Director of Postgraduate Dental Education.

## ANNEX 1

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### STATUTORY DETERMINATION

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## NATIONAL HEALTH SERVICE, ENGLAND

### The Performers Lists (Suspended Dentists' NHS Earnings) Determination 2006

The Secretary of State for Health makes the following determination in exercise of the powers conferred by regulation 13(17) of the National Health Service (Performers Lists) Regulations 2004<sup>(1)</sup>.

#### Citation, commencement and application

1.—(1) This Determination may be cited as the Performers Lists (Suspended Dentists' NHS Earnings) Determination 2006 and shall come into force on 1st April 2006.

(2) This Determination applies in relation to England only.

#### Interpretation

2.—(1) In this determination—

“the 1995 Regulations means the National Health Service Pension Scheme Regulations 1995<sup>(2)</sup>;

“the 2004 Regulations” means the National Health Service (Performers Lists) Regulations 2004<sup>(3)</sup>;

“the 2005 Determination” means the Secretary of State’s determination for payments in consequence of suspension by a PCT that was annexed to the SDR;

“the 2005 Regulations” means the National Health Service (Performers Lists) Amendment Regulations 2005<sup>(4)</sup>;

“assistant practitioner” has the same meaning as in the 1995 Regulations, as they had effect on 31st March 2006;

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

- (a) a dental practitioner who is a provider;
- (b) a dental practitioner who is a partner in a provider that is a partnership; and
- (c) a dental practitioner who is a director of a dental corporation which is a provider;

“GDS contract” has the same meaning as in the 1995 Regulations;

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<sup>(1)</sup> S.I. 2004/585.

<sup>(2)</sup> S.I. 1995/300; as amended.

<sup>(3)</sup> Relevant amendments have been made by S.I. 2005/3491.

<sup>(4)</sup> S.I. 2005/3491.

“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, piloted services or primary dental services for the financial year in which the month falls;

“PCT” means Primary Care Trust;

“PDS agreement” has the same meaning as in the 1995 Regulations;

“pensionable earnings” has the same meaning as in Schedule 2 to the 1995 Regulations, and accordingly—

- (a) in the case of earnings prior to 1st April 2006—
  - (i) as regards principal practitioners, means practitioner income less the appropriate sum for practice expenses and, to the extent required, the earnings of assistants in the practitioner’s employment, or
  - (ii) as regards assistant practitioners, means fees or regular payments (including salary or wages) paid to the practitioner in respect of general dental services or piloted services, excluding bonuses and payments to cover expenses or for overtime; and
- (b) in the case of earnings from 1st April 2006—
  - (i) 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
  - (ii) as regards type 2 dental practitioners, means fees or regular payments (including salary or wages) paid to the practitioner by a provider in respect of the performance of primary dental services, excluding bonuses and payments to cover expenses or for overtime;

“principal practitioner” has the same meaning as in the 1995 Regulations, as they had effect on 31st March 2006;

“provider” means—

- (a) a person (including a partnership) who has entered into a GDS contract with a PCT;
- (b) a person who is a party to, or persons who are parties to, a PDS agreement, but who is or who are not the commissioner of the services provided under the agreement; or
- (c) a PCT that is itself providing services under section 16CA(2) of the National Health Service Act 1977<sup>(1)</sup> (primary dental services) or under section 28C arrangements;

“SDR” means the Statement of Dental Remuneration under regulation 19(3) of the National Health Service (General Dental Services) Regulations 1992<sup>(2)</sup>, as it had effect on 31st March 2006;

“suspended dentist” means a dental practitioner who is suspended from a dental performers list (whether under regulation 13 of the 2004 Regulations or by virtue of paragraph 11 of Schedule 1 to the 2005 Regulations);

“type 1 dental practitioner” has the same meaning as in the 1995 Regulations; and

“type 2 dental practitioner” has the same meaning as in the 1995 Regulations.

(2) In determining the “normal monthly NHS remuneration” of a dental practitioner for the purposes of this Determination, a PCT shall—

- (a) have regard only to remuneration relating to the performance of primary dental services; and
- (b) determine an amount which, in the PCT’s view, represents a reasonable amount having regard to the pensionable earnings of the dental practitioner in the most recently available six complete months of data relating to his earnings.

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<sup>(1)</sup> Section 16CA was inserted by the Health and Social Care (Community Health and Standards) Act 2003 (c.43), section 170.

<sup>(2)</sup> S.I. 1992/661; as amended.

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

3.—(1) A suspended dentist may be entitled to payments from a PCT from whose dental performers list he is suspended (“the relevant PCT”), or a provider by whom he is employed or engaged may be entitled to payments in respect of him, if—

- (a) on 31st March 2006 the dentist was in receipt of payments pursuant to the 2005 Determination; or
- (b) immediately prior to his suspension or the circumstances that precipitated his suspension the dentist was employed or engaged by a provider,

and apart from his suspension from a dental performers list, he is able and permitted to perform primary dental services.

(2) Subject to the following provisions of this Determination, where by virtue of sub-paragraph (1) a suspended dentist may be entitled to payments from a PCT, he shall be entitled to payments from it, in respect of each complete calendar month or part month for which he is suspended by it, if—

- (a) in the case of a dentist who is a provider—
  - (i) he holds a PDS agreement and the normal monthly payments under his PDS agreement (or a *pro rata* amount in the case of part months) have been suspended, or
  - (ii) he is still paid his normal monthly payments under his GDS contract or PDS agreement but, notwithstanding his suspension, he is required to provide units of dental or orthodontic activity under his GDS contract or PDS agreement during his suspension;
- (b) in the case of a dentist who is not a provider, on 31st March 2006 he was in receipt of payments under the 2005 Determination; or
- (c) he is a dental practitioner to whom neither paragraph (a) nor (b) applies but—
  - (i) he is, or immediately prior to the circumstances that precipitated his suspension was, employed or engaged by a provider, and
  - (ii) he is not entitled to his normal monthly remuneration from the provider (or a *pro rata* amount in the case of part months).

(3) Subject to the following provisions of this Determination, where by virtue of sub-paragraph (1) a provider may be entitled to payments in respect of a suspended dentist from a PCT, that provider (if it is not itself the PCT that has suspended the dentist) shall be entitled to payments from the PCT in respect of the dentist, in respect of each complete calendar month or part month for which the dentist is suspended by the PCT, if the dentist is not entitled to payments pursuant sub-paragraph (2) but—

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

### **Amount of payments**

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

- (a) except a case where paragraph (b) applies—
  - (i) immediately prior to his suspension, or

- (ii) where appropriate, immediately prior to the circumstances that led to his suspension; or
  - (b) in the case of a suspended dentist who on 31st March 2006 was in receipt of payments under the 2005 Determination, for March 2006.
- (2) If in respect of any month or part month for which a suspended dentist is entitled to a payment from a PCT by virtue of paragraph 3(2)—
- (a) he is entitled to receive—
    - (i) any remuneration from any alternative work that he has taken on following his suspension, or
    - (ii) any insurance payments by reason of his cessation or reduction of work or income, the sum which he is entitled to receive pursuant to sub-paragraph (1) shall be reduced by £1 for each complete £2 which he is entitled to receive in respect of the alternative work or as an insurance payment; or
  - (b) he is entitled to receive any remuneration which relates to the provision of primary dental services from any provider by which he was employed or engaged immediately prior to—
    - (i) his suspension, or
    - (ii) the circumstances which gave rise to his suspension,
 the sum which he is entitled to receive pursuant to sub-paragraph (1) shall be reduced by £9 for each complete £10 which he is entitled to receive from the provider.
- (3) In a case to which paragraph 3(3) applies, the amount to which the provider 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 PCT is satisfied that—
- (a) the provider has incurred in providing primary dental services during that month or part month that would have been provided by the suspended dentist, had he not been suspended; and
  - (b) it would be unreasonable for the provider to have to bear.

### **Arrangements for payment**

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

(1) Any sum payable under this Determination to a suspended dentist who is employed or engaged by a provider may be paid to the provider (provider payments will in any event be paid to the provider) <sup>(1)</sup>.

### **Conditions of payment**

**6.** No payments shall be payable pursuant to this Determination unless—

- (a) the PCT making the payment is satisfied that the suspended dentist or provider that is otherwise entitled to a payment is entitled to that specific sum;
- (b) the PCT 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—
    - (aa) in the case of suspended dentist who on 31st March 2006 was in receipt of payments under the 2005 Determination, for March 2006, and

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<sup>(1)</sup> In practice, payments made to a provider of services under a GDS contract or PDS agreement will generally be made by the NHS Business Services Authority on behalf of the PCT that has commissioned the services.

- (bb) in all other cases, immediately prior to his suspension and immediately prior to the circumstances that led to his suspension;
- (ii) any insurance policy he has taken out in order to provide him with payments if his work ceases or is reduced,  
and has warranted that the information provided in accordance with this paragraph is accurate;
- (c) the suspended dentist provides the PCT with accurate and reliable information about any alternative work he undertakes during the period of his suspension, and undertakes to inform the PCT immediately where—
  - (i) he takes on any such work, or
  - (ii) there is any other change to his circumstances that might affect his entitlement to payments under of this Determination,

but a PCT 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 him under this Determination, in appropriate circumstances.

### **Overpayments**

7. If a PCT makes a payment to or in respect of a suspended dentist pursuant to this Determination but the dentist or the provider 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 PCT 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).

Signed by authority of the Secretary of State for Health

29 March 2006

*Chris Audrey*  
A member of the Senior Civil Service  
Department of Health

## ANNEX 2

### DETERMINATION III – SENIORITY PAYMENTS

#### 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 shall 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, shall come into force on 1 April 2005.

## **ENTITLEMENT**

2. (1) Subject to the provisions of sub-paragraph (5), a PCT shall, with effect from the first day of a quarter on which a dentist shall 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, shall 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 shall be made on a form which shall be obtained from a PCT, on whose dental list the dentist is included, shall be made by recorded delivery to that PCT, and shall include particulars of the fulfilment by the dentist of the conditions set out in sub-paragraphs (2) and (3).

(5) A PCT shall 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 shall 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 shall 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 shall 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 shall 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 shall be payable at the end of the quarter following the one to which it relates;

(c) no seniority payment shall 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.