

# **THE NATIONAL HEALTH SERVICE ACT 1977**

## **THE NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES – PREMISES COSTS) (ENGLAND) DIRECTIONS 2004**

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The Secretary of State for Health, in exercise of the powers conferred upon him by sections 17 and 126(4) of the National Health Service Act 1977(a), and of all other powers enabling him in that behalf, gives the Directions set out in this instrument. These Directions were authorised to be given, and by an instrument in writing, on behalf of the Secretary of State for Health, by Peter Wearmouth, a member of the Senior Civil Service, on 16 March 2004.

## **PART 1**

### **GENERAL**

#### ***Citation, commencement and territorial application***

1. These Directions may be cited as the National Health Service (General Medical Services – Premises Costs) (England) Directions 2004 and shall come into force on 1st April 2004. These Directions apply in relation to England only.

#### ***Interpretation***

2. In these Directions–  
“the 1977 Act” means the National Health Service Act 1977;  
“contractor”, unless the context otherwise requires, means a person entering into, or who has entered into, a GMS contract with a PCT;

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(a) 1977 c.49. Section 17 of the 1977 Act is as substituted by the Health Act 1999 (c.8) (“the 1999 Act”), section 12(1), and thereafter amended by the Health and Social Care Act 2001 (c.15), Schedule 5, paragraph 5(3), and the National Health Service Reform and Health Care Professions Act 2002 (c.17) (“the 2002 Act”), Schedule 1, paragraph 7. Section 126(4) of the 1977 Act was amended by the National Health Service and Community Care Act 1990 (c.19), section 65(2). As regards Wales, the functions of the Secretary of State under the 1977 Act were transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), as amended by section 66(5) of the 1999 Act and as read with section 40(1) of the 2002 Act.

“default contract” means a contract under section 176(3) of the Health and Social Care (Community Health and Standards) Act 2003(a);

“family member” means–

- (a) spouses;
- (b) lineal ancestors (which includes step-parents, adoptive parents and their ancestors) and lineal descendants (which includes step-children, adopted children and their descendants);
- (c) brothers, sisters, aunts, uncles, nephews, nieces and first cousins (which includes their step or adoptive equivalents); and
- (d) the spouse of any family member falling within sub-paragraph (b) or (c);

“GMS contract” means a general medical services contract under section 28Q of the 1977 Act(b);

“Local Medical Committee” means a committee recognised under section 45A of the 1977 Act (c);

“PCT” means a Primary Care Trust, and “its PCT”, in relation to a contractor, means the Primary Care Trust with which the contractor has entered into or is entering into a GMS contract;

“practice premises” means premises specified in a GMS contract as premises at which services are to be provided under the contract;

“registered social landlord” means a person registered in a register of social landlords maintained under section 1 of the Housing Act 1996(d);

“spouse” includes husbands, wives, unmarried partners, partners of the same sex and former spouses;

“Statement of Fees and Allowances” means the statement determined and published by the Secretary of State under regulation 34 of the National Health Service (General Medical Services) Regulations 1992(e), as that statement had effect on 31st March 2004; and

“Statement of Financial Entitlements” means the directions given by the Secretary of State under section 28T of the 1977 Act(f).

### ***Payments in relation to which these Directions apply***

**3.** These Directions are given to PCTs and apply in relation to the payments made to contractors–

- (a) in respect of premises developments or improvements;
- (b) in respect of professional fees, and related costs, incurred in occupying new or significantly refurbished premises;
- (c) relating to the relocation of the contractor; or

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(a) 2003 c.43.

(b) Section 28Q is inserted into the 1977 Act by section 175 of the Health and Social Care (Community Health and Standards) Act 2003.

(c) Section 45A is inserted into the 1977 Act by paragraph 23 of and Schedule 11 to the Health and Social Care (Community Health and Standards) Act 2003.

(d) 1996 c.52.

(e) S.I. 1992/635, as amended.

(f) Section 28T is inserted into the 1977 Act by section 175 of the Health and Social Care (Community Health and Standards) Act 2003.

- (d) in respect of recurring premises costs.

***Payments in relation to which these Directions do not apply***

- 4.** However, these Directions do not apply in relation to payments made to contractors under a GMS contract–
- (a) in respect of a plan drawn up in accordance with regulation 18(3) of the National Health Service (General Medical Services Contracts) Regulations 2004<sup>(a)</sup>; or
  - (b) pursuant to Section 19 of the Statement of Financial Entitlements (existing premises development and improvement commitments).

***General duties of PCTs under these Directions***

- 5.** Where pursuant to or as a consequence of these Directions a PCT may or must make a payment to a contractor in specified circumstances–
- (a) the PCT must only make the payment to a contractor in the specified circumstances; and
  - (b) if the payment is to be made, the PCT must ensure that–
    - (i) the payment is made under the contractor’s GMS contract, and
    - (ii) any conditions to which the payment is subject which are set out in these Directions are terms of the contract.

***Financial assistance in circumstances not contemplated in these Directions***

- 6.** However, these Directions do not prevent PCTs from providing such financial assistance as they think fit in order to pay, or contribute towards, the premises costs of a contractor in circumstances that are not contemplated by the payment arrangements set out in these Directions, such as where–
- (a) the contractor is providing services under a temporary GMS contract;
  - (b) an emergency need for financial assistance in respect of premises costs arises in circumstances that could not reasonably have been foreseen;
  - (c) the contractor needs temporary accommodation (whether in the form of portable premises or an existing building) while new practice premises are being built or existing practice premises refurbished; or
  - (d) the financial assistance relates to contractual arrangements for the provision of primary medical services under section 16CC(2)(b) of the 1977 Act (primary medical services).

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<sup>(a)</sup> S.I. 2004/ 291.

## PART 2

### PREMISES DEVELOPMENT AND IMPROVEMENT

#### *Premises development proposals*

7. Where a contractor has a proposal for–
- (a) the building of new premises to be used for providing primary medical services;
  - (b) the purchase of premises to be used for providing primary medical services;
  - (c) the development of premises which are used or are to be used for providing primary medical services (or for significant changes to existing development proposals); or
  - (d) premises improvements, which are to be the subject of a premises improvement grant application,

and it puts that proposal to its PCT as part of an application for financial assistance in respect of the proposal, the PCT must consider that application.

#### *Projects that may be funded with premises improvement grants*

8. The types of premises improvement projects that may be the subject of a premises improvement grant include–
- (a) improvements to practice premises in the form of building an extension to the premises, bringing into use rooms not previously used to support delivery of primary medical services or the enlargement of existing rooms;
  - (b) improving physical access to and within practice premises, and alterations or additions for Disability Discrimination Act 1995 compliance;
  - (c) improving lighting, ventilation and heating installations (including replacement of other forms of heating by central heating) of practice premises;
  - (d) the reasonable extension of telephone facilities within practice premises (but not the initial purchase or replacement of telephone systems);
  - (e) the provision of car parking;

- (f) the provision of suitable accommodation at the practice premises to meet the needs of children and elderly or infirm people;
- (g) fabric improvements to practice premises such as double glazing, security systems and work required for fire precautions and other statutory building requirements; and
- (h) refurbishment of a building not previously used for the provision of primary medical services but which is to be used as practice premises on a temporary basis.

***Projects that may not be funded with premises improvement grants***

**9.** PCTs must not, however, agree to fund the following expenditure with a premises improvement grant–

- (a) any project where a contract has been entered into, or work commenced, that has not been subject to prior agreement with the PCT;
- (b) any cost elements in respect of which a tax allowance is being claimed;
- (c) the cost of acquiring land, existing buildings or new buildings;
- (d) the repair or maintenance of premises, furniture, furnishings, floor covering and equipment;
- (e) restoration work in respect of structural damage or deterioration;
- (f) any work in connection with the domestic quarters or the residential accommodation of practitioners, caretakers or practice staff, whether or not it is a direct consequence of work on surgery accommodation; and
- (g) any extension not attached to the main building by at least a covered passage way.

***Initial consideration of premises development or improvement proposals***

**10.** Before determining whether a proposal from a contractor for premises development or improvement of a type mentioned in direction 7 should be included in the PCT's estates strategy for investment prioritisation, the PCT must–

- (a) consult the Local Medical Committee (if any) for its area about the proposal;
- (b) satisfy itself that the proposal is required to support, and will support, the delivery of the services that the contractor has agreed to provide under its GMS contract;

- (c) satisfy itself, where appropriate in consultation with the District Valuer, that the proposal represents value for money;
- (d) if the premises are held on a lease or a licence –
  - (i) satisfy itself that the contractor has adequate security of tenure (i.e. the premises should be either a health centre owned by a PCT or held on a lease the unexpired portion of which is at least as long as the period of guaranteed use (see direction 12(b)(iii) and (iv) below)), and
  - (ii) satisfy itself that a contractor intends to occupy the premises for at least as long as the period of guaranteed use (see direction 12(b)(iii) and (iv) below) and will enjoy protection under Part 2 of the Landlord & Tenant Act 1954 for that period; and
- (e) have regard to the standards provided in ‘*Primary and Social Care Premises – Planning and Design Guidance*’ available at [www.primarycare.nhsestates.gov.uk](http://www.primarycare.nhsestates.gov.uk). If a contractor is proposing to depart from the standards set out in that guidance (for example, because the physical nature of the building or site does not allow for full compliance with the standards), the PCT must satisfy itself that–
  - (i) the departure from the standards is reasonable in the circumstances, and
  - (ii) the premises will nevertheless comply with the minimum standards set out in Schedule 1.

***Documentation required in respect of premises developments or improvements***

**11.** The PCT must refuse an application for financial assistance in respect of a premises development or improvement proposal from a contractor unless–

- (a) if the nature of the work is such that, in the opinion of the PCT, it requires architect’s plans for the development or improvement to be drawn up, the contractor supplies the PCT with such plans;
- (b) if the nature of the work requires building work, the contractor–
  - (i) carries out a tendering process for a building contractor to undertake the work, resulting in at least three written quotes, and
  - (ii) agrees with the PCT which of those written quotes represents best value for money;
- (c) the contractor supplies to the PCT copies of any necessary planning and building regulations consents; and



- (d) if the premises development or improvement is to premises that are held on a lease or a licence, the contractor supplies the PCT with a copy of the written consent to the development or improvement of the landlord or licensor, as appropriate.

***Priority funding projects and conditions attached to payments***

**12.** If the PCT determines that a proposal from a contractor for premises development or improvement of a type mentioned in direction 7 is to be included in the PCT's estates strategy for investment prioritisation, and is to be one of its priority funding projects, the PCT must seek to finalise a project plan with the contractor. If the financial assistance is by way of a premises improvement grant, the PCT must not commit itself to covering less than 33% or more than 66% of the total cost of the premises improvement. The PCT must only agree to a finalised project plan with the contractor if it includes–

- (a) a payment schedule setting out the financial assistance to which the PCT has committed itself in respect of the project (the PCT must also ensure that this payment schedule is included in any payment schedule in the contractor's GMS contract); and
- (b) the following conditions–
  - (i) a condition which has the effect of making payments to the contractor under that payment schedule subject to a requirement that the contractor adheres both to the specifications for the project which are set out in the finalised project plan and to any standards to be met during the development or improvement work which are set out in the finalised project plan,
  - (ii) a condition which has the effect of making payments to the contractor under that payment schedule subject to a requirement that the contractor, when carrying out the development or improvement work, does not depart significantly, in the PCT's view, from the version of the project in the finalised project plan (which may be varied with the consent of both parties),
  - (iii) if the development or improvement work is in respect of premises held on a lease or under a licence by the contractor, a condition (unless such a condition is unreasonable in the circumstances) that has the effect of making the payments to the contractor under that payment schedule subject to a requirement that the contractor guarantees that the premises will, once the development or improvement work has been completed, remain in use for the delivery of NHS services–

- (aa) for projects costing up to £100,000 plus Value Added Tax, for at least 5 years, and
- (bb) for projects costing over £100,000 plus Value Added Tax, for at least 10 years, and
- (iv) if the development or improvement work is in respect of premises held on a lease or under a licence by the contractor, a condition (unless such a condition is unreasonable in the circumstances) that has the effect of committing the contractor to repaying a proportion of the grant should the premises cease to be used to provide NHS services before that 5 year or, as the case may be, 10 year period of guaranteed use has expired. The repayable amount is to be calculated by multiplying the amount the PCT has paid by the fraction produced by dividing the amount of time (expressed in whole and part years) left before the 5 or 10 year period of guaranteed use has expired by 5 years or, as the case may be, 10 years.

### **PART 3**

#### **PROFESSIONAL FEES, AND RELATED COSTS, INCURRED IN OCCUPYING NEW OR SIGNIFICANTLY REFURBISHED PREMISES**

##### *Reimbursement of legal and other professional costs incurred in occupying new or significantly refurbished premises*

**13.** Where—

- (a) a contractor has procured newly built practice premises or refurbished existing practice premises;
- (b) actual or notional rent payments are to be paid to the contractor in respect of those premises by the PCT pursuant to these Directions on completion of the building or refurbishment work; and
- (c) the contractor makes an application to its PCT for reimbursement in respect of the professional expenses referred to in direction 14,

the PCT must consider that application for financial assistance and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

##### *Types of professional expenses that may be reimbursed*

**14.** In the case where—

- (a) notional rent payments are to be paid in respect of newly built or refurbished practice premises, the reimbursable professional expenses are–
  - (i) reasonable surveyors’ and architects’ fees, and
  - (ii) reasonable legal costs in connection with the purchase of a site (where applicable) and the construction or refurbishment work; and
- (b) the practice premises are, or are to be, leasehold premises, the reimbursable professional expenses are–
  - (i) reasonable costs of engaging a project manager to oversee the interests of and give advice to the contractor, up to the maximum reimbursable amount, which is 1% of the total reasonable contract sum relating to the construction or refurbishment work, and
  - (ii) reasonable legal costs incurred by the contractor in connection with agreeing the lease or a contract for the lease.

**Value Added Tax on professional expenses**

**15.** Where–

- (a) a PCT decides to grant an application for reimbursement in respect of the professional expenses mentioned in direction 14; and
- (b) Value Added Tax has been properly charged in respect of the amount that the PCT has decided to reimburse,

the PCT must provide the contractor with financial assistance, under its GMS contract, to cover the cost to the contractor of that Value Added Tax.

**PART 4**

**GRANTS RELATING TO RELOCATION OF A CONTRACTOR**

*Mortgage redemption/deficit grants*

**16.** Where a contractor–

- (a) agrees to relocate to modern leasehold premises approved by its PCT in its estates strategy for investment prioritisation;
- (b) makes an application in writing to its PCT for a mortgage redemption/deficit grant to cover all or a proportion of the following–

- (i) a mortgage deficit which arises, after owner-occupied practice premises are sold, because the actual sale price of the premises was not sufficient to clear the outstanding mortgage on the property, or
  - (ii) mortgage redemption fees that the contractor may incur as a result of the sale or remortgage of such premises; and
- (c) includes in that application all reasonable information required of it by the PCT to determine the application, including details of the amount of the outstanding mortgage that was used to build or improve the property,

the PCT must consider that application for financial assistance and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set itself), grant that application.

***Costs that may not be funded with mortgage redemption/deficit grants***

**17.** PCTs must not agree to cover the following costs or liabilities of a contractor with a mortgage redemption/deficit grant–

- (a) any proportion of a mortgage deficit that has arisen through–
  - (i) payment holidays, or
  - (ii) reduced loan repayments not reflected in the cost rent reimbursement; and
- (b) any borrowings or redemption charges not connected with the original purchase of land, building works and subsequent improvements to the premises – for example, furnishings, fittings and equipment (including IT and telephone systems etc.).

***Matters that must be considered before determining mortgage redemption/deficit grant applications***

**18.** Before determining an application for a mortgage redemption/deficit grant from a contractor, a PCT must obtain professional advice and be satisfied that–

- (a) negotiations with the lender have limited the extent of any deficit or redemption charges;
- (b) options for change of use for the property have been considered and where appropriate, outline planning permission sought or obtained;
- (c) a proper process has been undertaken to identify a suitable third party developer and a site for the new leasehold premises;

- (d) the timing of the grant is appropriate to maximising the opportunity for a sale which will coincide with completion and occupation of the new leasehold premises; and
- (e) the sale of the premises is adequately advertised and the best price obtained,

and the PCT must deduct from any amount that it would otherwise be prepared to pay by way of a mortgage redemption/deficit grant the surrender value of any endowment policy cover linked to the mortgage on the premises.

***Conditions attached to mortgage redemption/deficit grants***

**19.** Although, for accounting purposes, a mortgage redemption/deficit grant is to be treated as a payment to the contractor, the PCT must ensure that payment of the grant is made subject to the following conditions–

- (a) the contractor must consent to the PCT sending the grant directly to the lender;
- (b) the contractor must provide the PCT with sufficient details to enable it to do so;
- (c) the contractor must provide the PCT with the information it needs from the lender to determine whether any endowment policy cover is linked to the mortgage on the premises, and if so, its surrender value; and
- (d) the contractor must not be in receipt of mortgage redemption/ deficit loan repayment payments in respect of the same mortgage.

***Borrowing costs relating to mortgage redemption/deficit costs***

**20.** Where a contractor, which is not in receipt of a mortgage redemption/deficit grant–

- (a) agrees to relocate to modern leasehold premises approved by its PCT in its estates strategy for investment prioritisation;
- (b) takes out a loan to cover–
  - (i) a mortgage deficit which arises, after owner-occupied practice premises are sold, because the actual sale price of the premises was not sufficient to clear the outstanding mortgage on the property, or
  - (ii) mortgage redemption fees that the contractor may incur as a result of the sale or remortgage of such premises,

or a third party takes out a loan to cover those costs or fees on its behalf and the contractor is obliged to meet the third party's liabilities in respect of the repayment of that loan; and

- (c) makes an application in writing to its PCT for financial assistance towards meeting its, or the third party's regular payments to repay the loan; and
- (d) includes in that application all reasonable information required of it by the PCT to determine the application, including details of the amount of the outstanding mortgage that was used to build or improve the property,

the PCT must consider that application for financial assistance and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set itself), grant that application.

***Costs that may not be funded with mortgage redemption/deficit loan repayment payments***

**21.** A PCT must refuse an application of a type mentioned in direction 20 if the loan covers–

- (a) any part of a mortgage deficit which has arisen through–
  - (i) payment holidays, or
  - (ii) reduced loan repayments not reflected in the cost rent reimbursement;
- (b) any borrowings or redemption charges not connected with the original purchase of land, building works and subsequent improvements to the premises (for example, furnishings, fittings, equipment (including IT and telephone systems, etc.).

***Matters that must be considered before determining applications of the type mentioned in direction 20***

**22.** Before determining an application of the type mentioned in direction 20, a PCT must obtain professional advice and be satisfied that–

- (a) negotiations with the lender have limited the extent of any deficit or redemption charges;
- (b) options for change of use for the property have been considered and where appropriate, outline planning permission sought or obtained;
- (c) a proper process has been undertaken to identify a suitable third party developer and a site for the new leasehold premises;

- (d) the timing of the loan is appropriate to maximising the opportunity for a sale which will coincide with completion and occupation of the new leasehold premises; and
- (e) the sale of the premises is adequately advertised and the best price obtained,

and the PCT must deduct from any regular payments that it would otherwise be prepared to pay, in granting the application, a regular and appropriate proportion of the surrender value of any endowment policy cover linked to the mortgage on the premises.

***Conditions attached to mortgage redemption/deficit loan repayment payments***

**23.** Although, for accounting purposes, regular payments that a PCT makes on granting an application of the type mentioned in direction 20 are to be treated as a payment to the contractor, the PCT must ensure that the payments are made subject to the following conditions–

- (a) the contractor must consent to the PCT sending the payments directly to the lender;
- (b) the contractor must provide the PCT with sufficient details to enable it to do so;
- (c) the contractor must provide the PCT with the information it needs from the lender to determine whether any endowment policy cover is linked to the mortgage on the premises, and if so, its surrender value; and
- (d) the contractor must not be in receipt of a mortgage redemption/deficit grant from its PCT in respect of the same mortgage.

***Guaranteed minimum sale price payments***

**24.** Where–

- (a) a contractor agrees with its PCT to relocate to modern leasehold premises approved by the PCT in the PCT’s estates strategy for investment prioritisation;
- (b) the relocation will, in the opinion of the PCT, result in an improvement in the range and quality of services to be provided to patients by the contractor;
- (c) the PCT and the contractor have agreed a guaranteed minimum sale price for owner-occupied practice premises that are being sold (“the previous premises”);

- (d) the PCT is satisfied that the previous premises were placed on the open market with active marketing to sell them at the maximum price achievable on a date to coincide with the contractor's move to new premises;
- (e) the PCT is satisfied, having taken professional advice, that an increased offer (i.e. an offer that was better than the one that was in fact accepted for the previous premises) could not reasonably have been achieved;
- (f) the PCT is satisfied that the previous premises have not been sold to–
  - (i) the contractor,
  - (ii) a present or former partner in, shareholder in or employee of the contractor,
  - (iii) a family member of a present or former partner in, shareholder in or employee of the contractor, or
  - (iv) the employer of a family member of a present or former partner in or shareholder in or employee of the contractor; and
- (g) in appropriate circumstances (for example, if the future planning use of the property is unclear)–
  - (i) the agreement for sale of the previous premises includes a clawback arrangement, and
  - (ii) the contractor has agreed with the PCT an enforceable undertaking in the form of a condition in its GMS contract that it will use any clawback monies to repay all or a proportionate part (as is appropriate) of any payment from the PCT pursuant to this direction,

if the sale price for the previous premises is less than the agreed guaranteed minimum sale price for the premises, the PCT must provide to the contractor under its GMS contract financial assistance in the form of a payment equal to the difference between those two prices.

***Agreement of a guaranteed minimum sale price***

**25.** If a PCT is considering agreeing a guaranteed minimum sale price with a contractor, it must–

- (a) seek professional advice on the actual sale price of the premises to be sold; and
- (b) only agree a guaranteed minimum sale price with the contractor–



- (i) on the basis of the professional advice about the actual sale price of the property that it has received, and
- (ii) having taken into account the options for change of use of the premises.

***Grants relating to the cost of reconverting former residential property***

**26.** Where a contractor has a proposal for reconverting practice premises which were previously the contractor's (or a partner in or shareholder in the contractor's) owner-occupied residential property back to residential use, and–

- (a) the property is no longer suitable for the delivery of modern primary medical services; and
- (b) the contractor has agreed to–
  - (i) move to premises suitable for the delivery of modern primary medical services, and
  - (ii) rent out the reconverted premises through arrangements made by the contractor directly or through a registered social landlord for a minimum period of time, which is to be set by its PCT and which its PCT must set for a period that is commensurate to the level of grant awarded pursuant to an application of the type mentioned in this direction; and
- (c) the contractor makes an application to its PCT for a residential property reversion grant towards the cost of the reversion,

the PCT must consider that application for financial assistance and, in appropriate cases (having regard, amongst other matters, to the budgetary targets that it has set for itself), grant that application.

***Circumstances where residential property reversion grants are not payable***

**27.** PCTs must ensure that payment of a residential property reversion grant is made subject to conditions to the following effect–

- (a) for the minimum period of time set by the PCT in accordance with direction 26(b)(ii), any registered social landlord through whom the premises are or will be rented out, and any tenant to whom all or part of the premises are or will be rented out, must not be–
  - (i) a present or former partner in, shareholder in or employee of the contractor,
  - (ii) a family member of a present or former partner in, shareholder in or employee of the contractor; or

- (iii) the employer of a family member of a present or former partner in, shareholder in or employee of the contractor; and
- (b) the contractor must not occupy all or part of the premises during the minimum period of time that has been set by the PCT in accordance with direction 26(b)(ii).

***Grants towards the cost of surrendering or assigning leases or to meet vacated leasehold premises costs***

**28.** Where a contractor which is moving or has moved to premises that are suitable for the delivery of modern primary medical services makes an application to its PCT for a grant towards—

- (a) the costs reasonably incurred (including reasonable legal costs) that relate to—
  - (i) surrendering a lease, or
  - (ii) assigning a lease where surrender of the lease was not realistically possible,

of leasehold premises that are or were practice premises but are not suitable for the delivery of modern primary medical services; or

- (b) vacated leasehold premises costs that relate to the contractor's ongoing liabilities (or a partner in or shareholder in the contractor's ongoing liabilities) in respect of practice premises that are being or have been vacated because they are not suitable for the delivery of modern primary medical services,

the PCT must consider that application for financial assistance and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set itself), grant that application.

***Circumstances where an application of the type mentioned in direction 28 must be refused***

**29.** The PCT must refuse an application of the type mentioned in direction 28 where—

- (a) the costs to which the application relates were incurred without the prior approval of the PCT;
- (b) the leasehold premises are owned by or leased from an NHS body;
- (c) the leasehold premises are wholly or partly owned by, or are leased from—

- (i) the contractor,
  - (ii) a present or former partner in, shareholder in or employee of the contractor,
  - (iii) a family member of a present or former partner in, shareholder in or employee of the contractor, or
  - (iv) the employer of a family member of a present or former partner in, shareholder in or employee of the contractor;
- (d) in the case of costs of assigning a lease, surrender could be agreed with the landlord, unless professional advice has been obtained and the conclusion of that advice is that surrender or assignment is not cost-effective;
- (e) in the case of vacated leasehold premises costs–
- (i) surrender could be agreed with the landlord, or
  - (ii) assignment to a third party could be agreed with the landlord and is realistically possible,
- unless professional advice has been obtained and the conclusion of that advice is that surrender or assignment is not cost-effective; or
- (f) in the case of vacated leasehold premises–
- (i) the costs relating to liabilities in respect of the vacated leasehold premises have not been agreed with the landlord, or
  - (ii) the financial assistance is not subject to a condition to the effect that the contractor will continue to take all reasonable steps to surrender or assign the lease to a third party on reasonable terms.

***Stamp Duty Land Tax payable on agreeing a new lease***

**30.** Where–

- (a) a contractor agrees with its PCT to relocate to or additionally occupy modern leasehold practice premises approved by the PCT in the PCT's estates strategy for investment prioritisation;
- (b) the relocation or additional premises will, in the opinion of the PCT, result in an improvement in the range and quality of services to be provided to patients by the contractor;

- (c) the contractor makes an application to its PCT for financial assistance to cover the cost of any Stamp Duty Land Tax incurred by the contractor as a consequence of signing a lease to occupy premises,

the PCT must consider that application for financial assistance and, in appropriate circumstances (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

## **PART 5**

### **RECURRING PREMISES COSTS**

#### ***Leasehold premises' rental costs***

**31.** Subject to the following provisions of this Part, where—

- (a) a contractor which rents its practice premises makes an application to its PCT for financial assistance towards its rental costs; and—
- (b) in the case of rental costs arising under a lease agreed or varied on or after 1st April 2004, the PCT is satisfied (before the lease is agreed or varied), where appropriate in consultation with the District Valuer, that the terms on which the new or varied lease is to take effect represent value for money,

the PCT must consider that application and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

#### ***Amount of leasehold premises' rental costs payable***

**32.** If a PCT does grant the application, subject to the following provisions of this Part, the amount that it must pay in respect of a contractor's rental costs for its practice premises is—

- (a) the current market rent for the premises; or
- (b) the actual lease rent for the premises, plus any Value Added Tax payable by the contractor if this is properly charged to the contractor by the landlord,

whichever is the lower amount.

#### ***Current market rents***

**33.** The amount of the current market rent of leasehold premises is to be determined in accordance with Parts 1 and 2 of Schedule 2. However, having regard to the fact that current market rent levels in some areas of deprivation may be too low to provide—

- (a) sufficient returns to support new capital investment in practice premises; or
- (b) sufficient support for existing premises that meet the minimum standards set out in Schedule 1,

PCTs may in such circumstances increase the amount they would otherwise pay as the current market rent of practice premises by applying an appropriate uplift factor (as provided by the Valuation Office Agency).

***Premiums affecting the lower rent rate***

**34.** If the actual lease rent for practice premises, plus any properly chargeable Value Added Tax, is only lower than the current market rent for those premises because, in the calculation of the current market rent for the premises, the PCT includes the value of a premium paid by the tenant, the amount to be paid by the PCT pursuant to direction 32 is the current market rent for the premises rather than the actual lease rent.

***Equipment etc. lease costs for modern practice leasehold premises***

**35.** Where—

- (a) a contractor has entered into an agreement (whether as part of a practice premises lease agreement or otherwise) to lease equipment, furniture or furnishings;
- (b) the nature and level of the costs of leasing the equipment, furniture or furnishings (including any arrangements for increasing the amounts payable), together with the period of time for which these costs are payable, were agreed by the contractor and its PCT before the agreement was agreed, and—
  - (i) the period of time does not exceed the remaining term of the occupancy lease, and
  - (ii) the PCT obtained professional advice before reaching agreement with the contractor; and
- (c) the contractor makes an application to its PCT for financial assistance towards those costs,

the PCT must consider that application for financial assistance and, in appropriate circumstances (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

***Borrowing costs***

**36.** Subject to the following provisions of this Part, where a contractor—

- (a) incurs borrowing costs as a result of purchasing, building or significantly refurbishing its practice premises (or would have incurred such costs had the contractor not funded the project with its, or its partners' or shareholders', own resources); and
- (b) makes an application to its PCT for financial assistance towards meeting those costs,

the PCT must consider that application and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

***Conditions to be met if applications for financial assistance in respect of borrowing costs are to be granted***

**37.** If the contractor's borrowing costs relate to new practice premises or the significant refurbishment of an existing building, a PCT must only grant an application of the type mentioned in direction 36 if–

- (a) in respect of the building work, the contractor–
  - (i) carries out or carried out a tendering process for a firm to undertake the work, resulting in at least three written quotes, and
  - (ii) agrees or agreed with the PCT which of those written quotes represents or represented best value for money;
- (b) the amount of financial assistance applied for has been calculated by applying the prescribed percentage to the necessary level of loan incurred (or that would have been incurred had the contractor not wholly or partly funded the project with its, or its partners' or shareholders', own resources), and agreed with the PCT, to meet the aggregated cost elements to build, fit-out and equip the premises. For these purposes, the cost elements that may be aggregated include–
  - (i) site purchase,
  - (ii) building works,
  - (iii) reasonable surveyors' and architects' fees, and reasonable legal costs arising out of the purchase of the site (where applicable) and the building or refurbishment,
  - (iv) any rolled-up interest incurred on loans taken out to procure the premises,
  - (v) local authority and planning application fees necessarily incurred,

- (vi) purchase or lease costs of adequately fitting-out and equipping the new premises, and
  - (vii) Value Added Tax and Stamp Duty Land Tax, where properly charged in relation to the above; and
- (c) the loan (i.e. any loan actually taken out by the contractor) is secured by the contractor.

***The prescribed percentage***

**38.** For the purposes of direction 37(b), the prescribed percentage is–

- (a) if the loan is a fixed interest rate loan (for the duration of loan period), the 20 high year gilt rate issued by the Bank of England(a), plus 1.5%;
- (b) if the loan is not a fixed interest rate loan (for the duration of the loan period), the Bank of England Base Interest Rate(b) plus 1%; or
- (c) if the contractor is financing the building or refurbishment scheme wholly or mainly from its (or its partners’ or shareholders’) own resources, that which the PCT determines as representing best value for money.

***Amounts payable in respect of borrowing costs***

**39.** Once a PCT has decided to grant an application from a contractor for financial assistance in respect of borrowing costs pursuant to direction 36, and the PCT has determined an annual amount in respect of the contractor’s borrowing costs in accordance with directions 37 and 38, the PCT must each month provide financial assistance to the contractor in respect of those borrowing costs, based on one twelfth that annual amount, until–

- (a) the loan is paid off;
- (b) in the case of a loan that is not a fixed interest rate loan (for the duration of the loan period) twelve months have elapsed since the annual amount was last established, at which point a new annual amount is to be established for the next twelve months, based on a redetermined prescribed percentage, which is the Bank of England Base Interest Rate at the time the annual amount is recalculated plus 1%, being applied to the agreed level of borrowing;

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(a) This is available on the following website: <http://213.225.140.30/mfsd/iadb/fromshowcolumns.asp?Travel=NixSCxSUx&FromSeries=1&ToSeries=50&DAT=ALL&FD=1&FM=Jan&FY=1963&TD=31&TM=Oct&TY=2003&CSVF=TT&FN=N&C=R5&html.x=16&html.y=23>.

(b) This is available on the following website: <http://213.225.140.30/mfsd/iadb/fromshowcolumns.asp?Travel=Nix SCxSUx&FromSeries=1&ToSeries=50&DAT=ALL&FD=1&FM=Jan&FY=1963&TD=31&TM=Oct&TY=2003&CSVF=TT &FN=N&C=P9&html.x=20&html.y=19>.

- (c) alternative borrowing arrangements are entered into by the contractor. Where a contractor changes lender or re-negotiates lower loan costs, the amount payable by the PCT shall be recalculated using the appropriate prescribed percentage in force at the time that the changed loan arrangements come into effect; or
- (d) the contractor elects not to receive any further payments under these arrangements (for example, in order to receive notional rent payments),

and the monthly amount is to be paid on the last day of the month, unless alternative payment arrangements are agreed between the PCT and the contractor.

***Condition attached to payments in respect of borrowing costs based on a fixed interest rate loan***

**40.** If a contractor is to receive payments in respect of borrowing costs under this Part, and those borrowing costs arise as a result of a of a fixed interest rate loan, the PCT must ensure that the making of the payment is subject to a condition to the effect that the contractor must advise the PCT of any change of lender or any reduction in the level of interest charged to its loan.

***Notional rent payments***

**41.** Subject to the following provisions of this Part, where a contractor that is an owner-occupier of its practice premises—

- (a) either—
  - (i) has repaid the loans secured on its practice premises, or
  - (ii) incurs borrowing costs as a result of purchasing, building or significantly refurbishing practice premises (or would have incurred such costs had the contractor not funded the project with its, or its partners' or shareholders', own resources) but elects not to receive any payments from its PCT in respect of those borrowing costs; and
- (b) makes an application to its PCT for notional rent payments,

the PCT must consider that application and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application. If a contractor has been in receipt of payments in respect of its borrowing costs pursuant to direction 39, elects not to receive further payments pursuant to that direction and makes an application in accordance with this direction, its PCT must grant that application and make notional rent payments to the contractor under its GMS contract at an appropriate level and frequency.

***Amount of notional rent payments***



**42.** Where a PCT grants an application of the type mentioned in direction 41, subject to the following provisions of this Part, the amount that it must pay to a contractor in respect of notional rent is the current market rental value of its practice premises, as determined in accordance with Parts 1 and 3 of Schedule 2. The PCT must review this amount as part of a three yearly review of the contractor's notional rent, although this review may be brought forward if–

- (a) there is a change to the purposes for which the premises are used;
- (b) there is further capital investment in the premises, and payments are to be made to the contractor in respect of that investment under its GMS contract.

***Abatement of notional rent payments***

**43.** Where–

- (a) NHS capital has contributed to the cost of building or refurbishment work done in respect of the practice premises of a contractor; and
- (b) that contribution of NHS capital was made after 18th September 2003,

on completion of the building or refurbishment work, the amount of the notional rent payable by a PCT must be the abated notional rent for those premises, calculated in accordance with Part 1 of Schedule 3, rather than the full notional rent, determined in accordance with direction 42. However, after a period of 10 years the full notional rent again becomes payable.

***Notional rent supplements***

**44.** If a contractor–

- (a) is an owner-occupier of its practice premises and is in receipt of payments in respect of its borrowing costs which are paid by a PCT pursuant to direction 39, and–
  - (i) the contractor makes further capital investment in the practice premises and that investment (including the details of the finalised project plan) had the prior approval of its PCT, but
  - (ii) the current market rent (and so the notional rent) for the practice premises remains lower than the repayments in respect of borrowing costs being made; or
- (b) rents its practice premises, is in receipt of payments in respect of its actual lease rent which are paid by a PCT pursuant to direction 32,
  - (i) and makes further capital investment in its practice premises, and

- (ii) that investment (including the details of the finalised project plan) had the prior approval of its PCT,

and the contractor makes an application to its PCT for a notional rent supplement, the PCT must grant that application and make notional rent supplement payments to the contractor under its GMS contract at an appropriate level and frequency.

***Amount of notional rent supplements***

**45.** Where a PCT grants an application of the type mentioned in direction 44, the amount that it must pay to the contractor as a notional rent supplement is the value of the enhancement of the current market rent for the premises arising from the further capital investment, which is to be determined (and abated) in accordance with Schedule 2 and Part 2 of Schedule 3.

***Payments in respect of running costs***

**46.** Where—

- (a) a contractor is in receipt of payments pursuant to this Part in respect of leasehold rental costs or borrowing costs, or by way of notional rent payments;
- (b) the contractor actually and properly incurs the costs which are or relate to—
  - (i) business rates,
  - (ii) water and sewage charges,
  - (iii) charges in respect of the collection and disposal of clinical waste, or
  - (iv) in the case of modern practice premises, a utilities and services charge (for example, a service charge under a lease or a charge levied under separate arrangements made by a contractor which is an owner-occupier), and the charge covers—
    - (aa) fuel and electricity charges,
    - (bb) building insurance costs,
    - (cc) costs of internal or external repairs, and
    - (dd) plant, building and grounds maintenance costs;
- (d) these costs are not covered in the other payments that the contractor is receiving pursuant to these Directions; and

- (e) the contractor makes an application to its PCT for financial assistance towards meeting any or all of these costs,

subject to direction 47, the PCT must consider that application and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

***Financial assistance towards service charges***

**47.** A PCT must deduct from any amount that it would otherwise be required to pay in respect of a service charge pursuant to an application of the type mentioned in direction 46–

- (a) an average (calculated on the basis of the previous year's costs) amount that the contractor (or, prior to 1st April 2004, the antecedent practice) paid in respect of–

- (i) fuel and electricity charges,
- (ii) insurance costs,
- (iii) costs of internal or external repairs, and
- (iv) building and grounds maintenance costs,

calculated by reference to the same time period as the period in respect of which the service charge is payable; or

- (b) if suitable and sufficient information is not (or does not become) available to calculate the average referred to in paragraph (a), 40% of the amount otherwise payable.

***Abatements in respect of contributions towards recurring premises costs from third parties***

**48.** Where a contractor's practice premises, or any part thereof, are or form part of premises that are owned or rented by any person other than the contractor, and that person–

- (a) is required by any agreement (which includes a licence or a lease) to make or makes any contribution towards any recurring premises costs in respect of which the PCT is providing financial assistance to the contractor in accordance with this Part; or
- (b) is required by any agreement (which includes a licence or a lease) to pay or pays to the contractor any amount–
  - (i) by way of rent in respect of the practice premises or any part thereof, or

- (ii) in respect of the running costs of the practice premises,

the PCT must set off that contribution or that amount, equitably, against the payments made to the contractor pursuant to this Part.

***Abatements in respect of income from private patients and commercial contracts***

**49.** Where a contractor’s practice premises, or any part thereof, are used for or associated with the provision of medical services–

- (a) to private patients; or
- (b) under arrangements with any person who is not a public authority (and for these purposes “public authority” includes NHS bodies, government departments, local authorities and the armed forces),

the PCT must reduce the amount of any payment that it makes to the contractor pursuant to this Part by the appropriate abatement percentage. The appropriate abatement percentage is the percentage listed in column 1 of the table in this paragraph opposite percentage band, in column 2 of the table, into which the contractor’s private income percentage falls.

**TABLE**

<i>Column 1</i> <i>Appropriate Abatement percentage</i>	<i>Column 2</i> <i>Private income percentage</i>
0%	up to 10%
10%	between 10% and 20%
20%	between 20% and 30%
30%	between 30% and 40%
40%	between 40% and 50%
50%	between 50% and 60%
60%	between 60% and 70%
70%	between 70% and 80%
80%	between 80% and 90%
90%	above 90%

**Private income percentages**

**50.** A contractor’s private income percentage is–

- (a) the average amount of income derived by the contractor, or members or employees of the contractor, from the provision of medical services, at or associated with its practice premises, to private patients or under any arrangements with a person other than a public authority; divided by
- (b) the average total amount of the income of the contractor, or members or employees of the contractor, relating to the provision of medical services at or associated with the practice premises,

multiplied by 100. For these purposes, practice premises are associated with the provision of medical services if there is any connection or association between the provision of the medical services and the practice premises (for example, contact or billing arrangements), even if the medical services are provided elsewhere. The PCT is to take all reasonable steps to agree with the contractor what are appropriate average amounts for the purposes of sub-paragraphs (a) and (b), and must duly justify the averages it does determine.

### ***Payments in kind***

**51.** If a payment that is to be made pursuant to this Part would be abated, or abated by a greater amount, if instead of receiving money or obtaining a pecuniary advantage a contractor, or a member or employee of a contractor, receives a payment in kind, the value of the payment in kind is to be taken into account in determining amount of the payment to be made pursuant to this Part. The PCT is to take all reasonable steps to agree with the contractor the value of the payment in kind and must duly justify the value it does determine.

### ***Minimum standards condition attached to all payments under this Part***

**52.** If a payment is to be made by a PCT pursuant to this Part, the PCT must ensure that the making of the payment is subject to a condition to the effect that the practice premises in respect of which the payment is made meet the minimum standards set out in Schedule 1. If this condition is breached but the breach is capable of remedy by refurbishment of the premises–

- (a) a remedial notice should not be served in respect of the breach if, pursuant to a plan drawn up in accordance with regulation 18(3) of the National Health Service (General Medical Services Contracts) Regulations 2004, action is already due to be taken which will remedy that breach and the timescale for taking that action under that plan has not yet elapsed;
- (b) before serving a remedial notice in respect of the breach, the PCT must consult the Local Medical Committee (if any) for its area; and
- (c) if a remedial notice is served, the notice period must be at least six months, unless the breach was due to be remedied as a consequence of action taken under a plan drawn up in accordance with regulation 18(3) of the National Health Service (General Medical Services Contracts) Regulations 2004, but the timescale for taking that action under that plan has elapsed without the action being taken.

### ***Accurate information condition attached to all payments under this Part***

**53.** Where a PCT grants an application under this Part, it must ensure that the payment is made subject to conditions to the following effect–

- (a) the contractor must make available to the PCT any information which the PCT does not have but needs, and the contractor either has or could reasonably be expected to obtain, in order for the PCT to calculate the appropriate amount of financial assistance to be provided; and
- (b) all information supplied by a contractor to its PCT pursuant to or in accordance with the condition set out in paragraph (a) must be accurate.

## **PART 6**

### **SUPPLEMENTARY PROVISIONS**

#### *Payments previously made to practitioners rather than contractors*

**54.** If, immediately prior to 1st April 2004—

- (a) a PCT was making payments under the Statement of Fees and Allowances to a registered medical practitioner who—
  - (i) is either a contractor or a partner in or a shareholder in a contractor, and
  - (ii) owns or is a part owner of the leasehold or freehold interest in practice premises,
- (b) those payments were with regard to any of the recurring premises costs in respect of which payments may or must be made pursuant to Part 5,

the PCT must, subject to direction 55, continue to provide financial assistance in respect of those costs.

#### *Conditions relating to cases of preserved rights to payments in respect of recurring premises costs*

**55.** That financial assistance must be provided—

- (a) to a contractor rather than an individual registered medical practitioner, unless the registered medical practitioner is himself a contractor;
- (b) in accordance with Part 5 (except that, where it is reasonable to do so, the PCT may simply continue with the existing payment levels without the need to consider a new application for financial assistance), and subject to any relevant condition relating to that type of financial assistance which is set out therein.

#### *Payments under default contracts*

**56.** Where—

- (a) a registered medical practitioner or a partnership of registered medical practitioners agrees a default contract with a PCT;
- (b) that practitioner or a partner in that partnership was in receipt of payments under the Statement of Fees and Allowances with regard to any of the recurring premises costs in respect of which payments may be made pursuant to Part 5; and
- (c) the PCT must, by virtue of direction 54, make similar payments to the registered medical practitioner or the partnership when he or it agrees a GMS contract with the PCT,

the PCT must provide financial assistance to the potential contractor under his or its default contract in respect of those recurring premises costs, at an appropriate level and frequency having regard to the amount that the potential contractor is likely to be paid in respect of those costs under the GMS contract.

***Direct payments to third parties***

**57.** Where a contractor and its PCT agree, the PCT must pay any amount that is due to the contractor as financial assistance under these Directions to a third party instead of the contractor, subject to a condition that the contractor ensures that it treats the payment for accounting purposes as a payment to it. If–

- (a) the payment from the PCT to the third party is less than the amount that is due from the contractor to the third party; and
- (b) the contractor is due other payments from the PCT as financial assistance under these Directions which are greater than or equal to the amount of the shortfall,

where the contractor and the PCT agree, the PCT must pay all or part of those other payments to the third party instead of to the contractor, subject to a condition that the contractor ensures that it treats the payment for accounting purposes as a payment to it.

***Time limitation for making applications***

**58.** PCTs must only consider or grant an application of the types mentioned in these Directions if the application is made within six years of the premises costs to which the application relates falling due.

***Applications in respect of historic premises costs***

**59.** Apart from an application of the type mentioned in direction 30 relating to Stamp Duty Land Tax which falls due on or after 1st December 2003, the PCT must only consider or grant an application of the types mentioned in these Directions if the premises costs to which the application relates–

- (a) fall due on or after 1st April 2004; and
- (b) if they are recurring premises costs, are in respect of a period that starts on or after 1st April 2004.

Signed by authority of the Secretary of State for Health

16 March 2004

*Peter Wearmouth*  
A member of the Senior Civil Service  
Department of Health



## **SCHEDULE 1**

### **MINIMUM STANDARDS FOR PRACTICE PREMISES**

1. As regards the design or construction of the premises, or of the approach or access to the premises, to which the payments relate, the contractor must comply with any obligations it has to its own members (where applicable), staff, contractors and to persons to whom it provides primary medical services under the Health and Safety at Work Act 1974 (and legislation under that Act) and the Disability Discrimination Act 1995. The requirements of the 1995 Act include taking such steps as are reasonable to—

- (a) provide for ease of access to the premises and ease of movement within the premises for all users of the premises (including wheelchair users);
- (b) provide adequate sound and visual systems for the hearing and visually impaired; and
- (c) remove barriers to the employment of disabled people.

2. Adequate facilities should also be provided for the elderly and young children, including nappy-changing and feeding facilities. There should also be adequate lavatory and hand hygiene facilities which meet appropriate infection control standards.

3. If the premises have a treatment room, this should be properly equipped. An additional treatment room may be required where enhanced minor injury services are provided..

4. The arrangements for instrument decontamination should comply with national guidelines as appropriate to primary care.

5. The premises should have a properly equipped consulting room for use by the practitioners with adequate arrangements to ensure the privacy of consultations and the right of patients to personal privacy when dressing or undressing, either in a separate examination room or in a screened-off area around an examination couch within the treatment room or the consulting room. However, in the case of branch surgeries, this standard need not be fully met if the contractor provides outlying consultation facilities using premises usually used for other purposes, and these meet with the approval of the PCT.

6. The access arrangements for the building should be convenient for all users.

7. There should be washbasins connected to running hot and cold water (ideally distributed through elbow, knee or sensor-operated taps) in consulting rooms and treatment areas.
8. There should be adequate internal waiting areas with—
  - (a) enough seating to meet all normal requirements, either in the reception area or elsewhere; and
  - (b) the facility for patients to communicate confidentially with reception staff, including by telephone.
9. There should be adequate standards of lighting, heating and ventilation.
10. The premises, fittings and furniture should be in good repair and (when being used for the provision of primary medical services) clean and hygienic.
11. The arrangements for the storage and disposal of clinical waste should comply with current legislative requirements and national guidelines.
12. There should be adequate fire precautions, including provision for safe exit from the premises, designed in accordance with the Building Regulations agreed with the local fire authority.
13. There should be adequate security for drugs, records, prescription pads and pads of doctors' statements.
14. If the premises are to be used for minor surgery or the treatment of minor injuries, there should be a room suitably equipped for the procedures to be carried out.

## **SCHEDULE 2**

### **CURRENT MARKET RENTS AND NOTIONAL RENT ABATEMENTS**

#### **PART 1**

##### **FACTORS COMMON TO ALL CURRENT MARKET RENT CALCULATIONS**

1. Current market rent calculations for notional rent purposes differ from current market rent calculations for actual leasehold premises pursuant to direction 33.
2. However, in both cases, the valuer must consider what might reasonably be expected to be paid by a tenant for the premises at the valuation date. The aim will be to arrive at a rent which can be agreed between the contractor (or his or her representative) and a third party in willing negotiation. For these purposes, it must be assumed that neither party is seeking to take advantage of the fact that—
  - (a) the contractor's remuneration is so arranged that this rent and any VAT payable is reimbursed separately; and
  - (b) at any one time only one contractor is permitted to be in the market to use the premises for practice purposes.
3. In determining a figure for any current market rent, the following will also apply—
  - (a) where the practice accommodation forms part of an owner-occupied residence but does not include areas which are used regularly but not exclusively for practice purposes, the current market rent will be assessed for the practice accommodation only, but as part of the whole premises and not increased or reduced to reflect any advantage or disadvantage there may be in the fact that the practice accommodation is not in separate premises;
  - (b) where the practice accommodation forms part of a residence owned or rented by a person not connected with the contractor, the current market rent will be assessed in respect of the practice accommodation only and is to reflect any advantage or disadvantage there may be in the fact that it is not in separate premises;
  - (c) where the practice accommodation forms part of an owner-occupied residence and includes areas which are used regularly but not exclusively for practice purposes, the CMR will be assessed as at (a) above but with an agreed percentage added of the current market rental

value of any area used regularly but not exclusively for practice purposes having regard to the extent and frequency of such use and any modifications made to facilitate that use.

## **PART 2**

### **FACTORS WHICH ONLY APPLY IN RELATION TO LEASEHOLD PREMISES**

4. The valuer must first have regard to the actual terms of the lease. In the case of the payment provisions–

- (a) the amounts payable must be adjusted to take account of appropriate deductions in respect of the following–
  - (i) any amount referable to residential accommodation, except where this is to be taken into account in accordance with paragraph 3,
  - (ii) other non-practice accommodation (unless the PCT has specifically agreed that no deduction is to be made in respect of it),
  - (iii) furniture or moveable equipment included in the rent costs,
  - (iv) services or other facilities included in the rent costs,
  - (v) the value of any responsibility of the landlord in respect of internal repairs or decoration,
  - (vi) any amount referable to water rates, where the tenant is responsible for paying the landlord's share and recovers that share from the landlord;
- (b) the amounts payable must be adjusted to take account of appropriate additions in respect of the following–
  - (i) the value of any responsibility of the tenant in respect of external repairs and maintenance, or for insurance of the building,
  - (ii) any premium paid by the tenant,
  - (iii) any Value Added Tax paid by the tenant where properly charged to the tenant by the landlord
- (c) relating to reviewing rental payments, the PCT must–

- (i) review its assessment of the current market rent for the property when the landlord undertakes a rent review provided for in the lease, unless the landlord's review does not result in a change to the level of rent charged (an assessment on the basis of vacant possession will not be appropriate on a rent review, unless the terms of the lease so provide or the property market can be shown not to distinguish between vacant and tenanted premises), and
  - (ii) if the rent review is linked to an index (for example, the Retail Price Index, adjust the amount it pays in accordance with that index, provided it received a copy of the lease on offer before it was agreed and it agreed to the indexing arrangement, having taken professional advice as to its appropriateness; and
- (d) if the lease rent is inclusive of rates (including water rates), the current market rent must also be inclusive of the rates so included.

### **PART 3**

#### **FACTORS WHICH ONLY APPLY IN RELATION TO NOTIONAL RENT CASES**

5. If the premises are owner-occupied premises, the following assumptions are to be made by the valuer about the nature of the notional lease upon which the notional rent payments are to be based. This notional lease–

- (a) is to be for a term of 15 years, with upward only rent reviews every three years;
- (b) includes a covenant that the tenant undertakes to bear the cost of internal repairs and decoration and the landlord undertakes to bear the cost of insuring the building and of carrying out external repairs and maintenance;
- (c) does not include a service charge, or like payment for such items as upkeep, maintenance (including lift maintenance where appropriate), cleaning and heating of common parts;
- (d) is for vacant possession (for the purposes of the initial assessment but not for the purposes of the notional rent review, unless the terms of the lease so provide or the property market can be shown not to distinguish between vacant and tenanted premises);
- (e) is exclusive of rates;
- (f) includes a right for the tenant to assign or sublet the whole premises, subject to landlords consent which is not to be unreasonably withheld;

- (g) allows the premises to be used for practice purposes and for any other purpose for which planning permission has been granted, or might reasonably be expected.

## SCHEDULE 3

### NOTIONAL RENT ABATEMENTS AND NOTIONAL RENT SUPPLEMENTS

#### PART 1

##### NOTIONAL RENT ABATEMENTS

1. Where NHS funds have contributed to the cost of building or refurbishment work done in respect of practice premises, the notional rent payable in respect of those payments is to be abated (in proportion to the level of NHS contribution) as follows—
  - (a) determine the current market rent for the premises prior to improvement ( $P_u$ );
  - (b) determine the current market rent for the whole of the improved premises ( $P_i$ );
  - (c) subtract one from the other ( $P_i - P_u$ ), which will produce the current market rent value of the enhancement ( $I$ );
  - (d) determine the amount of the capital provided by the contractor as a proportion of the whole cost of the improvement, expressed as a percentage ( $A$ );
  - (e) ( $A$ ) is then to be enhanced by adding 10% to cover normal landlord expenses, which is then applied to ( $I$ ) and the resultant is added to ( $P_u$ ).
2. Accordingly, expressed as a formula, the post-improvement notional rent is—

$$I \times (A+10)\% + P_u$$

#### PART 2

##### NOTIONAL RENT SUPPLEMENTS

3. Where a notional rent supplement is to be calculated, the amount of that supplement, expressed as a formula, is:  $I \times (A+10)\%$  .