
D E T E R M I N A T I O N

NATIONAL HEALTH SERVICE, ENGLAND

The Performers Lists (Suspended Dentists' NHS Earnings) Determination 2015

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

Citation, commencement and application

1.—(1) This Determination may be cited as the Performers Lists (Suspended Dentists' NHS Earnings) Determination 2015.

(2) This Determination comes into force on the day after the day on which it is made.

(3) This Determination applies in respect of England only(b).

Interpretation

2. In this Determination—

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

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

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

“contractor” means—

(a) a person (including a corporation, partnership, or a limited liability partnership) who has entered into a GDS contract with the Board under section 102 of the 2006 Act(f) (persons eligible to enter into GDS contracts) or as a consequence of a property transfer scheme made under section 300 of the 2012 Act (transfer schemes) is a party to a GDS contract; or

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

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

“dentist” means a person whose name is included in the dentists register;

“dentists register” means the register of dental practitioners kept by the General Dental Council under section 14 of the Dentist Act 1984(h) (the dentists register and the registrar);

(a) S.I. 2013/335.

(b) The powers exercised in making this Determination are exercisable by the Secretary of State only in relation to England.

(c) 2012 c.7.

(d) 2006 c.41.

(e) The National Health Service Commissioning Board (known as “NHS England”) was established by section 1H of the National Health Service Act 2006. Section 1H was inserted by section 9 of the Health and Social Care Act 2012.

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

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

(h) 1984 c.24.

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

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

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

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

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

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

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

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

“pensionable earnings” has the same meaning as in paragraph 1 of Schedule 2 to the NHS Pensions Schemes Regulations 1995 (additional definitions used in this Schedule) or, as the case may be, regulation 3.A.1 of the NHS Pensions Schemes Regulations 2008 (interpretation of Part 3: general), and accordingly—

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

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

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

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

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

Entitlement to payments by virtue of this determination

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

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

immediately prior to the dentist’s suspension or the circumstances that precipitated that dentist’s suspension the dentist was employed or engaged by a contractor, and apart from the suspension under regulation 12 of the Performers Lists Regulations (suspension), or any suspension from the dentists register which does not provide grounds for immediate removal from the dental

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

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

(c) S.I. 2013/335, as amended by S.I. 2015/362.

performers list under regulation 35 of the Performers Lists Regulations (grounds for removal from the dental performers list), that dentist would be able and would be permitted to perform primary dental services.

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

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

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

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

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

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

Amount of payments

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

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

- (a) the dentist is entitled to receive—

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

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

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

the sum which the dentist is entitled to receive pursuant to sub-paragraph (1) shall be reduced by £9 for each complete £10 which the dentist is entitled to receive from the contractor.

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

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

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

Arrangements for payment

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

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

Conditions of payment

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

- (a) the Board is satisfied that the suspended dentist, or contractor that is otherwise entitled to a payment, is entitled to that specific sum;
- (b) the Board has been provided by the suspended dentist (unless received from another source) with accurate and reliable details of—
 - (i) the suspended dentist's monthly pensionable earnings immediately prior to the dentist's suspension and immediately prior to the circumstances that led to the dentist's suspension,
 - (ii) any insurance policy the suspended dentist has taken out in order to provide the dentist with payments if the dentist's work ceases or is reduced,

and the suspended dentist has warranted that the information provided in accordance with this paragraph is accurate;

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

- (c) the suspended dentist provides the Board with accurate and reliable information about any alternative work the dentist undertakes during the period of suspension, and undertakes to inform the Board immediately where—
 - (i) the dentist takes on any such work, or
 - (ii) there is any other change to the dentist's circumstances that might affect the dentist's entitlement to payments under this Determination,

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

Overpayments

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

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

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

Revocation and saving

8.—(1) Subject to paragraph (2), the Performers Lists (Suspended Dentists' NHS Earnings) Determination 2013 made on 27th March 2013 ("2013 Determination") is revoked.

(2) In a case where—

- (a) a determination was made before 1st April 2015 which would have continuing effect but for sub-paragraph (1), or
- (b) a determination is pending immediately before 1st April 2015 in respect of a suspension made under the Performers Lists Regulations,

the 2013 Determination continues to apply to the extent necessary to enable payments to be made, continue to be made and recovered in the case of any overpayment.

(3) For the purposes of the continued application of the 2013 Determination in accordance with paragraph (2), references to a Primary Care Trust must be read as if it were a reference to the Board.

Signed by authority of the Secretary of State for Health



Date 21 May 2015

A member of the Senior Civil Service
Department of Health

