

Health and Social Services Committee

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Date: 19 January 2006

Venue: Committee Rooms 3 & 4, National Assembly for Wales

Title: Health and Social Care (Community Health and Standards) Act 2003
Commencement (Wales) (No.4) Order 2006;

General Dental Services and Personal Dental Services Statements of Financial Entitlements Directions;

Functions of Local Health Boards (Dental Public Health) (Wales) Regulations 2006;

Dental Public Health Directions;

Directions to LHBs in respect of General Dental Service contracts and Personal Dental Service agreements; and

General Dental Services and Personal Dental Services Transitional Provisions (Wales) Order 2006.

Purpose

1. This paper provides the Committee with the opportunity it requested to consider the draft legislation relating to the new dental contract. The Committee has already considered the main Regulations which implement the changes when it met on 23 November 2005 (the General Dental Services Contracts, Personal Dental Services Agreements and the Dental Charges Regulations) and is due to consider the Performers List Regulations at its meeting on 1 February.

Summary

2. When it met on 3 November 2005 the Committee selected this legislation for scrutiny. Although the implementation date for the new dental contract is 1 April 2006, much of the legislation needs to be made before then so that Local Health Boards (LHBs) and dentists can enter into their new contracts - they need to be able to access final form legislation to be able to do this. In order to meet the legislative timetable, the Committee agreed to consider the legislation in draft form.

3. The draft legislation, draft Explanatory Memoranda and draft Regulatory Appraisal are included, where available, as part of this paper and set out the detail of the proposed changes. All of the attached documents are in draft form although the Regulations and Commencement Orders are in final draft form and I do not anticipate there to be any significant change to these documents. The Statement of Financial Entitlements Directions are in an earlier draft form and are currently being consulted upon. I have undertaken to provide the Committee with final versions as soon as they become available. It is also intended that the Regulations will be debated in Plenary prior to the vote.

Background

4. *Routes to Reform, A Strategy for Primary Dental Care in Wales* acknowledged the need for reform of primary dental care services, in particular the need for a new General Dental Service (GDS) contract in Wales. The central aims of reform were identified as:

- moving away from the restrictions of the detailed and inflexible existing fee-for-item system in GDS and giving dentists a predictable pattern of earnings and the opportunity to practise more preventive dentistry;
- services being locally sensitive;
- improving the patient experience, including a readily understood system; and
- improving access to NHS dentistry.

5. The legislation to assist in enabling these changes to happen was included in the Health and Social Care (Community Health and Standards) Act 2003 (the "2003 Act").

6. The emphasis on preventive care, local sensitivity and improving quality and access are recurrent themes underpinning the wider reform programme currently underway across the NHS. For dentistry, these aims will be achieved primarily through the introduction of local commissioning of primary dental services by LHBs. They will enter into local contracts with dentists for the provision of these services.

7. The 2003 Act gives LHBs their new responsibility for primary dental services. This means LHBs will have a legal obligation to ensure the delivery of primary dental services in their area. Primary dental care will remain 'catchment' based rather than provided only for residents of the LHB. LHBs can commission the services required to meet this obligation from general dental practitioners or bodies corporate, or provide them themselves (for example, through salaried dental services).

8. The Welsh Assembly Government has already made clear that these changes will be accompanied by devolution of the centrally held GDS budget which will go to LHBs to commission dental services. Preparatory work on these budgets is well underway.

9. Central to this commitment is the new way that money allocated for dentistry will be managed as part of the local NHS budget as a whole. LHBs will have the duty to maintain the devolved allocations earmarked for dentistry. In addition, LHBs can use the money they already spend on salaried dental services to develop more integrated primary dental care arrangements. LHBs will also have the opportunity to prioritise local dental services, if they consider this necessary. These safeguards and flexibilities do not exist under the present system.

10. Historically, when a dentist has left the NHS or reduced their NHS commitment, the LHB had no power to replace the lost capacity. One of the key features of the new arrangements is that LHBs will hold the dental budget so that

if a dentist in their area does decide to reduce their NHS commitment the LHB will be able to use the money to create alternative dental services, including providing the services themselves through salaried dentists.

11. In terms of patients charges, successive reports have found that the current NHS dental charging system is complex, bureaucratic for dentists and confusing for patients. The Audit Commission recommended that patients should have clearer information about charges and the Office of Fair Trading investigation, to which the Assembly Government contributed a cross Government response, highlighted the lack of clarity for patients and the public about what charges apply to NHS and private treatment.

12. The introduction of new contractual arrangements for dentists sees the requirement for a new payment system for patients to come into effect at the same time and in future we intend that NHS dental charges will continue to bear relation to the level of service provided but will no longer be directly related to the dentists' remuneration. The new arrangements will apply throughout Wales and are not intended to increase the proportion of revenue raised from patients' charges but to ensure that there is greater clarity about the cost of NHS treatment for both dentists and the public.

Consideration

13. As Members will know from my letter of 11 October to the previous Committee Chair, and also from discussions in recent Committee meetings, it has been our intention that wherever possible the legislation concerning the new dental contract will follow the National Assembly's standard procedure. The Committee has already scrutinised the main Regulations and there is also opportunity today and at the Committee's meeting on 1 February to consider the remaining Regulations.

14. In two areas, however, circumstances now dictate that I will have to disapply some of the legislative process. It is still our intention that all of the legislation being made under Standing Order 24 will continue to follow the standard procedure with consideration by Business and Legislation Committee and then Plenary. However, I have concluded that it is not reasonably practicable for the legislation to be prepared in English and Welsh. The legislation runs to several hundred thousand words and the legislative translators are unable to accommodate the work within the required timescale. I have therefore decided that the explanatory notes to the Regulations will be bilingual but that the remainder of the legislation be made in English only.

15. In terms of the legislation being made under Standing Order 29 (i.e. the Directions), I have also concluded that Standing Order 29 (i)-(iii) will need to be disapplied. For the GDS and Personal Dental Service (PDS) Statements of Financial Entitlements, although draft versions are included with this paper and have also been sent to the dental profession for comment, we will need to await the outcome of the Doctors and Dentists Review Body report (expected mid February) before finalising the drafts. In terms of the other Directions we are still some way from having working drafts in such a form that they can undergo

worthwhile consideration. The timetable for approving the Directions (dates for Business Committee etc) mean that they would need to be in final form by the middle of January which we're not going to be in a position to provide. I will of course continue to keep the Committee informed of progress and am happy to provide draft and final versions of the Directions once they are ready.

16. The new dental contract is based closely on that being introduced in England, although officials have been working with British Dental Association Wales and the dental profession to amend the contract where possible to reflect needs and address difficulties here. However, our timetable is inextricably linked to the one in England and the equivalent legislation in England is due to come into force on the same day.

17. Any delay in implementation in Wales would put Wales seriously out of step and have an immediate and negative effect on retention and recruitment of dentists providing NHS care. There would also be substantial additional cost in maintaining different payment and charging arrangements for dentists in Wales with the Dental Practice Board.

18. For each of the items of legislation which were due to be considered today I have set out in the following paragraphs their intended effect and also clarified whether a draft is available.

Health and Social Care (Community Health and Standards) Act 2003 Commencement (Wales) (No.4) Order 2006

19. The final version of the draft Order and the draft Explanatory Memorandum are included as an annex to this paper. The Order relates to primary dental services and commences from 14 February 2006 the relevant sections of the 2003 Act concerning:

- lists of persons performing primary dental services;
- empowering LHBs to provide primary dental services or secure their provision;
- a regulation making power in respect of prescribing the dental public health functions of LHBs;
- financial assistance and support to persons proposing or providing primary dental services under a general dental services contract; and
- making transitional provision in respect of dental practitioners who were providing general dental services.

20. From 1 April 2006 the Order provides:

- in relation to the duty on LHBs to provide or secure the provision of primary dental services in their areas;
- for the repeal of certain sections of the National Health Services Act 1977 (the 1977 Act) concerning general dental services;
- arrangements for primary dental services;
- for the repeal of personal dental services pilot schemes;
- various consequential amendments relating to primary dental services and general dental services; and

- various repeals relating to primary dental services and general dental services.

General Dental Services and the Personal Dental Services Statement of Financial Entitlements Directions

21. The draft Directions and draft Explanatory Memorandum are included as annexes to this paper. These Statement of Financial Entitlements (SFE) Directions relate to the payments to be made by LHBs to a contractor under a GDS contract or PDS agreement. They include information on annual contract values, including the calculation of the value of the contract and whether any revision or adjustments need to be made. The SFEs also include details of payments for specific purposes such as domiciliary and sedation services, vocational training, maternity and sickness payments.

Functions of Local Health Boards (Dental Public Health) (Wales) Regulations 2006

22. The final version of the draft Regulations, the draft Explanatory Memorandum and draft Regulatory Appraisal are included as an annex to this paper. The Regulations set out the functions to be exercised by LHBs in Wales in relation to dental public health. Regulation 2 provides that the functions to be exercised are dental public health promotion programmes, dental inspection of pupils in schools maintained by local education authorities and oral health surveys. LHBs may involve other agencies in discharging these dental public health functions, such as independent contractors or dental practices. For example the LHB might wish to involve a dental practice in providing an oral health promotion or smoking cessation programme.

Dental Public Health Directions and Directions to LHBs in respect of GDS contracts and PDS agreements

23. Draft Directions and draft Explanatory Memoranda have yet to be completed.

General Dental Services and Personal Dental Services Transitional Provisions (Wales) Order 2006

24. The final version of the draft Order and the draft Explanatory Memorandum are included as an annex to this paper. The Order sets out the arrangements to be put in place to move contractors and potential contractors from The National Health Service (General Dental Services) Regulations 1992 and PDS piloting under the National Health Service (Primary Care) Act 1997 to provision of primary dental services under GDS contracts and PDS agreements.

25. It makes provisions relating to the new arrangements for the provision of GDS contracts and also provides for the abolition of PDS pilot schemes on 31 March 2006 and their replacement from 1 April 2006 with permanent arrangements for PDS.

26. Part 2 of the Order makes provisions about the conditions and entitlement of dentists providing GDS and contractors providing services under a PDS pilot

agreement moving to a GDS contract from 1 April 2006. It sets out the circumstances in which those currently providing GDS and PDS will be entitled to enter into a new GDS contract. It also provides a right of appeal to the National Assembly where an LHB refuses to enter into a GDS contract because it is not satisfied that the criteria relating to suspended dental practitioners are met. It includes provision in relation to the duration of entitlement to a GDS contract in the case of a suspended dental practitioner who has appealed and dental practitioners who are performing relevant services.

27. Part 3 makes similar provisions about conditions and entitlements for dentists providing GDS and contractors providing services under a PDS pilot agreement moving to a PDS agreement from 1 April 2006. It sets out the circumstances in which those currently providing GDS and PDS will be entitled to enter into a PDS agreement. It also provides a right of appeal to the National Assembly where an LHB refuses to enter into a PDS agreement because it is not satisfied that the criteria relating to suspended dental practitioners are met. This part includes provision in relation to the duration of entitlement to a GDS contract in the case of a suspended dental practitioner who has appealed and dental practitioners who are performing relevant service.

28. Part 4 includes miscellaneous provisions consequent upon the ending of GDS and the abolition of PDS piloting.

Benefits

29. The move to local commissioning of NHS primary care dental services offers a fresh start for dentists and patients. The reforms allow dentists to provide more appropriate clinical care, spend more time with each patient and, subject to agreement with LHBs, expand overall capacity. These reforms place dentistry more firmly in the mainstream of the NHS - an easy to access service, providing appropriate clinical care and giving out key public health messages to encourage self care wherever possible.

30. For dentists, the reforms will provide a guaranteed income, scope to plan services, and an end to the item of service treadmill. The current system provides incentives to maximise the items of treatment provided to maintain income, rather than provide the care necessary to maintain oral health. This may act as a deterrent to dentists working for the NHS. In contrast, the new system removes outmoded treatment incentives and allows time to advise patients of their role in maintaining oral health.

31. Dentists and patients will benefit from new regulations allowing a wider range of professionals to be involved in providing NHS dental care. This will enable the dental team to increase the focus on preventive measures to combat dental disease, and to tackle serious oral health inequalities, particularly in children.

32. For patients, the range of treatments provided by the NHS will be clearer. Each dental surgery will be required to display details of the new banded system of dental charges in their surgery. Dentists will still be able to offer NHS and private dental care, but dentists who provide private care will be required to give

information and advice on private treatment choices and methods of payment. The choices for patients will become much more transparent.

33. Over time, patients should receive a more appropriate level of service as the local NHS more closely aligns resources for dentistry with local need and commissions services accordingly. The new local commissioning system means that if a dentist leaves a practice the resources for his contract revert to the LHB; the level of resource for NHS dentistry in a local area remains constant and is not affected by the decision of an individual dentist. The current remuneration system arbitrarily distributes resources according to the location and commitment of GPs not local oral health needs, and ensures an inequitable distribution of resources.

34. LHBs' new responsibility for local dental services will allow them to commission services to meet particular local oral health needs. The new contracts with local dentists will be longer term agreements, replacing the open ended nature of the current arrangements with an agreed level of service. Access for patients will be determined by the contract agreed with the LHB not the preference of an individual dentist.

35. LHBs will be able to judge the relative benefits of dental service provision and oral health measures as they seek to address oral health inequalities and ensure equitable access to NHS primary care dental services.

36. PDS piloting under the National Health Service (Primary Care) Act 1997 has proved popular with dentists and their patients. Under these pilot arrangements, dentists are better able to use their professional skills to relate dental services more closely to patients' oral health needs. Patients with lower treatment needs are seen less frequently and courses of treatment become simpler. Evidence from the piloting PDS shows at least a 10% reduction in dentists' overall activity (courses of treatment and individual items of treatment) can be expected with an improvement in clinical effectiveness, cost effectiveness and appropriateness of treatment provided.

37. By adopting the new ways of working demonstrated in the PDS pilots, dentists are able to undertake fewer courses of treatment and, subject to agreement with the LHB, to see greater numbers of patients. This has the potential to improve the working lives of dentists and their teams and also improve access to NHS dental services.

38. Building on the experience of PDS piloting, the GDS Contracts Regulations and PDS Agreements Regulations will enable LHBs to enter into contracts for the provision of primary dental services. Remuneration of providers under the contract will be by annual contract value as under the PDS piloting arrangements.

39. The GDS Contracts Regulations and PDS Agreements Regulations will provide for two types of contract. Under a GDS Contract, the contractor will be required to provide a range of dental services set out in Regulations. New PDS Agreements will be the 'permanent' version of PDS piloting and provide for

greater flexibility in the services to be provided. Additionally, a wider range of potential providers are permitted to hold contracts including healthcare professionals other than dentists. PDS agreements will, for example, be used for commissioning specialised services such as orthodontics.

Financial implications

40. The overall intention is to secure the existing level of NHS dental services within existing resources. Growth of NHS dental services, and increasing access, is a key aim of the reforms and there will be additional resources made available for this from 2006-07 onward. In terms of dental charges, it is not intended to increase the proportion of total revenue costs raised from patients' charges. The financial considerations are covered in more detail in the Explanatory Memoranda.

Timetable for implementation

41. Following the Committee's consideration of the Regulations, I intend submitting them to Business Committee at the end of January with the aim of tabling a final draft at Plenary toward the end of February 2006. Subject to the National Assembly's approval the Regulations will be come into force on 1 April 2006.

Action for Subject Committee

42. The Committee is invited to:

- consider this paper, the draft legislation and draft Explanatory Memoranda; and
- note the intention to proceed with the draft Regulations in accordance with standing order 24.

Brian Gibbons AM
Minister for Health and Social Services

Contact point: Andrew Powell-Chandler, Community Primary Care and Health Services Policy Division, ext 1689

NATIONAL ASSEMBLY FOR WALES

STATUTORY INSTRUMENTS

2006 No. (W.)**NATIONAL HEALTH SERVICE, WALES****The Health and Social Care (Community Health and Standards) Act
2003 Commencement (Wales) (No. 4) Order 2006****EXPLANATORY NOTE***(This note is not part of the Order)*

This Order is the fourth commencement order made by the National Assembly for Wales under the Health and Social Care (Community Health and Standards) Act 2003 (“the Act”).

Article 2 relates to primary dental services. Article 2(1) commences from 15 February 2006 section 179(1) of the Act in relation to new section 28X of the National Health Service Act 1977 (“the 1977 Act”) in so far as that section concerns lists of persons performing primary dental services.

Article 2(1) commences from 15 February 2006 section 170 of the Act in relation to new section 16CA(2) and (4) of the 1977 Act which empowers Local Health Boards to provide primary dental services or secure their provision. It also commences from 15 February 2006 a regulation making power in new section 16CB of the 1977 Act in respect of prescribing the dental public health functions of Local Health Boards. It also commences on that date section 180 of the Act in so far as it is not in force, namely as it relates to financial assistance and support to persons proposing or providing primary dental services under a general dental services contract or under section 28C arrangements.

Article 2(2) commences from 1 April 2006 section 170 of the Act in so far as not in force, in particular in relation to the duty on Local Health Boards in the new section 16CA(1) of the 1977 Act to provide or secure the provision of primary dental services in their areas. It also commences from that date the remainder of section 171 in so far as it inserts the new section 16CB(2), (3) and (5) of the 1977 Act which relate to dental public health functions, and in so far as it repeals section 5(1A) of the 1977 Act.

Article 3 relates to general dental services contracts. Article 3(1)(a) commences section 172(1) of the Act fully from 15 February 2006. Article 3(1)(b) commences the power in section 173 of the Act to make transitional provision in respect of dental practitioners who were providing general dental services under section 35 of the 1977 Act.

Article 3(2) commences from 1 April 2006 section 172(2) which repeals sections 35 and 36 of the 1977 Act concerning general dental services.

Article 4 relates to arrangements for primary dental services which may be made under section 28C of the 1977 Act. It commences from 15 February 2006 amendments to section 28D and 28E of the 1977 Act by section 177(1) to (11) of the Act in their application to dental services. It also commences from 1 April 2006 section 178 of the Act in relation to the repeal of personal dental services pilot schemes made under Part 1 of the National Health Service (Primary Care) Act 1997. It also commences the remainder of section 177 in so far as it relates to dental services, namely the repeal of section 28G of the 1977 Act (choice of dental practitioner).

Article 5(1) commences on 15 February 2006 section 183 of the Act which inserts a new section 79 and Schedule 12ZA (which relate to charges for primary dental services) into the 1977 Act, but only for the purposes of making regulations. Article 5(2) fully commences section 183 on 1 April 2006.

Article 6 commences on 1 April 2006 various consequential amendments relating to primary dental services, general dental services and section 28C arrangements contained in Schedule 11 to the Act.

Article 7 commences on 1 April 2006 various repeals relating to primary dental services, general dental services and section 28C arrangements.

Article 8 amends the Health and Social Care (Community Health and Standards) Act 2003 (Commencement No.1) (Wales) Order 2004 in order to provide that certain transitional provisions contained in that order continue in force until 1 April 2006 rather than upon the coming into force of section 172(1) of the Act.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The provisions of the Health and Social Care (Community Health and Standards) Act 2003 listed in the table below have been brought into force in Wales by commencement orders made before the date of this Order. The provisions commenced by SI 2003/3346, SI 2004/759, S.I. 2005/457 and S.I. 2005/2925 have been commenced in relation to England and Wales. The provisions commenced by SI 2004/480 (W.49), 2004/873 (W.88) and 2005/3285 (W.249) have been commenced in relation to Wales.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 1	1.4.2004	2004/759
Sections 2 to 4	1.1.2004	2003/3346
Sections 5 to 20	1.4.2004	2004/759
Sections 22 to 35	1.4.2004	2004/759
Section 36	1.1.2004	2003/3346
Sections 37 to 39	1.4.2004	2004/759
Section 40	1.1.2004	2003/3346
Section 41	8.1.2004	2003/3346
Section 43	11.3.2004	2004/759
Section 44	1.4.2004	2004/759
Sections 45 and 46	1.4.2004	2004/759
Section 47 as to Wales	1.4.2004	2004/873 (W.88)
Sections 48 and 49	1.4.2004	2004/759
Section 50(1) (partially)	1.4.2004	2004/759
Section 50(1) (partially)	1.4.2006	2004/759
Section 50(2) and (3)	1.4.2005	2004/759
Section 50(4)	1.4.2006	2004/759
Section 50(5)	1.4.2004	2004/759
Section 51(1) to (3), (5) and (6)	1.4.2004	2004/759
Section 51(4)	1.4.2005	2004/759
Section 52(1) to (4), (6) and (7)	1.4.2004	2004/759
Section 52(5)	1.4.2005	2004/759
Sections 53 to 57	1.4.2004	2004/759
Sections 60 and 61	1.4.2004	2004/759
Sections 64 to 68	1.4.2004	2004/759
Sections 70-75 as to Wales	1.4.2004	2004/873 (W.88)
Sections 92-101, as to Wales (partially)	1.4.2004	2004/873 (W.88)

Section 102	1.4.2004	2004/759
Section 103	1.4.2004	2004/759
Section 105 (partially)	1.4.2006	2005/2925
Section 106	1.4.2004	2004/759
Section 107 as to Wales	1.4.2006	2005/3285 (W.249)
Section 108	1.4.2004	2004/759
Section 109 as to Wales	1.4.2004	2004/873 (W.88)
Section 111	1.4.2004	2004/759
Section 114 as to Wales (partially)	1.4.2006	2005/3285 (W.249)
Section 115(1), (2), (4), (5) and (6) as to Wales	1.4.2006	2005/3285 (W.249)
Section 116(2) and (3) as to Wales	1.4.2006	2005/3285 (W.249)
Section 117 as to Wales	30.12.2005	2005/3285 (W.249)
Sections 118 and 119	1.6.2004	2004/759
Section 120 and 121	1.4.2004	2004/759
Section 123	1.4.2004	2004/759
Section 124	1.4.2004	2004/759
Section 126	1.4.2004	2004/759
Section 128	1.4.2004	2004/759
Section 130	1.4.2004	2004/759
Section 132	1.4.2004	2004/759
Section 134	1.4.2004	2004/759
Section 136 to 138	1.4.2004	2004/759
Section 140	1.4.2004	2004/759
Sections 142 to 145 as to Wales	1.4.2004	2004/873 (W.88)
Section 146	1.4.2004	2004/759
Section 147 (partially)	8.1.2004	2003/3346
Section 147 as to England (partially)	11.3.2004	2004/759
Section 147 as to Wales (partially)	11.3.2004	2004/759
Section 147 (partially)	1.4.2004	2004/759
Section 147 (partially)	1.6.2004	2004/759
Section 148	1.1.2004	2003/3346
Section 174 as to Wales (partially)	28.2.2004	2004/480 (W.49)
Section 174 as to Wales (partially)	1.4.2004	2004/480 (W.49)
Section 175 as to Wales	28.2.2004	2004/480 (W.49)
Section 176 as to Wales	28.2.2004	2004/480 (W.49)
Section 179(1) as to Wales (partially)	28.2.2004	2004/480 (W.49)
Section 179(2) as to Wales	28.2.2004	2004/480 (W.49)
Section 180 as to Wales (partially)	28.2.2004	2004/480 (W.49)
Section 181	1.4.2006	2005/2925
Section 184 as to Wales (partially)	28.2.2004	2004/480 (W.49)
Section 184 as to Wales (partially)	1.4.2004	2004/480 (W.49)
Section 184 as to Wales (partially)	1.4.2006	2005/2925
Section 189(1)	1.4.2004	2004/759
Section 190	1.4.2005	2005/457
Section 196 as to Wales (partially)	1.4.2004	2004/480 (W.49)
Section 196 (partially)	1.4.2004	2004/759
Section 196 as to Wales (partially)	1.4.2004	2004/873 (W.88)
Section 196 (partially)	1.4.2005	2005/457

Section 196 as to Wales (partially)	1.4.2006	2005/2925
Schedule 1	1.4.2004	2004/759
Schedule 2	1.1.2004	2003/3346
Schedules 3 to 5	1.4.2004	2004/759
Schedule 6	8.1.2004	2003/3346
Schedule 8	11.3.2004	2004/759
Schedule 9		
Paragraphs 1, 3, 5 to 8, 13 and 31 (partially)	8.1.2004	2003/3346
Paragraphs 2, 14, 16 to 20, 22, 23(a), 25, 29 and 30	1.4.2004	2004/759
Paragraphs 9 and 11	1.6.2004	2004/759
Paragraphs 10, 21, 24, 26 to 28 and 32 as to England	1.4.2004	2004/759
Paragraph 12	1.4.2004	2004/759
Paragraphs 16 and 23(b) (partially)	11.3.2004	2004/759
Schedule 11 as to Wales (partially)	1.4.2004	2004/480 (W.49)
Schedule 11 as to Wales (partially)	28.2.2004	2004/480 (W.49)
Schedule 11 as to Wales (partially)	1.4.2006	2005/2925
Schedule 14 as to Wales (partially)	1.4.2004	2004/480 (W.49)
Schedule 14 Part 1	1.4.2004	2004/759
Schedule 14 as to Wales (partially)	1.4.2006	2005/2925

2006 No. (W.)

NATIONAL HEALTH SERVICE, WALES

**The Health and Social Care (Community Health and Standards) Act
2003 Commencement (Wales) (No. 4) Order 2006**

Made 14 February 2006

The National Assembly for Wales, in exercise of the powers conferred by section 195(1) and 199(1) of the Health and Social Care (Community Health and Standards) Act 2003⁽¹⁾, makes the following Order:

Title, commencement, interpretation and application

1.—(1) The title of this Order is the Health and Social Care (Community Health and Standards) Act 2003 Commencement (Wales) (No. 4) Order 2006.

(2) In this Order —

“the Act” means the Health and Social Care (Community Health and Standards) Act 2003; and

“the 1977 Act” means the National Health Service Act 1977⁽²⁾.

(3) This Order applies in relation to Wales.

Appointed days for provisions relating to primary dental services

2.—(1) 15 February 2006 is the appointed day for the coming into force of the following provisions of the Act —

(a) section 179(1) in so far as it is not in force;

(b) in Schedule 11, paragraph 39 in so far as it inserts the definition of “primary dental services” into section 128(1) of the 1977 Act, and section 184 and paragraph 7 of that Schedule in so far as they relate to that paragraph;

(c) section 170 in so far as it relates to the insertion of section 16CA(2) and (4) into the 1977 Act;

(d) for the purposes of making regulations, section 171(1) in so far as it inserts section 16CB(2) into the 1977 Act; and

(e) section 180 in so far as it is not already in force.

(2) 1 April 2006 is the appointed day for the coming into force of the following provisions of the Act —

(a) section 170 in so far as it is not already in force;

(b) section 171(1) in so far as it relates to the insertion of section 16CB(2), (3) and (5) into the 1977 Act, and in so far as it is not already in force; and

(c) section 171(2).

⁽¹⁾ 2003 c.43. See section 199(2) for the definition of the appropriate appointing authority in relation to commencement orders.

⁽²⁾ 1977 c.49.

Appointed days for provisions relating to general dental services contracts

3.—(1) 15 February 2006 is the day appointed for the coming into force of the following provisions of the Act—

- (a) section 172(1);
- (b) section 173;
- (c) section 182(2); and
- (d) paragraph 39 of Schedule 11 in so far as it is not already in force, and section 184 and paragraph 7 of that Schedule in so far as they relate to that paragraph.

(2) 1 April 2006 is the day appointed for the coming into force of section 172(2) of the Act.

Appointed days in relation to section 28C arrangements

4.—(1) 15 February 2006 is the day appointed for the coming into force of the following provisions of the Act in so far as they relate to dental services —

- (a) section 177(1) to (11);
- (b) paragraphs 14 and 15 of Schedule 11, and section 184 and paragraph 7 of that Schedule in so far as they relate to those paragraphs; and
- (c) the entries in Schedule 14 relating to sections 28C(3)(b) and (7), 28D(2), 28DA, 28E(2)(b) and the words following that paragraph, and 28E(3)(k) and (6) of the 1977 Act.

(2) 1 April 2006 is the day appointed for the coming into force of the following provisions of the Act to the extent they relate to dental services in so far as not already in force —

- (a) section 177; and
- (b) section 178.

Appointed days in relation to charges for dental services

5.—(1) For the purposes of making regulations, 15 February 2006 is the day appointed for the coming into force of section 183 of the Act.

(2) 1 April 2006 is the day appointed for the coming into force of section 183 of the Act in so far as it is not already in force.

Consequential amendments relating to primary dental services, general dental services, and section 28C arrangements

6.—(1) 1 April 2006 is the day appointed for the coming into force of the provisions of Schedule 11 to the Act referred to in paragraph (2) to the extent they relate to dental services in so far as not already in force and section 184 and paragraph 7 of that Schedule in so far as it relates to those provisions.

(2) In Schedule 11—

- (a) paragraphs 2 and 3;
- (b) paragraph 11;
- (c) paragraphs 17 to 20;
- (d) paragraph 21(5) in so far as it omits section 44(3)(c) and (d) and (5) and paragraph 21(1) in so far as it relates to those provisions;
- (e) paragraph 22(3)(b) and paragraph 22(1) in so far as it relates to that provision;
- (f) paragraph 24(b);
- (g) paragraphs 28 to 31;
- (h) paragraph 36(b);
- (i) paragraph 45 in relation to paragraph 6A(2)(b) of Schedule 12A to the 1977 Act;
- (j) paragraph 46(1), (2)(b), (3)(b) and (c);

- (k) paragraph 50;
- (l) paragraph 66;
- (m) paragraph 67(b);
- (n) paragraph 68 ; and
- (o) paragraph 72 and paragraph 69 in so far as it relates to that provision.

Repeals relating to primary dental services, general dental services and section 28C arrangements

7.—(1) 1 April 2006 is the day appointed for the coming into force of the repeals of the enactments mentioned in Part 4 of Schedule 14 to the Act referred to in paragraph (2) to the extent they relate to dental services in so far as not already in force and section 196 in so far as it relates to those enactments.

(2) The enactments specified for the purposes of paragraph (1) are—

- (a) in the 1977 Act, sections 5(1A), 28G, 35, 36, 43ZA(3)(b), 43D(10)(b), 44(3)(c) and (d) and (5), 45(1)(b), 49F(1)(c), 49H(1)(a), 56(b), 72(5)(a), 78, 81(b), 82(b), 83(b), 103(1)(a), 128(1), Schedule 1 and Schedule 12;
- (b) the Health Services Act 1980(1);
- (c) the Health and Social Services and Social Security Adjudications Act 1983 in relation to section 15(a)(2);
- (d) the Dentists Act 1984(3);
- (e) the Health and Social Security Act 1984(4);
- (f) the Health and Medicines Act 1988 in relation to section 8(1)(b) and section 17(1) in so far as it relates to section 36 of the 1977 Act and Schedule 2, paragraphs 4 to 6, 7(1) and (2) and 8(2) and (3)(5);
- (g) the National Health Service and Community Care Act 1990 in relation to section 24(6);
- (h) the Health Authorities Act 1995 in relation to paragraphs 24 and 25 of Schedule 1(7);
- (i) in the National Health Service (Primary Care) Act 1997, Part 1, sections 24(1), 40(1) and (3) and Schedule 2, paragraphs 12, 16 to 19, 24, 25 and 72(8);
- (j) the Health Act 1999 in relation to section 9(3), section 10(1), section 11(2) in so far as it inserted section 44(B1) into the 1977 Act, section 39(3) and section 61(2)(9);
- (k) the Freedom of Information Act 2000 in relation to Schedule 1 paragraphs 44 and 45(10);
- (l) the Health and Social Care Act 2001 in relation to section 20(4), section 22 (1), (2), (3) and (5), section 23(3), section 26, section 41(1) and Schedule 5 paragraph 5(7), 11(2) and 12(2)(11); and
- (m) the National Health Service Reform and Health Care Professions Act 2002 in relation to section 4(1), Schedule 2 paragraphs 10(1) and (2) and Schedule 3 paragraphs 2(1) and (3)(12).

Amendment of the Health and Social Care (Community Health and Standards) Act 2003 (Commencement No. 1) (Wales) Order 2004

8. In article 6 of the Health and Social Care (Community Health and Standards) Act 2003 (Commencement No. 1) (Wales) Order 2004(13), for paragraph (1) substitute—

-
- (1) 1980 c.53.
 - (2) 1983 c.41.
 - (3) 1984 c.24.
 - (4) 1984 c.48.
 - (5) 1988 c.49.
 - (6) 1990 c.19.
 - (7) 1995 c.17.
 - (8) 1997 c.46.
 - (9) 1999 c.8.
 - (10) 2000 c.36.
 - (11) 2001 c.15.
 - (12) 2002 c.17.
 - (13) S.I. 2004/480 (W.49).

“(1) The following transitional provisions will apply until 1 April 2006.”.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽¹⁾

Date

The Presiding Officer of the National Assembly

⁽¹⁾ 1998 c.38.

DRAFT

To: Business Committee

From: Dr Brian Gibbons AM

Explanatory Memorandum:**Health and Social Care (Community Health and Standards) Act 2003
Commencement (Wales) (No.4) Order 2006****Summary:**

From 1 April 2006 Local Health Boards (LHBs) will have a duty to secure or provide primary dental services in its area to the extent that it considers necessary to meet all reasonable requirements. LHBs will do this by contracting with dental practices, corporate bodies or private providers which agree to provide primary dental services or by providing the service itself through salaried NHS staff. These changes will be accompanied by devolution of the centrally held general dental services budget which will go to LHBs to commission dental services

The Commencement Order relates to primary dental services and commences from 15 February 2006 the relevant sections of the 2003 Act concerning: lists of persons performing primary dental services; empowering LHBs to provide primary dental services or secure their provision; a regulation making power in respect of prescribing the dental public health functions of LHBs; financial assistance and support to persons proposing or providing primary dental services under a general dental services contract; and making transitional provision in respect of dental practitioners who were providing general dental services. From 1 April 2006 the Order provides: in relation to the duty on LHBs to provide or secure the provision of primary dental services in their areas; for the repeal of certain sections of the National Health Services Act 1977 (the 1977 Act) concerning General Dental Services (GDS); arrangements for primary dental services; for the repeal of Personal Dental Services (PDS) pilot schemes; various consequential amendments relating to primary dental services and general dental services; and various repeals relating to primary dental services and general dental services.

1. This memorandum is submitted to the Assembly's Business Committee in relation to the Health and Social Care (Community Health and Standards) Act 2003 Commencement (Wales) (No.4) Order 2006 in accordance with Standing Order 24.6.
2. A copy of the final version of the draft Order is submitted with this draft Memorandum.

Enabling power:

3. The power enabling this Order to be made is contained in sections 195 and 199 of the Health and Social Care (Community Health and Standards) Act 2003. The 2003

Act provides for new arrangements to be made for Local Health Boards and general dental practitioners and amends the 1977 Act. Responsibility for issues relating to the contents of the Regulations has been delegated to my portfolio as Minister for Health and Social Services.

Effect:

4. The Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”) provides the legislative framework for the establishment of primary dental services. It is intended that the new contracting arrangements will underpin modernised, locally sensitive primary dental services properly integrated with the rest of the NHS.

5. From 1 April 2006 it is intended to establish new contractual arrangements for high street dentists which move away from the general dental services item of service remuneration to an annual payment no longer directly related to the dentists activity. This will enable dentists to spend more time with their patients and adopt a more preventive approach to oral health care.

6. Article 2 of the Order relates to primary dental services. Article 2(1) commences from 15 February 2006 section 179(1) of the 2003 Act in relation to new section 28X of the 1977 Act in so far as that section concerns lists of persons performing primary dental services. Article 2(1) commences from 15 February 2006 section 170 of the 2003 Act in relation to new section 16CA(2) and (4) of the 1977 Act which empowers LHBs to provide primary dental services or secure their provision. It also commences from 15 February 2006 a regulation making power in new section 16CB of the 1977 Act in respect of prescribing the dental public health functions of LHBs. It also commences on that date section 180 of the Act in so far as it is not in force, namely as it relates to financial assistance and support to persons proposing or providing primary dental services under a GDS contract or under section 28C arrangements.

7. Article 2(2) commences from 1 April 2006 section 170 of the 2003 Act in so far as not in force, in particular in relation to the duty on LHBs in the new section 16CA(1) of the 1977 Act to provide or secure the provision of primary dental services in their areas. It also commences from that date the remainder of section 171 in so far as it inserts the new section 16CB(2), (3) and (5) of the 1977 Act which relate to dental public health functions, and in so far as it repeals section 5(1A) of the 1977 Act.

8. Article 3 relates to GDS contracts. Article 3(1)(a) commences section 172(1) of the Act fully from 15 February 2006. Article 3(1)(b) commences the power in section 173 of the Act to make transitional provision in respect of dental practitioners who were providing GDS under section 35 of the 1977 Act. Article 3(2) commences from 1 April 2006 section 172(2) which repeals sections 35 and 36 of the 1977 Act concerning GDS.

9. Article 4 relates to arrangements for primary dental services which may be made under section 28C of the 1977 Act. It commences from 15 February 2006 amendments to section 28D and 28E of the 1977 Act by section 177(1) to (11) of the Act in their application to dental services. It also commences from 1st April 2006 section 178 of the Act in relation to the repeal of PDS pilot schemes made under Part 1 of the National Health Service (Primary Care) Act 1997. It also commences

the remainder of section 177 in so far as it relates to dental services, namely the repeal of section 28G of the 1977 Act (choice of dental practitioner).

10. Article 5(1) commences on 15 February 2006 section 183 of the Act which inserts a new section 79 and Schedule 12ZA (which relate to charges for primary dental services) into the 1977 Act, but only for the purposes of making regulations. Article 5(2) fully commences section 183 on 1st April 2006.

11. Article 6 commences on 1 April 2006 various consequential amendments relating to primary dental services, GDS services and section 28C arrangements contained in Schedule 11 to the Act. Article 7 commences on 1 April 2006 various repeals relating to primary dental services, GDS and section 28C arrangements. Article 8 amends the Health and Social Care (Community Health and Standards) Act 2003 (Commencement No.1) (Wales) Order 2004 in order to provide that certain transitional provisions contained in that order continue in force until 1 April 2006 rather than upon the coming into force of section 172(1) of the Act.

Target implementation:

12. It is intended that the proposed Order should be made and come into force on 14 February 2006. Any delay in implementation in Wales would put Wales seriously out of step and have an immediate and negative effect on retention and recruitment of dentists providing NHS care. There would also be substantial additional cost in maintaining different payment and charging arrangements for dentists in Wales with the Dental Practice Board.

Financial implications

13. The overall intention is to secure the existing level of NHS dental services within existing resources. Growth of NHS dental services, and increasing access, is a key aim of the reforms. However, I'm unable to confirm specific budget allocations for 2006-07 in advance of formal Assembly agreement to the final budget proposals.

14. Current expenditure on GDS is non-cash limited. Net expenditure in 2004-05 was some £80.041 million. It is proposed that current expenditure on dentistry will be protected so that when spend on GDS moves from a national budget into local allocations, there will be a floor, so that LHBs will be required to spend at least at the current level on dentistry. They can spend more than this if they wish but cannot spend less.

15. Practices are guaranteed the same level of gross income as that in the test period (October 2004-September 2005), increased by the agreed Doctors and Dentists Review Body (DDRB) uplift, for comparable levels of commitment work.

16. To support LHBs, local dental committees and dentists to help prepare for the changes and to implement reform, funding of £990,000 was incurred in 2004-05. This was made up as follows:

- £440,000. £20,000 to each LHB in terms of supporting the dental change agenda allowing them to support leadership in LHBs; improve organisational development to successfully implement the contract; support Local Dental

Committees; developing dental leadership skills; improve communication and review and update dental competencies in line with the development of the dental reforms; and

- £550,000. The equivalent of £1,000 per dental practice (pro rata on NHS commitment). This was in response to the DDRB recommendation that financial assistance to practices was required to assist them to prepare for the new contractual arrangements.

17. The above allocation to LHBs to help them get to grips with the changes is recurrent in 2005-06 and 2006-07. This funding has come from the Health and Social Services Main Expenditure Group (Payments to Contractors Budget Expenditure Line).

Regulatory appraisal:

18. Having regard to National Assembly guidance, I have concluded that a regulatory appraisal is not appropriate in this instance as the Commencement Order brings into force primary legislation (paragraph 7(ii) of the Assembly's published guidance on regulatory appraisals). Regulatory appraisals have been completed in respect of the main enabling Regulations, that is The National Health Service (General Dental Services Contracts) (Wales) Regulations 2006, The National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006 and The National Health Service (Dental Charges) (Wales) Regulations 2006.

Consultation with stakeholders:

19. The Order forms part of the wider reform of NHS dental services which has been discussed with the dental profession on an England and Wales and Wales only basis. Consultation on the main enabling Regulations, listed in paragraph 18, along with accompanying guidance, has been aimed at dentists, including representative bodies such as British Dental Association Wales (BDA Wales), and LHB Directors of Primary Care who have an interest and responsibility for negotiating the new contract values and for managing the new system of local dental commissioning. In addition they have been published on the Welsh Assembly Government website and details included in updates sent to all dentists in Wales.

Consultation with Subject Committee:

20. The draft Order was notified to the Health and Social Services Committee at its meeting on 3 November 2005 (HSS(2)-11-05(p.7)) and was identified for scrutiny. This took place on 19 January 2006.

21. (To be completed after 19 January).

Recommended procedure:

22. Subject to the views of the Business Committee I recommend that the Order continue to proceed to Plenary under the standard procedure.

Compliance:

23. The proposed Order will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 Section 120);
- be compatible with the Assembly's scheme for sustainable development (Section 121);
- be compatible with Community law (Section 106);
- be compatible with the Assembly's human rights legislation (Section 107);
- be compatible with any international obligations binding the UK Government and the Assembly (Section 108).

24. The information in this memorandum has been cleared with the Directorate of Legal Services (DLS) and the Assembly Compliance Officer (ACO).

25. Drafting lawyer: Sarah Wakeling, ext. 3754.

26. Head of Division: John Sweeney, ext. 3570.

27. Drafting policy official: Andrew Powell-Chandler, ext. 1689.

Dr Brian Gibbons AM

Date: December 2005

NATIONAL ASSEMBLY FOR WALES

**SUBORDINATE
LEGISLATION**

2006 [No. [] W.]

**NATIONAL HEALTH
SERVICE, WALES**

**NATIONAL HEALTH
SERVICE ACT 1977**

**Directions to Local Health Boards
[and NHS Trusts], as to the
Statement of Financial Entitlements**

Made [14 February 2006]

Coming into force [1 April 2006]

- 1.** The National Assembly for Wales in exercise of powers conferred by section 28E (3A) and section 126(4) of the National Health Service Act 1977(1) gives the following directions set out in this statement of Financial Entitlements.
- 2.** These directions apply to [Local Health Boards and NHS Trusts] in Wales and come into force on 1 April 2006.
- 3.** [Local Health Boards and NHS Trusts] will apply the Statement of Financial Entitlements set out in the Schedule to these directions in relation to payments to be made by [Local Health Boards and NHS Trusts] to a contractor under a PDS Agreement entered into

(1) 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 section 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).

under section 28C of the [National Health Service Act] 1977⁽¹⁾.

⁽¹⁾ Section 28C of the National Health Service Act 1977 was inserted by section 21(1) of the National Health Service (Primary Care) Act 1997.

[SCHEDULE]
**PERSONAL DENTAL
SERVICES STATEMENT OF
FINANCIAL ENTITLEMENTS**
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1. Introduction

1.1 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 [13]. Words and expressions defined in that Section are often highlighted by initial capital letters.

1.2 This SFE may be revised at any time, in certain circumstances with retrospective effect.¹ For the most up-to-date information, contact the [] or visit the following web-site: [].

¹ 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. Negotiated Annual Agreement Values

2.1 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.

2.2 However, a degree of standardisation is necessary in order to achieve certain objectives, which include having standard arrangements for the following: making deductions in respect of NHS charges and superannuation; making parental and sickness leave payments; [making vocational training payments;] and reimbursement of business rates. The standard arrangements for making payments are set out in this SFE.

Nomination of the first Negotiated Annual Agreement Value

2.3 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.

2.4 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 and employees superannuation contributions under this Part in that financial year.

2.5 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 annual, or 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 pilot scheme agreements

2.6 If the contractor provided services under a pilot scheme, 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 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–

- () 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 [National Assembly for Wales], following a recommendation of the DDRB), is to provide the benchmark value for the contractor's NAAV;
- () 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 trainees;
- () the payments for specific purposes under Part 2 (i.e. payments in respect of [vocational training], seniority, parental leave and sickness leave, and reimbursement of domestic rates) 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;
- () the annual agreement value of the pilot scheme agreement may also have had built into it other amounts that are separately remunerated under the [[GDS?] contract], and these amounts should also be excluded from the calculation of the contractor's NAAV. The RB has an overriding duty to take all reasonable steps to ensure that it does not remunerate twice for the same item of expenditure under the PDS agreement.

New NAAVs where a PDS agreement is revised

2.7 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

2.8 If –

- 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
- () 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 that reflects price values for the new financial year.

2.9 At or for 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 2.14 of the [GDS SFE].

3. Payment of Monthly Annual Agreement Value Payments

3.1 At any point, there should be in respect of each PDS agreement a NAAV, determined in accordance with Section 2. 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. The payment arrangements set out in this SFE, and in particular in this Section, are the payment arrangements that must be used for payment of the payment or payments included in the NAAV.

Initial value of Monthly AAVPs

3.2 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 NAAV has been established, that amount is to be divided by twelve, and subject to paragraph 3.3, the result is the first initial value of the contractor's Monthly AAVPs.

3.3 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 —

the number of days during the month in which the contractor is under an obligation to provide mandatory services; by

() the total number of days in that month.

3.4 That initial value (expressed as a monthly value, in cases where a 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

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

3.6 If the contractor's NAAV 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 NAAV changes during a month, the initial value of its Monthly AAVPs (until its NAAV is next revised again) —

for the month after the month during which its NAAV changed, is its NAAV divided by 12; or

() for the month during which its NAAV changed, is the aggregate of the following amounts —

() 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

() the amount produced by dividing the number of days during the month for which the contractor had a new NAAV by the total number of days in that month, and multiplying that fraction by the new initial value of the contractor's Monthly AAVPs.

3.7 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

3.8 Patients in receipt of relevant dental treatment have to pay charges in respect of that treatment under the NHS Charges Regulations, unless they are exempt from paying the charge by virtue of either Schedule 12ZA to the 1977 Act or the NHS Charges Regulations. Charges are recoverable under those Regulations in respect of specified types of treatment.

3.9 It is the contractor who collects the NHS charges from those patients. Furthermore, in accordance with its 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.

3.10 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 3.11, 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.

3.11 Deductions may need to be made to the amount determined in accordance with paragraph 3.10 under the administrative provisions in Section 10 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 employee’s superannuation contributions

3.12 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 should be the RB. However, whether or not the RB is the employing authority for a Dentist Performer employed

or engaged by a contractor, the 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, sickness payments or Monthly Seniority Payments payable under that agreement.

3.13 Therefore, it makes sense in practical terms for each RB 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 pensionable earnings that derived from each PDS agreement that it holds.

3.14 Accordingly, it must deduct those contributions from the contractor's Monthly AAVPs, unless it is satisfied that other arrangements have been made to pay those contributions. The process of calculating all these deductions is explained in Section 4. If it is the employing authority for any Dentist Performer employed or engaged by the contractor, it may also deduct from the contractor's Monthly AAVPs any employee superannuation contributions (including Money Purchase Additional Voluntary Contributions (MPAVCs)) that the Dentist Performer owes but which have not been superannuated 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

3.15 The gross value of a contractor's Monthly AAVPs, minus any necessary deductions as mentioned in paragraphs 3.11 to 3.14, is the net value of the contractor's first Monthly AAVPs, which is the amount actually to be paid. This amount becomes payable on the first working day of the month after the month to which the Monthly AAVP relates.

Conditions attached to Monthly AAVPs

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

- 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;
- () 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

- () all information supplied pursuant to or in accordance with this paragraph must be accurate.

3.17 If the contractor breaches any condition of its Monthly AAVPs that is set out this SFE (including the conditions that are set out in paragraph 3.16), the RB may, in appropriate circumstances, withhold payment of all or any part of a Monthly AAVP that is otherwise payable.

Monthly Pay Schedule

3.18 On the due date for Monthly AAVPs (which is the first working day of the month after the month to which the Monthly AAVP relates), or as soon as reasonably practicable thereafter, the RB must send to the contractor a Monthly Pay Schedule which shall include —

- the contractor's NAAV;
- () the amount of the initial value of the contractor's Monthly AAVPs, prior to any permitted deductions;
- () the amount of permitted deductions, which will be specified in two parts —
 - () the amount of the NHS charges that the RB has determined, in accordance with paragraph 3.10, 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
 - () 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 3.11 to 3.13), together with the reason for any such deduction;
- () the amount of the Monthly AAVP following the permitted deductions;
- () 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
- (a) 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.

Annual Reconciliation Report

3.19 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 will include, in respect of the previous financial year—

the total value of the contractor's PDS agreement, net of any payments in respect of parental or sickness leave and of any Monthly Seniority Payments;

() the total of the initial values of the contractor's Monthly AAVPs;

() the total value of the deductions made to Monthly AAVPs paid to the contractor, which will be specified in two parts —

() the total amount of the NHS charges deducted, and

() the total amount of any other deductions made under the agreement or pursuant to this SFE; and

(b) 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. Superannuation contributions

4.1 Under the NHS Pension Scheme Regulations, RBs will continue to be responsible for paying the employer's superannuation contributions for Dentist Performers who are members of the Scheme, as their "employing authority". As such, RBs are also responsible for forwarding to the NHS Pensions Agency, and to any MPAVCs Provider, their Dentist Performers' employee superannuation contributions. The details of this obligation are set out in the NHS Pension Scheme Regulations.

4.2 The costs of paying the Dentist Performers' employee superannuation contributions (including any MPAVCs) in respect of its Pensionable Earnings should therefore have been built into PDS agreement prices. Equally, the price of any other arrangements that the contractor has which gives rise to Pensionable Earnings should have included the cost of Dentist

Practitioners' employee superannuation contributions (including any MPAVCs).

4.3 As regards each PDS agreement that it holds, a RB will have to deduct from the contractor's Monthly AAVPs the employee superannuation contributions payable in respect of that agreement, whether or not it is the employing authority for all the Dentist Performers who are entitled to a share of the Pensionable Earnings derived from that agreement, unless the necessary deductions have already been made elsewhere. These deductions are to be made in two stages.

Monthly deductions in respect of employee's superannuation contributions

4.4 First, as indicated in paragraph 4.13 above, the RB will need to make deductions 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 Dentist Performer employed or engaged by the contractor in respect of —

employee's superannuation contributions payable to the NHS Pensions Agency; and

() any MPAVCs payable to an MPAVCs Provider.

4.5 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.

4.6 An amount equal to the monthly amount that the RB deducts must be remitted to the NHS Pensions Agency and any relevant MPAVCs Provider no later than —

the 19th day of the month after the month in respect of which the amount was deducted; or

() in the case of MPAVCs, 7 days after the payment from which they were deducted falls due.

End-year adjustments

4.7 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 any parental leave or sickness leave payments, or any Monthly Seniority Payments payable under the agreement. this amount will be included in the Annual Reconciliation Report. The [National Assembly for Wales] 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 amount, the RB, and the contractor, will be able to determine the Pensionable Earnings Total for that agreement for that financial year.

4.7. 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 within one month of receiving an Annual Reconciliation Report, the contractor sends to the RB a standard return (set nationally and available electronically) specifying, for the financial year to which the Annual Reconciliation Report Relates, the Pensionable Earnings derived from [its GDS contract] of each Dentist Performer that it employed or engaged during that financial year. Those individual totals must not, taken together, amount to more, but may amount to less than the contractor's Pensionable Earnings Total for that financial year.

4.8 Once the Pensionable Earnings in respect of that financial year of each Dentist Performer employed or engaged by a contractor have notified to the RB, the RB must —

if its deductions of employee's superannuation contributions (including MPAVCs) from the contractor's Monthly AAVPs during that financial year in respect of those earnings —

- () did not cover the cost of all the employee's superannuation contributions payable in respect of those earnings —
 - () deduct the amount outstanding from any Monthly AAVPSs payable, or from a series of Monthly AAVPs payable, to the contractor, or
 - () 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
- () 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

- () forward any outstanding employee's superannuation contributions due in respect of those earnings to the NHS Pensions Agency 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

5. Seniority payments

5.1 Seniority payments are monthly payments to a contractor that has preserved rights to such payments. This is a limited scheme, designed to preserve existing entitlements in certain circumstances.

Eligibility criteria

5.2 A contractor is only entitled to seniority payments if —

the contractor was, before 1st April 2006, a pilot scheme provider and its PDS agreement takes effect for payment purposes on 1st April 2006;

() built into the value of its pilot scheme agreement was an amount that represented a seniority payment in respect of one or more of the dentists employed or engaged by the contractor as a performer of dental services;

() any dentist in respect of whom a seniority payment is claimed —

() continues to be employed or engaged by that contractor as a performer of primary dental services under its PDS agreement, and

(i) is not in receipt of any payments under the NHS Pension Scheme.

5.3 The contractor is not entitled to receive payments under this Section in respect of a dentist if another contractor, or a GDS contract holder, is in receipt of a seniority payment in respect of him.

Applications for a seniority payment

5.4 This issue will need to be addressed in the context of the negotiations on NAAVs, as any amount in respect a seniority payment that was included in the calculation of the value for the pilot scheme agreement will have to be excluded from the calculation of the contractor's NAAV (see paragraph 2.6(c)).

Calculation of Monthly Seniority Payments where one dentist has a preserved right

5.5 The initial value of the contractor's Monthly Seniority Payment is to be determined as follows. If the amount that represented a seniority payment under

the pilot scheme was paid in respect of a single dentist, the part of that amount that was payable in respect of March 2006 (so a third of the amount for the final quarter of the financial year 2005 to 2006, if the amount was payable as a quarterly amount) is to be uprated by the 2006/7 Adjustment, and that up-rated amount will be the amount of the contractor's Monthly Seniority Payments (provided the eligibility criteria in paragraph 5.2(c) and 5.3) continue to be met).

Calculation of Monthly Seniority Payments where more than one dentist has a preserved right

5.6 If the amount that represented a seniority payment under the pilot scheme agreement was in respect of more than one dentist, a calculation needs first to be made of the part of that amount that was payable in respect of March 2006. If the parts of that monthly amount ("the pilot scheme amount") that were payable in respect of each dentist are ascertainable, the ascertainable amount for each dentist is the value of the preserved right payment in respect of that dentist. If the parts of the pilot scheme amount that were in respect of each dentist were not ascertainable, the pilot scheme amount is to be divided by the number of dentists in respect of whom the pilot scheme amount was payable to produce the preserved right payment in respect of each dentist.

5.7 Then, the preserved right payments of each dentist who performed services on behalf of the contractor under its pilot scheme agreement and who is also a Dentist Performer who performs services under the PDS agreement is to be uprated by the 2006/7 Adjustment to produce the 2006/7 Preserved Right Value for that dentist. These 2006/7 Preserved Right Values are to be aggregated together to produce the amount of the Monthly Seniority Payment for the contractor.

5.8 If a dentist whose preserved right payment has featured in the calculation of a Monthly Seniority Payment retires (for the purposes of the NHS Pension Scheme), ceases to be employed or engaged by the contractor as a performer of primary dental services under its PDS contract, or another contractor or [GDS contract] holder receives a seniority payment in respect of him, the amount of the contractor's Monthly Seniority Payment is to be reduced by the amount of that payment that is attributable to that dentist. If the eligibility criteria in respect of that dentist cease to be met during a month, the amount of the Monthly Seniority Payment for that month is to be reduced *pro rata*.

Conditions attached to Monthly Seniority Payments

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

- 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;
- () the contractor must notify the RB of any change that may effect its eligibility to receive the payment or any part thereof (for example, if a dentist in respect of whom the payment is made retires, ceases to be employed or engaged by him [or her] or is no longer included in a Dentist Performers List); and
- () all information provided pursuant to or in accordance with this paragraph must be accurate.

5.10 If the contractor breaches any condition of its Monthly Seniority Payments that is set out in this SFE (including the conditions that are set out in paragraph 5.9), the RB may, in appropriate circumstances, withhold payment of any or any part of a Monthly Seniority Payment that is otherwise payable.

5.11 Preserved right payments are not transferable. If a dentist moves to a new contractor, he [or she] does not take the benefit of the preserved right with him [or her]: it is extinguished.

[6. Payments in respect of vocational training - Instructions]

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

Eligibility for payments in respect of vocational training

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

- the contractor employs or engages a Dentist Performer who is a Trainer;
- () the contractor has employed a Trainee under a contract of employment for —

- () a period of one year's full-time employment (or an equivalent period of part-time employment), or
- () for such additional period not exceeding 12 months' full-time employment (or the part-time equivalent) as the [Dental Dean or Director of Postgraduate Dental Training] (as the case may be) has authorised as necessary for the completion of vocational training; and
- () under that contract of employment, the contractor has agreed to pay the 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 Trainee, that amount *pro rata*).

6.3 Any attendance by a 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

6.4 Where a contractor satisfies the eligibility criteria specified in paragraph 8.2, read with paragraph 8.3, 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 —

- the name of the Trainee appointed, the date when the Trainee's employment commenced, the number of hours to be worked by the Trainee, the date when the Trainee's employment will end, and the date of the month on which payment of the salary will be made to the Trainee;
- () 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
- () a declaration in writing that the contractor will pay the 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 Trainee, that amount *pro rata*).

Vocational training payments to be made

6.5 There are four types of vocational training payment that a contractor who satisfies the eligibility criteria and who has applied in accordance with paragraph 6.4 is entitled to receive during the currency of a training contract with a Trainee —

- a training grant of £684.50 per month, if the Trainee is full-time (i.e. has contracted hours of at least 35 hours per week), or that amount *pro rata* if the Trainee is part-time;
- () reimbursement of the salary which the contractor has paid to the Trainee, which is to be £2,281 per month, if the Trainee is full-time (i.e. has contracted hours of at least 35 hours per week), or that amount *pro rata* if the Trainee is part-time;
- () where a salary is reimbursed pursuant to subparagraph (b), reimbursement of the amount of any employer's national insurance contributions which are payable by the contractor in respect of that salary; and
- (c) a sum that represents the service cost to the contractor of employing the Trainee, of £4,750 per month, if the Trainee is full-time (i.e. has contracted hours of at least 35 hours per week), or that amount *pro rata* if the Trainee is part-time.

6.6 Again, any attendance by a trainee at a day release course in connection with the vocational training scheme is to be included in the calculation of his contracted hours.

6.7 The payments due to a contractor under this Section become payable on the first working day of the month after the month to which the claim for the payments relates (only one application for payments need be made in respect of each agreed training period).

Conditions attached to vocational training payments

6.8 Payments under paragraph 6.5(a), or any part of such payments, are only payable if the contractor gives that training grant to the Trainee's Trainer —

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

6.9 Payments under paragraph 6.5(b) or (c), or any part of such payments, are only payable if the contractor pays the Trainee his [or her] salary under his [or her] contract of employment.

6.10 The payments under paragraph 6.5, or any part of such payments, are only payable if the following conditions are satisfied —

- the Trainer in respect of whom the payments are made must remain a Trainer;

- () the Trainee in respect of whom the payments are made must remain employed by the contractor;
- () 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 he is entitled under this Section);
- () 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
- () all information provided by the contractor pursuant to or in accordance with subparagraphs (c) or (d) must be accurate.

8.9 If the contractor breaches any condition of its payments under this Section that is set out this SFE (including the conditions that are set out in paragraphs 6.8 to 6.10), the RB may, in appropriate circumstances, withhold payment of any or any part of a payment under this Section that is otherwise payable.

8.10 If there is a breach of the condition that is set out in paragraph 6.10(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 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 6.5(b) and (c) in respect of the amount of the salary which it has paid to the Trainee in respect of the period of notice, up to a maximum of one month's salary.].

7. Weekly payments in respect of maternity, paternity and adoption leave

7.1 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.

7.2 If an employee, a partner 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

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

subject to paragraph 7.6, 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 as a performer of dental services as part of the NHS and must have immediately preceded the 15th week before the expected week of confinement;

- () 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;
- () 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
- () the payment relates to a Parental Leave Pay Period.

Eligibility for paternity leave payments

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

subject to paragraph 7.6, 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 as a performer of dental services as part of the NHS and have immediately preceded the date of birth or adoption; and

- () the Dentist Performer's wife or partner has —
 - (i) given birth, or
 - () adopted a child and will be the main care provider and the Dentist Performer is also an adoptive parent of that child;

- () the Dentist Performer has ceased to perform dental services under the contractor's PDS agreement in order to take paternity leave; and
- () the payment relates to a Parental Leave Pay Period.

Eligibility for adoption leave payments

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

- subject to paragraph 7.6, 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 as a performer of dental services as part of the NHS and have immediately preceded the date of the adoption;
- () the Dentist Performer has become the adoptive parent of a child and is the main care provider for that child;
- () the Dentist Performer has ceased to provide dental services under the contractor's PDS agreement in order to take adoption leave; and
- () the payment relates to a Parental Leave Pay Period.

Parental leave for those who have undertaken approved vocational training

7.6 In the case of a Dentist Performer who has undergone one year's approved vocational training, the 2 years mentioned in paragraphs 7.3(a), 7.4(a) and 7.5(a) shall be reduced to one year.

Applications for parental leave payments

7.7. Where a Dentist Performer satisfies the eligibility criteria specified in paragraph 7.3, 7.4 or 7.5, 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 to be obtained the RB, and that application must include —

- 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
- () 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 Pay Schedule).

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

- 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
- (d) 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.

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

- () in respect of the birth of a child, written confirmation from the contractor —
 - () of the expected or actual date of birth, and
 - () 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;
- () 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—
 - () is the partner of the main care provider,
 - () will share responsibility for the child's upbringing, and
 - () is taking time off to support his partner or to care for the child; and
- () 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 in respect of the same Dentist Performer's paternity leave.

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

- 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;

- () in the case of an inter-country adoption —
 - () the date on which the adopter received official notification,
 - () the expected date the child will enter the United Kingdom or the date upon which the child did so enter, and
 - () a copy of the official notification and evidence of the date of the child's arrival;
- () written confirmation from the contractor that the Dentist Performer is the main care provider is or will be the main care provider for the child; and
- () 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 in respect of the same Dentist Performer's adoption leave.

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

7.11 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 be the amount that features in respect of that Dentist Performer on the contractor's Monthly Pay Schedule, plus his [or she] estimated monthly Pensionable Earnings in respect of any Monthly Seniority Payment to which he [or she] is entitled) immediately before the parental leave is taken. This monthly amount is to be multiplied by 12 and then divided by 52 to produce the weekly amount of the parental leave payments.

7.12 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 first working day of the following month.

Conditions attached to weekly parental leave payments

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

- () 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
- () unless she 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 she 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 her estate); and
- () 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 her estate if the Dentist Performer dies).

7.14 If the contractor breaches any condition of its payments under this Section that is set out in this SFE (including the conditions that are set out in paragraph 7.13), the RB may, in appropriate circumstances, withhold payment of any or any part of a payment under this Section that is otherwise payable.

8. Payments in respect of long-term sickness absence

8.1 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.

8.2 If an employee, a partner 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 will 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

8.3 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 —

subject to paragraph 8.4, 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 precedes the period of sickness;

- () 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;
- () 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
- () the contractor is not in receipt of payments under Section 7 in respect of the Dentist Performer.

8.4 In the case of a Dentist Performer has undergone one year's approved vocational training, the 2 years mentioned in paragraph 8.3(a) will be reduced to one year.

8.5 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

8.6 Where a Dentist Performer satisfies the eligibility criteria specified in paragraphs 8.3 to 8.5, 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 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

- () 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 weekly amount of sickness leave payments and the due date

8.7 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 be the amount that features in respect of that Dentist Performer on the contractor's Monthly Pay Schedule, plus his [or her] estimated monthly Pensionable Earnings in respect of any Monthly Seniority Payment to which he is entitled) immediately before the sickness leave is taken. This amount is to be multiplied by 12 and then divided by 52 to produce, subject to paragraph 8.8, the weekly amount of the sickness leave payments.

8.8 The weekly amount determined in accordance with paragraph 8.7 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 first working day of the following month.

Conditions attached to sickness leave payments

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

- 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;
- () 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;
- () unless he [or she] 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 [or she] 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

- () the contractor must continue to pay the Dentist Performer at least his [or her] estimated net Pensionable Earnings during his [or her] absence (or pay this to his [or her] estate if he [or she] dies).

8.10 If the contractor breaches any condition of his [or her] sickness leave payments that is set out in this SFE (including the conditions that are set out in paragraph 8.9), the RB may, in appropriate circumstances, withhold payment of any or any part of a payment under this Section that is otherwise payable.

9. Reimbursement of non-domestic rates

9.1 Under this Section, contractors 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

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

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

- (e) subject to paragraph 11.3, the total value of the primary dental services provided at the practice premises as part of the NHS is not less than £25,000.

9.3 The RB may waive the eligibility criterion in paragraph 11.2(b) in any case where it considers it is reasonable in all the circumstances to do so.

Applications for reimbursement of non-domestic rates

9.4 Where the contractor satisfies the eligibility criteria specified in paragraph 9.2, read with paragraph 9.3, 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 —

the Demand Notice for the financial year to which the claim relates, or a copy of it certified by the Billing Authority;

(f) in respect of the Hereditament —

() 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

() 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;

() 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

() 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.

9.5 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 will be deemed to be its income under the SDR during that period.

9.6 Where the contractor seeks reimbursement of an amount in respect of non-domestic rates in relation to more than one Hereditament, he [or she] will submit to the RB a separate claim in respect of each such Hereditament.

9.7 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

9.8 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 9.9.

9.9 The amount of the abatement will be based on the percentage that the contractor is required to declare in accordance with paragraph 9.4(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 9.4(c)) the corresponding percentage opposite that entry in column 2 is the amount, in percentage terms, of the abatement.

COLUMN 1	COLUMN 2
Proportion which the PDS agreement income bears to the gross income of the Hereditament	Proportion of Non-domestic Rates to be abated
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	70%

than 30%	
10% or more but less than 20%	80%
Less than 10%	90%

9.10 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

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

- 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;
- () 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;
- () 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
- () all information supplied pursuant to or in accordance with sub- paragraphs (b) or (c) must be accurate.

9.12 If the contractor breaches any condition of its payments under this Section that is set out this SFE (including the conditions that are set out in paragraph 9.11), 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

10. Administrative provisions

Overpayments and withheld amounts

10.1 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 —

the contractor was not entitled to receive all or part thereof, whether because —

- () it or a person employed or engaged by it did not meet the eligibility criteria for the payment, or
- () the payment was calculated incorrectly (including where a payment on account overestimates the amount that is to fall due);
- () 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
- () 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.

10.2 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 10.1, 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

10.3 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 —

this is with the consent of the contractor; or

- () 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).

10.4 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 —

pay to the contractor, promptly, an amount representing the amount that the RB accepts that the contractor is at least entitled to; and

- () thereafter pay any shortfall promptly, once the dispute is finally resolved.

10.5 However, if a contractor has —

not claimed a payment to which it would be entitled pursuant to this SFE if it claimed the payment; or

- () 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 first working day of the month after the month during which the RB obtains the information it needs in order to calculate the payment.

Payments on account

10.6 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 —

the amount of, or a reasonable approximation of the amount of, a payment that is due to fall due pursuant to this SFE; or

- () 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 10.1 applies.

Time limitation for claiming payments

10.7 Subject to paragraphs 10.8 and 10.9, payments under this SFE contractor's are only eligible to payments under this SFE if the they are claimed within

three months of the date on which they could first have fallen due.

10.8 Subject to paragraph 10.9, a contractor is only eligible to receive reimbursement in respect of non-domestic rates under Section 9 —

- () where he is claiming a single payment of the full amount due as a reimbursement in respect of any financial year, if he [or she] 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;
- () where he [or she] 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 he [or she] 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;
- () where he [or she] is claiming reimbursement of monthly instalments of non-domestic rates in monthly instalments, if he [or she] 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.

10.9 The RB may waive the eligibility criteria in paragraphs 10.7 and 10.8 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

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

- () 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 may be set off, equitably, against the payments that he [or she] is entitled to receive under his [or her] PDS agreement pursuant to this SFE; or
- () 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 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

10.11 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 contractor is under an obligation to provide primary dental services under its PDS agreement. The amount of the period payment payable is to be adjusted by the fraction produced by dividing —

the number of days during the period to which the payment relates for which the contractor was under an obligation to provide mandatory services under its PDS agreement; by

() the total number of days in that period.

10.12 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.

Dispute resolution procedures

10.13 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).

10.14 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.

11. Glossary of Terms

Acronyms

11.1 The following acronyms are used in this document —

AAVP – Annual Agreement Value Payment

DDRB – Doctors’ and Dentists’ Review Body

GDS – General Dental Services

[LHB - Local Health Board - needed?]

MPAVC – Money Purchase Additional Voluntary Contribution

NAAV – Negotiated Annual Agreement Value

NHS – National Health Service

RB – Relevant Body

PDS – Personal Dental Services

RB – Relevant Body

SFE – Statement of Financial Entitlements

SDR – Statement of Dental Remuneration

Definitions

11.2 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.

11.3 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 amended¹.

“2006/7 Adjustment” is an amount specified by the Secretary of State, following a recommendation of the DDRB, and which is included in paragraph 2.12 of the GDS SFE.

“Annual Reconciliation Report” will be construed in accordance with paragraph 3.19.

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

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

“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.

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

“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 Dental Performers List;

- () a list of persons undertaking to provide general dental services prepared in accordance with regulations made under section 36 of the 1977 Act; or
- () 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 regulations made under section 28X of the 1977 Act (persons performing primary medical and dental services).

“Dentist Performer” means a dental practitioner —

whose name is included in a Dental Performers List of a LHB;

- () who performs dental services under a PDS agreement; and
- () who is employed or engaged by a contractor.

“Employed or engaged”, in relation to a Dentist Performer’s relationship with a contractor, includes (in addition to Dentist Performers who have a contract of service or for services with the contractor) —

a Dentist Performer who is the contractor;

- () a Dentist Performer who is a partner in a contractor that is a partnership; and
- () a Dentist Performer who is a director of a dental corporation.

“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.

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

“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 LHB.

“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 9.2(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 2000¹, 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 Pay Schedule” shall be construed in accordance with paragraph 3.18.

“Monthly Seniority Payment” is a payment under Section 5.

“Negotiated Annual Agreement Value” is the amount determined in accordance with section 2.

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

¹ S.I. 2000/619.

“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 2006¹.

“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 1996².

“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” means —

in the case of a maternity leave payment, a period not exceeding 26 weeks commencing —

- () not earlier than the 11th week before the expected week of confinement, nor later than the expected week of confinement, or
- () if confinement occurs prior to the eleventh week before the expected week of confinement, on the Monday immediately before the actual date of confinement,

in respect of which a claim for payments is made by or in respect of a person taking maternity leave (which for these purposes includes leave for ante-natal care) under Section 9 or Determination VI of the SDR;

- () 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 Section 9 or Determination VI of the SDR;
- () 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

¹ S.I. 2006/ .
² S.I. 1995/300; as amended.

adoption leave under Section 9 or Determination VI of the SDR.

“Partner”, in the context of a personal relationship (as opposed to a partner to a partnership agreement), means a member of a couple who, in the case of a man and a woman, are living as husband and wife, and, in any other case, 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 2006.

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

“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.

[“Relevant Body” means the party to a PDS agreement that is commissioning the services provided under the agreement (usually a Local Health Board)].

[“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 - is this same in Wales?].

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

“Trainer” means a Dentist Performer —

who is employed or engaged by a contractor; and

- (g) 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.

NATIONAL ASSEMBLY FOR WALES

[S U B O R D I N A T E
L E G I S L A T I O N]

2006 No. (W.)

**NATIONAL HEALTH
SERVICE WALES**

National Health Service Act 1977

Directions to [Local Health Boards]
as to the Statement of Financial
Entitlements

Made [14 February 2006]

Coming into force [1 April 2006]

1. The National Assembly for Wales, in exercise of the powers conferred by sections 28N and 126(4) of the National Health Service Act 1977⁽¹⁾ after consulting in accordance with section 28N(4) of the National Health Service Act 1977 both with the bodies appearing to it to be representative of persons to whose remuneration these directions relate and with such other persons as it thinks appropriate, gives the directions set out in this Statement of Financial Entitlements.

2. These directions apply to Local Health Boards in Wales and come into force on 1 April 2006.

3. Local Health Boards will apply the Statement of Financial Entitlements [set out in the Schedule] to these directions in relation to payments to be made by [Local Health Boards] to a contractor under a general

(1) 1977 c.49. Section 28N was inserted in the NHS Act 1977 by section 172 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), paragraph 37 of Schedule 4 to the Health act 1999 (c.8) and paragraph 5(13)(b) of Schedule 5 to the Health and Social Care act 2001 (c.15).

dental services contract entered into under section 28K
of National Health Service Act 1977⁽¹⁾.

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⁽¹⁾ 28K was inserted into the NHS Act 1977 by section 172 of the
Health and Social Care Community Health and Standards) Act
2003 (c.43).

SCHEDULE

GENERAL DENTAL SERVICES STATEMENT OF FINANCIAL ENTITLEMENTS

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Definitions

1. Introduction

1.1 This SFE relates to the Payments to be made by LHBs to a contractor under a GDS Contract.

1.2 This SFE is divided into Parts, paragraphs, sub-paragraphs and heads. A Glossary of some of the words and expressions used in this SFE is provided in Section 13. Words and expressions defined in that Section are often highlighted by initial capital letters.

1.3 This SFE may be revised at any time, in certain circumstances with retrospective effect⁽¹⁾. For the most up-to-date information, contact [] or visit the following web-site: []

⁽¹⁾ See section 28N(3)(e) of the NHS Act 1977 (1977 c.49).

PART 1
ANNUAL CONTRACT VALUES

2. Calculated Annual Contract Values

2.1 A Calculated Annual Contract Value (“CACV”) 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 (or the contractor himself in the case of a sole practitioner). 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 Contract Value

2.2 A contractor is only entitled to payments based on a CACV if—

- (a) it is entitled to a GDS contract by virtue of Part 2 of the Transitional Provisions Order;
- (b) its GDS contract is entered into pursuant to that Part;
- (c) its GDS contract takes effect, or is treated as taking effect for payment purposes, on 1st April 2006; and
- (d) its GDS contract is not thereafter varied to change the number of units of dental activity or, where applicable, orthodontic activity to be undertaken by the contractor.

Baseline numbers of units of dental and orthodontic activity

2.3 Each GDS contract must specify the number of units of dental activity to be provided by the contractor and, if the contract includes provision for orthodontic services, the number of units of orthodontic activity to be provided by the contractor: regulations 17 and 18 of the GDS Contracts Regulations refer. In the case of contractors who are entitled to payments based on a CACV, for the start of the financial year 2006 to 2007, a calculation must be made—

- (a) of a baseline number of units of dental activity, which is to be calculated in accordance with article 12(2) of the [Transitional Provisions Order] (based on data

in respect of the year ending on 30th September 2005) and then reduced by 10%, in accordance with article 12(3). The total number of units of dental activity determined in accordance with article 12(2) or (3) is the contractor's Baseline Number of Units of Dental Activity (BNUDA); and

- (b) if the contract includes the provision of orthodontic services, of a baseline number of units of orthodontic activity, which is to be calculated in accordance with article 13(2) of the 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 13(2) is the contractor's Baseline Number of Units of Orthodontic Activity (BNUOA).

Requirement to establish the contractor's first CACV

2.4 Once the contractor's BNUDA and BNUOA have been established for the financial year 2006 to 2007, the LHB will need to establish the first value of the contractor's CACV. The first value of the contractor's CACV is the amount that is properly attributable, in the year ending 30th September 2005, to the contractor's BNUDA and any BNUOA that the contractor 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 CACV

2.5 Firstly, the LHB 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 baseline value is then to be subject, potentially, to four types of adjustment to produce the first value of the contractor's CACV.

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 Trainees for whom the Trainer was responsible during the baseline year. 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 LHB 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; mergers or splits during the baseline period; and practices being newly established during the baseline period. Where the LHB 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 CACV.

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 the LHB from 1st April 2006. However, there should be no changes to the baseline value of a contractor's CACV, as part of the practice configuration adjustment, to reflect this change in responsibility.

Time lag adjustment

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 are two further adjustments that are unrelated to the BNUDA and BNUOA calculations. The first of these is the Time Lag Adjustment. This is an adjustment to the baseline value of a contractor's CACV, as adjusted in accordance with paragraphs 2.7 to 2.9, which is designed to ensure that a calculation based on cash receipts in the baseline period is adjusted to an appropriate level for resource

accounting purposes for the financial year 2006 to 2007.

2.11 Broadly, this will entail an uplift of 2.33% to bring the receipts in the baseline period to an appropriate level for the financial year 2006 to 2007...

2006/7 adjustment

2.12 This is an adjustment to the amount determined in accordance with paragraph 2.11. It is to reflect annual price increases, and is made following a recommendation of the Doctors' and Dentists' Review Body (DDRB). The percentage increase for the financial year 2006 to 2007 is [X%].

First CACV

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

Second and third CACVs

2.14 At the start of the financial year 2007 to 2008 and the financial year 2008 to 2009, the Monthly ACVPs of any contractor entitled to payments based on an CACV will be updated. It is intended that this SFE will be amended so that, for the start of the financial year 2007 to 2008, a 2007/8 Adjustment will be included, reflecting price values for that financial year. Similarly, for the start of the financial year 2008 to 2009, a 2008/9 Adjustment will be included.

2.15 The first of these Adjustments will be used to update the first value of a contractor's CACV, producing for that contractor a second value of the contractor's CACV, and the second of these Adjustments will be used to update the second value of its CACV to produce a third value. The second and third values of the contractor's CACVs will then be used to calculate the contractor's Monthly ACVPs 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.

3. Negotiated Annual Contract Values

3.1 Except where the contractor remains entitled to a CACV and is paid on that basis, payments under a GDS contract in respect of the agreed number of units

of dental activity and orthodontic activity specified in the contract is to be based on a Negotiated Annual Contract Value (NACV).

NACVs for new GDS contracts

- 3.2 As regards new GDS contracts, if—
- (a) the contractor is not entitled to payments based on a CACV (which will be the case for all contractors from 1st April 2009); or
 - (b) the contractor is entitled to payments based on a CACV but agrees with its LHB, in accordance with—
 - (i) article 12(4) of the Transitional Provisions Order to vary the number of units of dental activity that it will provide from its BNUDA, or
 - (ii) article 13(4) of the Transitional Provisions Order to vary the number of units of orthodontic activity that it will provide from its BNUOA,

or both,

the LHB and the contractor must agree, in respect of the first financial year during which the GDS contract has effect, a NACV for GDS contract, based on the number of units of dental activity and, where applicable, orthodontic activity that the contractor is required to provide under its GDS contract.

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

New or first NACVs where a GDS contract is revised

3.4 If the number of units of dental activity or, where applicable, orthodontic activity that a contractor is required to provide under its GDS contract is revised, a new or (in the case of a contractor whose Monthly ACVPs before the variation were based on a CACV) first NACV will have to be established for that contractor. If the variation takes effect during the financial year, the new or revised NACV for that contract shall be an annual (or annualised for the part year) amount for calculation purposes, even though only a proportion of that annual amount will in fact be payable for the first part year.

Annual uprating of NACVs

3.5 If —

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

the amount of its NACV is to be updated by a percentage amount that reflects price values for the new financial year.

3.6 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 2.14.

4. Payment of Monthly Annual Contract Value Payments

4.1 At any point, there should be in respect of each GDS contract a CACV, determined in accordance with Section 2, or a NACV, determined in accordance with Section 3, which is to provide the basis for the calculation of the Monthly ACVPs payable under the contract in respect of the units of dental activity and, where applicable, orthodontic activity that the contractor is required to provide. This CACV or NACV, which in all cases is to be an annual (or annualised) amount, is known as the Actual Annual Contract Value (AACV) of that contract at that point.

Initial value of Monthly ACVPs

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

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

- (a) the number of days during the month in which the contractor is under an obligation to provide mandatory services; by
- (b) the total number of days in that month.

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

Revision of the initial value of Monthly ACVPs

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

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

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

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

Deductions in respect of NHS charges

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 contract condition set by virtue of paragraph 38 of Schedule 3 to the GDS Contracts Regulations, the contractor is required to make returns of information to the LHB 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 38 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 LHB) since the scheduling date in the previous month, the LHB 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 number of units of dental activity or, where applicable, orthodontic activity that the contractor is to provide under its GDS contract. The Monthly ACVP value produced after that deduction has been made is, subject to paragraph 4.11, the gross value of the contractor’s Monthly ACVPs for that month (i.e. the value before the deduction of employee’s superannuation contributions).

Deductions in respect of overpayments etc.

4.11 Deductions may need to be made to the amount determined in accordance with paragraph 4.10 under the administrative provisions in Section 12 of this SFE, to take account of matters such as overpayments. In accounting terms, these deductions may alter the gross value of the Monthly ACVP in question or the gross value of another payment, but either way they will alter the net value of the Monthly ACVP in question.

Deductions in respect of employees superannuation contributions

4.12 The dentists 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 should be the LHB.

Where the LHB does act as the employing authority for any Dentist Performers, it will need to make deductions from the contractor's Monthly ACVPs in respect of those performers' employee superannuation contributions (including Money Purchase Additional Voluntary Contributions (MPAVCs)) that relate to all of their Pensionable Earnings (as defined in the NHS Pension Scheme Regulations) from whatever sources, unless the necessary deductions have already been made elsewhere. The process of making these deductions is explained in Section 5.

Net value of the contractor's first Monthly ACVPs

4.13 The gross value of a contractor's Monthly ACVPs, minus any necessary deductions as mentioned in paragraphs 4.11 and 4.12, is the net value of the contractor's first Monthly ACVPs, which is the amount actually to be paid. This amount becomes payable on the first working day of the month after the month to which the Monthly ACVP relates.

Conditions attached to Monthly ACVPs

4.14 Monthly ACVPs, or any part thereof, are only payable if the contractor satisfies the following conditions—

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

4.15 If the contractor breaches any condition of his Monthly ACVPs that is set out this SFE (including the conditions set out in paragraph 4.14), the LHB may, in appropriate circumstances, withhold payment of all or any part of a Monthly ACVP that is otherwise payable.

Monthly Pay Schedule

4.16 On the due date for Monthly ACVPs (which is the first working day of the month after the month to

which the Monthly ACVP relates), or as soon as reasonably practicable thereafter, the LHB must send to the contractor a Monthly Pay Schedule which shall include—

- (a) the contractor's AACV;
- (b) the amount of the initial value of the contractor's Monthly ACVPs, prior to any permitted deductions;
- (c) the amount of permitted deductions, which shall be specified in two parts—
 - (i) the amount of the NHS charges that the LHB 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 number of units of dental activity or, where applicable, orthodontic activity that the contractor is to provide under its GDS contract, and
 - (ii) the amount of any other deductions that need to be made to the Monthly ACVPs under the contract or pursuant to this SFE (for example, the deductions mentioned in paragraphs 4.11 and 4.12), together with the reason for any such deduction;
- (d) the amount of the Monthly ACVP following the permitted deductions;
- (e) any other payments payable to the contractor pursuant to these Directions on that due date, including where relevant an indication that a particular payment is made in respect of a named Dentist Performer;
- (f) the estimated net monthly Pensionable Earnings of each Dentist Performer who performs services under the contract, i.e. net of any Pensionable Earnings that are attributable to any Monthly Seniority Payment;
- (g) the number of units of dental activity or, where applicable, orthodontic activity the contractor—
 - (i) is contracted to provide during the relevant financial year,
 - (ii) has so far provided during the financial year, based on the data submitted to the LHB by the contractor, in accordance with its contract condition set by virtue of paragraph 38 of Schedule 3 to the GDS Contracts Regulations, and
 - (iii) has left to provide during the financial year; and
- (h) the number of courses of treatment involving sedation services or domiciliary services in

respect of which Monthly ADSSPs have been made under section 6.

Annual Reconciliation Report

4.17 The LHB 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 GDS Contracts Regulations or otherwise), which shall include, in respect of the previous financial year—

- (a) the total of the initial values of the contractor's Monthly ACVPs;
- (b) the total value of the deductions made to Monthly ACVPs 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 contract or pursuant to this SFE;
- (c) the estimated Pensionable Earnings of each Dentist Performer who performed services under its GDS contract, net of any Pensionable Earnings that are attributable to any Monthly Seniority Payment paid in respect of the Dentist Performer;
- (d) the number of units of dental activity or orthodontic activity the contractor—
 - (i) was contracted to provide,
 - (ii) actually provided, based on the data submitted to the LHB by the contractor, in accordance with its contract condition set by virtue of paragraph 38 of Schedule 3 to the GDS Contracts Regulations, and
 - (iii) where relevant, the number of units of dental activity or orthodontic activity that the contractor was contracted to provide but did not provide; and
- (e) the number of courses of treatment involving sedation services or domiciliary services in respect of which Monthly ADSSPs have been made under section 6.

5. Superannuation contributions

5.1 Under the NHS Pension Scheme Regulations, LHBs will continue to be responsible for paying the employer's superannuation contributions for Dentist Performers who are members of the Scheme, as their "employing authority". As such, LHBs are also responsible for forwarding to the NHS Pensions Agency, and to any MPAVCs Provider, their Dentist

Performers' employee superannuation contributions. The details of this obligation are set out in the NHS Pension Scheme Regulations.

5.2 The costs of paying the Dentist Performers' employee superannuation contributions (including any MPAVCs) in respect of its Pensionable Earnings should therefore have been built into GDS contract prices. Equally, the price of any other arrangements that the contractor has which gives rise to Pensionable Earnings should have included the cost of Dentist Practitioners' employee superannuation contributions (including any MPAVCs).

5.3 The amount of the employee's superannuation contributions that a Dentist Performer owes in respect of his or her Pensionable Earnings is to be deducted from the Monthly ACVPs of the contractor that employs or engages him or her, unless the necessary deductions have already been made elsewhere. These deductions are to be made in two stages.

Monthly deductions in respect of employee's superannuation contributions

5.4 First, as indicated in paragraph 4.12 above, the LHB will need to make deductions each month from the contractor's Monthly ACVPs. These deductions are to be based on a reasonable estimate of a the monthly proportion of the annual liability of each Dentist Performer employed or engaged by the contractor in respect of—

- (a) employee's superannuation contributions payable to the NHS Pensions Agency; and
- (b) any MPAVCs payable to an MPAVCs Provider.

5.5 The LHB 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.

5.6 An amount equal to the monthly amount that the LHB deducts must be remitted to the NHS Pensions Agency and any relevant MPAVCs Provider no later than —

- (a) the 19th day of the month after the month in respect of which the amount was deducted; or
- (b) in the case of MPAVCs, 7 days after the payment from which they were deducted falls due.

End-year adjustments

5.7 After the end of any financial year, the final amount of each Dentist Performer's liability in respect of employee's superannuation contributions (including any MPAVCs) will need to be determined. 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 ACVPs that the Dentist Performers who are employed or engaged by it and who are members of the NHS Pension Scheme prepare, sign and forward to the contractor's LHB—

- (a) an accurately completed certificate in respect of Pensionable Earnings, in the standard format provided nationally; and
- (b) no later than one month from the date on which the Dentist Performer was required to submit the HMRC return on which the certificate must be based.

5.8 Once the Pensionable Earnings in respect of a financial year of each Dentist Performer employed or engaged by a contractor have been agreed, the contractor's LHB must—

- (a) if its deductions from the contractor's Monthly ACVPs during that financial year relating to the employee's superannuation contributions (including MPAVCs) in respect of those earnings—
 - (i) did not cover the cost of all the employee's superannuation contributions payable by the contractor's Dentist Performers in respect of those earnings—
 - (aa) deduct the amount outstanding from any Monthly ACVPS payable, or from a series of Monthly ACVPs payable, to the contractor, or
 - (bb) obtain payment (where no such deduction can be made) from the contractor of the amount outstanding, and it is a condition of all of the payments made pursuant to this SFE that the contractor must pay to the LHB the amount outstanding, or
 - (ii) were in excess of the amount payable by the contractor's Dentist Performers 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 NHS Pensions Agency 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. Domiciliary services and sedation services

Agreeing and revising Annual Domiciliary and Sedation Services Payments

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

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

Annual uprating of ADSSPs

- 6.3 If —
- (a) at the start of a financial year, a contractor was in receipt of Monthly ADSSPs in respect of the last month of the previous financial year; and
 - (b) the number of courses of treatment involving sedations or domiciliary visits that the contractor is required to provide is unchanged,
- the amount of its ADSSP is to be uprated by a percentage amount that reflects price values for the new financial year. 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 2.14.

Initial value of Monthly ADSSPs

6.4 Once the contractor's first ADSSP has been established, that amount is to be divided by twelve,

and subject to paragraphs 6.5 and 6.11, the result is the first gross value of the contractor's Monthly ADSSPs.

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

- (a) the number of days during the month in which the contractor is under an obligation to those courses of treatment; by
- (b) the total number of days in that month.

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

Revision of the initial value of Monthly ADSSPs

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

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

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

6.9 Once the gross value of a contractor's Monthly ADSSPs has been established for any particular month (subject to paragraph 6.11), the LHB must go on to establish the net value of the contractor's Monthly ADSSPs, which is the amount actually to be paid.

NHS charges and employee's superannuation contributions

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

Deductions in respect of overpayments etc.

6.11 Deductions may need to be made from Monthly ADSSPs under the administrative provisions in Section 12 of this SFE, to take account of matters such as overpayments. In accounting terms, these deductions may alter the gross value of the Monthly ADSSP in question or the gross value of another payment, but either way it will alter the net value of the Monthly ADSSP in question.

Net value of the contractor's first Monthly ADSSPs

6.12 The gross value of a contractor's Monthly ADSSPs, minus any deductions as mentioned in paragraph 6.11, is the net value of the contractor's first Monthly ADSSPs, which is the amount actually to be paid. This amount becomes payable on the first working day of the month after the month to which the Monthly ADSSP relates.

Conditions attached to Monthly ADSSPs

6.13 Monthly ADSSPs, or any part thereof, are only payable if the contractor satisfies the following conditions—

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

- (b) all information supplied pursuant to or in accordance with this paragraph must be accurate.

6.14 If the contractor breaches any condition of his Monthly ADSSPs that is set out this SFE (including the conditions set out in paragraph 6.13), the LHB may, in appropriate circumstances, withhold payment of any or any part of a Monthly ADSSP that is otherwise payable.

7. Seniority payments

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

Eligibility criteria

7.2 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 or she reached the age of 55 years in the previous quarter of that financial year; or
- (b) 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 or her birthday falls), 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 or she reached the age of 55 years in the previous quarter of that financial year,

and no other contractor receives a Monthly Seniority Payment in respect of that Dentist Performer for the same month.

Applications for a seniority payment

7.3 Where a Dentist Performer satisfies the eligibility criteria specified in paragraph 7.2(a), in order to obtain a Monthly Seniority Payment in respect

of that Dentist Performer, the contractor must notify the LHB in writing that—

- (a) the Dentist Performer is employed or engaged by the contractor; and
- (b) to the best of its knowledge, no other contractor is or will be claiming a Monthly Seniority Payment in respect of that Dentist Performer for any month to which the contractor's claim relates.

7.4 Where a Dentist Performer satisfies the eligibility criteria specified in paragraph 7.2(b), in order to obtain a Monthly Seniority Payment in respect of that Dentist Performer, the contractor must make an application to the LHB 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 7.2(b);
- (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 Pay Schedule); and
- (c) confirmation that to the best of its knowledge, no other contractor is or will be claiming a Monthly Seniority Payment in respect of that Dentist Performer for any month to which the contractor's claim relates.

Calculation of the amount of the Monthly Seniority Payment

7.5 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 in the month to which the payment relates, but the maximum amount payable in respect of any month is £604.44.

7.6 For these purposes, a Dentist Performer's net monthly Pensionable Earnings in respect of any month are one twelfth of his or her 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.

7.7 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, LHB'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 Pay Schedule.

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

Conditions attached to Monthly Seniority Payments

7.9 A payment, or any part thereof, is only payable under this Section if the following conditions are satisfied—

- (a) the contractor must make available to the LHB any information which the LHB 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 LHB 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;
- (c) the person in respect of whom the payment is made remains included in a Dentist Performers List;
- (d) the Dentist Performer 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 or her;
- (e) no other contractor receives a Monthly Seniority Payment from a LHB in respect of the Dentist Performer for the month to which the payment relates; and
- (f) a contractor who receives a payment under this Section in respect of a Dentist Performer must give that payment to that Dentist Performer—
 - (i) within one calendar month of it receiving that payment, and
 - (ii) as an element of the personal income of that Dentist Performer, subject to any lawful deduction of income tax and national insurance.

7.10 If the contractor breaches any condition of its payments under this Section set out in this SFE (including the conditions set out in paragraph 7.9), the LHB may, in appropriate circumstances, withhold payment of any or any part of a payment under this Section that is otherwise payable.

7.11 If the contractor breaches the condition in paragraph 7.9(e) or (f), the LHB may require repayment of any payment 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 to which the condition relates.

8. Payments in respect of vocational training

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

Eligibility for payments in respect of vocational training

8.2 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 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) for such additional period not exceeding 12 months' full-time employment (or the part-time equivalent) as the Dental Dean or Director of Postgraduate Dental Training (as the case may be) has authorised as necessary for the completion of vocational training; and
- (c) under that contract of employment, the contractor has agreed to pay the Trainee a monthly salary at a full-time (at least 35 hours per week) rate of [£]per month (so for a part-time Trainee, that amount *pro rata*).

Any attendance by a trainee at a day release course in connection with the vocational training scheme is to be included in the calculation of his or her contracted hours.

Applications for payments under this Section

8.3 Where a contactor satisfies the eligibility criteria specified in paragraph 8.2, read with paragraph 8.3, in order to obtain payments in respect of vocational training, it must make an application to the LHB on a standard form (set nationally and available electronically), and that application must include—

- (a) the name of the Trainee appointed, the date when the Trainee's employment commenced, the number of hours to be worked by the Trainee, the date when the Trainee's employment will end, and the date of the month on which payment of the salary will be made to the 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 Trainee a monthly salary at a full-time (at least 35 hours per week) rate of [£] per month (so for a part-time Trainee, that amount *pro rata*).

Vocational training payments to be made

8.4 There are four types of vocational training payment that a contractor who satisfies the eligibility criteria and who has applied in accordance with paragraph 8.4 is entitled to receive during the currency of a training contract with a Trainee—

- (a) a training grant of [£], if the Trainee is full-time (i.e. has contracted hours of at least 35 hours per week), or that amount *pro rata* if the Trainee is part-time;
- (b) reimbursement of the salary which the contractor has paid to the Trainee, which is to be [£] if the Trainee is full-time (i.e. has contracted hours of at least 35 hours per week), or that amount *pro rata* if the Trainee is part-time;
- (c) where a salary is reimbursed pursuant to subparagraph (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 Trainee, of [£] if the Trainee is full-time (i.e. has contracted hours of at least 35 hours per week), or that amount *pro rata* if the Trainee is part-time.

Again, any attendance by a trainee at a day release course in connection with the vocational training scheme is to be included in the calculation of his or her contracted hours.

8.5 The payments due to a contractor under this Section become payable on the first working day of the month after the month to which the claim for the payments relates (only one application for payments need be made in respect of each agreed training period).

Conditions attached to vocational training payments

8.6 Payments under paragraph 8.4(a), or any part thereof, are only payable if the contractor gives that training grant to the 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.

8.7 Payments under paragraph 8.4(b) or (c), or any part thereof, are only payable if the contractor pays the Trainee his or her salary under his contract of employment.

8.8 The payments under paragraph 8.4, or any part thereof, 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 Trainee in respect of whom the payments are made must remain employed by the contractor;
- (c) the contractor must inform the LHB if there is any change of circumstances which may affect his entitlement to payments under this Section (including changes which may affect the level of the payments to which he is entitled under this Section);
- (d) the contractor must make available to the LHB any information which the LHB 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 subparagraphs (c) or (d) must be accurate.

8.9 If the contractor breaches any condition of its payments under this Section set out this SFE (including the conditions set out in paragraphs 8.6 to 8.8), the LHB may, in appropriate circumstances,

withhold payment of any or any part of a payment under this Section that is otherwise payable.

8.10 If there is a breach to the condition set out in paragraph 8.8(b), the LHB 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 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 8.4(b) and (c) in respect of the amount of the salary which it has paid to the Trainee in respect of the period of notice, up to a maximum of one month's salary.

9. Weekly payments in respect of maternity, paternity and adoption leave

9.1 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.

9.2 If an employee, a partner or a contractor is a Dentist Performer, the contractor that employs or engages that Dentist Performer may be entitled under this Section to payments from the LHB in respect of a period of maternity leave, paternity leave or adoption leave taken by that Dentist Performer. However, nothing in the conditions for payments to contractors under this Section will be interpreted as qualifying a Dentist Performer's statutory rights. In any event, even if the LHB 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

9.3 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 9.6, 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 continuous and must have immediately preceded the 15th week before the expected week of confinement;
- (b) the Dentist Performer has become pregnant and has reached, or been confined before

reaching, the commencement of the 11th week before the expected week of confinement;

- (c) the Dentist Performer has ceased to perform dental services under the contractor's GDS contract in order to take maternity leave (which for these purposes includes leave for ante-natal care); and
- (d) the payment relates to a Parental Leave Pay Period.

Eligibility for paternity leave payments

9.4 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 7.6, 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 have been continuous and 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 GDS contract in order to take paternity leave; and
- (d) the payment relates to a Parental Leave Pay Period.

Eligibility for adoption leave payments

9.5 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 7.6, 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 have been continuous and have immediately preceded the date of the adoption;
- (b) the Dentist Performer has become the adoptive parent of a child and is the main care provider for that child;
- (c) the Dentist Performer has ceased to provide dental services under the contractor's GDS contract in order to take adoption leave; and
- (d) the payment relates to a Parental Leave Pay Period.

Parental leave for those who have undertaken approved vocational training

9.6 In the case of a Dentist Performer who has undergone one year's approved vocational training, the 2 years mentioned in paragraphs 9.3(a), 9.4(a) and 9.5(a) will be reduced to one year.

Applications for parental leave payments

9.7. Where a Dentist Performer satisfies the eligibility criteria specified in paragraph 9.3, 9.4 or 9.5, in order to obtain parental leave payments in respect of that Dentist Performer, the contractor must make an application to the LHB on a standard form to be obtained from the LHB, 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 Pay Schedule).

9.8 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 no other claim for maternity leave payments has been made under this Section by any other contractor in respect of the same Dentist Performer's maternity leave.

9.9 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 in respect of the same Dentist Performer's paternity leave.

9.10 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 the main care provider 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 in respect of the same Dentist Performer's adoption leave.

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

9.11 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 be the amount that features in respect of that Dentist Performer on the contractor's Monthly Pay

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

9.12 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 first working day of the following month.

Conditions attached to weekly parental leave payments

9.13 Payments under this Section, or any part thereof, are only payable if the following conditions are satisfied—

- (a) the Dentist Performer must not perform any dental services during the Parental Leave Pay Period under any GDS contract or PDS agreement, except with the written approval of the LHB; and
- (b) unless the Dentist Performer dies, the Dentist Performer in respect of whom the payments are made continues to be a Dentist Performer and continues to be employed or engaged by the contractor (if the Dentist Performer does die, 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 Dentist Performer's estate); and
- (c) the contractor must continue to pay the Dentist Performer at least the Dentist Performer's estimated net Pensionable Earnings (which provided the basis for the calculation of the parental leave payment) during the Parental Leave Pay Period (or pay this to the Dentist Performer's estate if the Dentist Performer dies).

9.14 If the contractor breaches any condition of its under this Section set out this SFE (including the conditions set out in paragraph 9.13), the LHB may, in appropriate circumstances, withhold payment of any or any part of a payment under this Section that is otherwise payable.

10. Payments in respect of long-term sickness absence

10.1 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.

10.2 If an employee, a partner or a contractor is a Dentist Performer, the contractor that employs or engages that Dentist Performer may be entitled under this Section to payments from the LHB in respect of a period of long term sickness absence taken by that Dentist Performer. However, nothing in the conditions for payments to contractors under this Section will be interpreted as qualifying a Dentist Performer's statutory rights. In any event, even if the LHB 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

10.3 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 10.4, the Dentist Performer's name has been included in a Dental List for a period of at least 2 years, which need not be continuous or immediately precede the period of sickness;
- (b) the Dentist Performer has been unable to provide dental services under the contractor's GDS contract because of sickness, but sickness leave payments are not payable in respect of the first 4 weeks of absence;
- (c) the Dentist Performer has been in receipt of payments under this Section 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 9 in respect of the Dentist Performer.

10.4 In the case of a Dentist Performer has undergone one year's approved vocational training, the 2 years mentioned in paragraph 10.3(a) will be reduced to one year.

10.5 Sickness leave payments are only payable in respect of a maximum of 22 weeks in any period of 52 weeks. So 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 LHB could again be obliged to make sickness leave payments in respect of that Dentist Performer. However, the LHB 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

10.6 Where a Dentist Performer satisfies the eligibility criteria specified in paragraphs 10.3 to 10.5, in order to obtain a sickness leave payment in respect of that Dentist Performer, the contractor must make an application to the LHB 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 Part by any other contractor in respect of the same Dentist Performer's sickness absence.

Calculation of the weekly amount of sickness leave payments and the due date

10.7 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 be the amount that features in respect of that Dentist Performer on the contractor's Monthly Pay Schedule, plus his or her estimated monthly Pensionable Earnings in respect of any Monthly Seniority Payment to which he or she is entitled) immediately before the sickness leave is taken. This amount is to be multiplied by 12 and then divided by 52 to produce, subject to paragraph 10.7, the weekly amount of the sickness leave payments.

10.8 The weekly amount determined in accordance with paragraph 10.7 is the amount to which the contractor is entitled in respect of each complete week during with 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 first working day of the following month.

Conditions attached to sickness leave payments

10.9 Payments under this Section, or any part thereof, are only payable if the following conditions are satisfied—

- (a) the contractor must, if the LHB so requests, provide the LHB with medical certificates or other statements to the effect that the Dentist Performer is incapable of work by reason of sickness, completed by a registered medical practitioner, covering any period of absence in respect of which a sickness leave payment is being claimed;
- (b) the Dentist Performer must not perform any dental services under a GDS contract or PDS agreement during any period of absence in respect of which a sickness leave payment is claimed, except with the written approval of the LHB;
- (c) unless he or she 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 or her absence (or pay this to his or her estate if he or she dies).

10.10 If the contractor breaches any condition of his sickness leave payments set out in this SFE (including the conditions set out in paragraph 10.9), the LHB may, in appropriate circumstances, withhold payment of any or any part of a payment under this Section that is otherwise payable.

11. Reimbursement of non-domestic rates

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

Eligibility for reimbursement of non-domestic rates

11.2 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 11.3, the contractor’s AACV for that financial year is not less than £25,000.

11.3 The LHB may waive the eligibility criterion in paragraph 11.2(b) in any case where it considers it is reasonable in all the circumstances to do so.

Applications for reimbursement of non-domestic rates

11.4 Where the contractor satisfies the eligibility criteria specified in paragraph 11.2, read with paragraph 11.3, in order to obtain reimbursement in respect of its non-domestic rates, it must make an application to the LHB 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 the its income under its GDS contract bears to the gross income of the Hereditament from the provision of dental services (i.e. from both NHS and private work) during the last 6 months of the financial year preceding the financial year in respect of

which the claim for reimbursement is being made; and

- (d) a declaration in writing from the contractor undertaking, if requested to do so by the LHB, within three months of receiving such a request to provide to the LHB documentary evidence sufficient to demonstrate accurately the proportion that its income under its GDS contract bore to the gross income of the Hereditament from the provision of dental services (i.e. from both NHS and private work) in the last 6 months of the financial year preceding the financial year in respect of which the claim for reimbursement is being made.

11.6 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 GDS contract for the last six months of the financial year 2005 to 2006 will be deemed to be its income under the SDR during that period.

11.5 Where the contractor seeks reimbursement of an amount in respect of non-domestic rates in relation to more than one Hereditament, he or she will submit to the LHB a separate claim in respect of each such Hereditament.

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

Amount of non-domestic rates that may be reimbursed

11.7 The amount to which the contractor is entitled in respect of a reimbursement payment in any financial year is the amount specified in the Demand Notice for that financial year less, where the gross income of the Hereditament from the provision of dental services includes any income which is not derived from its GDS contract, any amount ("the abatement") calculated in accordance with paragraph 11.7.

11.8 The amount of the abatement will be based on the percentage that the contractor is required to declare in accordance with paragraph 11.4(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 11.4(c)) the corresponding percentage opposite that entry in column 2 is the amount, in percentage terms, of the abatement.

Proportion which the GDS contract income bears to the gross income of the Hereditament	Proportion of Non-domestic Rates to be abated
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 50%	60%
20% or more but less than 30%	70%
10% or more but less than 20%	80%
Less than 10%	90%

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

Conditions attached to payments under this Section

11.10 Payments under this Section, or any part thereof, are only payable if the following conditions are satisfied—

- (a) the contractor must, as regards the Hereditament to which the payment relates, comply with its contract condition set by virtue of paragraph 12 of Schedule 3 to the GDS Contracts Regulations;
- (b) the contractor must make available any information which the LHB 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 LHB 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.

11.10 If the contractor breaches any condition of its payments under this Section set out this SFE (including the conditions set out in paragraph 11.10), the LHB 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

12. Administrative provisions

Overpayments and withheld amounts

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

- (a) the contractor was not entitled to receive all or part thereof, whether because—
 - (i) it or a person employed or engaged by it did not meet the eligibility criteria for the payment, or
 - (ii) the payment was calculated incorrectly (including where a payment on account overestimates the amount that is to fall due);
- (b) the LHB 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 LHB is entitled to repayment of all or part of the money paid,

the LHB may recover the money paid by deducting an equivalent amount from any payment payable pursuant to this SFE, 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 LHB that equivalent amount.

12.2 Where a LHB is entitled pursuant to this SFE to withhold all or part of a payment because of a breach of a payment condition, and the LHB does so or recovers the money by deducting an equivalent amount from another payment in accordance with paragraph 12.1, 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

12.3 Without prejudice to the specific provisions elsewhere in this SFE relating to underpayments of particular payments, if the full amount of a payment that is payable pursuant to this SFE has not been paid

before the date on which the payment falls due, then unless—

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

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

12.4 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 LHB must—

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

12.5 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 LHB is unable to calculate the payment until after the payment is due to fall due because it does not have the information it needs in order to calculate that payment (all reasonable efforts to obtain the information having been undertaken),

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

Payments on account

12.6 Where the LHB and the contractor agree (but the LHB's agreement may be withdrawn where it is reasonable to do so and if it has given the contractor reasonable notice thereof), the LHB 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 12.1 applies.

Time limitation for claiming payments

12.7 Subject to paragraphs 12.8 and 12.9, payments under this SFE contractor's are only eligible to payments under this SFE if the they are claimed within three months of the date on which they could first have fallen due.

12.8 Subject to paragraph 12.9, a contractor is only eligible to receive reimbursement in respect of non-domestic rates under Section 11—

- (a) where he or she is claiming a single payment of the full amount due as a reimbursement in respect of any financial year, if he or she 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 he or she 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 he or she 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 he or she is claiming reimbursement of monthly instalments of non-domestic rates in monthly instalments, if he or she 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.

12.9 The LHB may waive the eligibility criteria in paragraph 12.7 and 12.8 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

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

- (a) that dental practitioner enters into a GDS contract that takes effect for payment purposes on 1st April 2006, any payments that the dental practitioner received under a determination made under regulation [] of the Performers Lists Regulations may be set off, equitably, against the payments that he is entitled to receive under his GDS contract pursuant to this SFE; or
- (b) a contractor is entitled to any payments in respect of that dental practitioner pursuant to this SFE and a payment was made to the dental practitioner pursuant to a determination

made under regulation [] of the Performers Lists Regulations 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 any payment in respect of him or her pursuant to this SFE.

Effect on periodic payments of termination of a GDS contract

12.11 If a GDS contract under which a periodic payment (generally, the monthly contract 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 contractor is under an obligation to provide mandatory services under its GDS contract. The amount of the period payment payable is to be adjusted by the fraction produced by dividing—

- (a) the number of days during the period to which the payment relates for which the contractor was under an obligation to provide mandatory services under its GDS contract; by
- (b) the total number of days in that period.

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

Dispute resolution procedures

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

12.14 The procedures require the contractor and the LHB 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.

13. Glossary of Terms

Acronyms

13.1 The following acronyms are used in this document—

AACV – Actual Annual Contract Value

ACVP – Annual Contact Value Payment

ADSSP – Annual Domiciliary and Sedation Services Payment

BNUDA – Baseline Number of Units of Dental Activity

BNUOA – Baseline Number of Units of Orthodontic Activity

CACV – Calculated Annual Contract Value

GDS – General Dental Services

HMRC – Her Majesty’s Revenue and Customs

LHB - Local Health Board

MPAVC – Money Purchase Additional Voluntary Contribution

NACV – Negotiated Annual Contract Value

SFE – Statement of Financial Entitlements

SDR – Statement of Dental Remuneration

Definitions

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

13.3 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(1).

“Actual Annual Contract Value” will be construed in accordance with paragraph 4.1.

“Annual Reconciliation Report” will be construed in accordance with paragraph 4.17.

“Annual Domiciliary and Sedation Service Payment” will be construed in accordance with paragraphs 6.1 to 6.4.

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

“Baseline Number of Units of Orthodontic Activity” will 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

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

1988 (generally, district councils and London Borough Councils).

“Calculated Annual Contract 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 entering into, or who has entered into, a GDS Contract with a LHB.

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

“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 regulations made under section 28X of the 1977 Act (persons performing primary medical and dental services);

“Dentist Performer” means a dental practitioner—

- (a) whose name is included in a Dental Performers List of a LHB;
- (b) who performs dental services under a GDS Contract; and
- (c) who is—
 - (i) himself or herself a contractor (i.e. a sole practitioner); or
 - (ii) an employee of a contractor, a partner in a contractor or a member of a dental corporation that is a contractor.

“Employed or engaged”, in relation to a Dentist Performer’s relationship with a contractor, includes (in addition to Dentist Performers who are employees of a contractor)—

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

“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.

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

“GDS Contracts Regulations” means the National Health Service (General Dental Services Contracts) Regulations 2006.

“Hereditament” shall be construed in accordance with paragraph 11.2(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(1), 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 Contract Value Payments” are the payments, based on the Actual Annual Contract Value of a GDS contract, which are to be determined in accordance with Section 4.

“Monthly Annual Domiciliary and Sedation Services Payment” is the amount determined in accordance with paragraphs 6.4 to 6.12.

“Monthly Pay Schedule” will be construed in accordance with paragraph 4.16.

“Monthly Seniority Payment” is a payment under Section 7.

“Negotiated Annual Contract Value” is the amount determined in accordance with section 3.

“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

(1) S.I. 2000/619.

of any Pensionable Earnings that are attributable to any Monthly Seniority Payment.

“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 2006.

“NHS Pension Scheme Regulations” means the National Health Service (Pension Scheme) Regulations 1995(1).

“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” 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 Section 9 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 Section 9 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 Section 9 or Determination VI of the SDR.

(1) S.I. 1995/300; as amended.

“Partner”, in the context of a personal relationship (as opposed to a partner to a partnership agreement), means a member of a couple who, in the case of a man and a woman, are living as husband and wife, and, in any other case, 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.

“Pensionable Earnings” means the earnings which are treated as the pensionable earnings of Dentist Performer who is a practitioner member of the NHS Pension Scheme. The detail of the calculation of the calculation will feature in, or in or by virtue of determinations under, the NHS Pension Scheme Regulations. However, it is anticipated that a Dentist Performer’s pensionable earnings will be, essentially, the Dentist Performer’s earnings derived from providing NHS treatment under a GDS or PDS contract, and that in calculating the NHS profits of a practice, percentage of a contractor’s (or a practitioner’s) NHS income will be deemed go on practice expenses. This SFE will be amended when more information about the changes to the NHS Pension Scheme Regulations becomes available.

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

“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.

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

“Trainer” means a Dentist Performer—

- (a) who is employed or engaged by a contractor; and
- (b) whose application to 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.

ANNEX

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;

“LHB” means a Local Health Board

“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 Wales only, and will come into force on 1 April 2005.

ENTITLEMENT

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

(5) A LHB will 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 LHB; and
- (b) for a quarter in which he or she ceases to be on that LHB's dental list and in respect of which a seniority payment is authorised by another LHB.

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 or her 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 or she 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 will be payable in the first and each subsequent quarter in which he or she is entitled, provided —
 - (i) that his or her accumulated gross fees to the end of the relevant quarter amount to at least the sums listed below

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

Or;

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

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 or she 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;

Quarter ending	Accumulated gross fees
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 will be payable at the end of the quarter following the one to which it relates;
- (c) no seniority payment will be made by the Board to a dentist in respect of any period before the quarter immediately preceding the quarter in which his or her application for a seniority payment is delivered to a LHB.

DRAFT

To: Business Committee:
From: Dr Brian Gibbons AM:
Minister for Health & Social Services

Draft Explanatory Memorandum:

Directions to Local Health Boards as to the General Dental Services and Personal Dental Services Statement of Financial Entitlements

Summary:

From 1 April 2006 Local Health Boards (LHBs) will have a duty to secure or provide primary dental services in its area to the extent that it considers necessary to meet all reasonable requirements. LHBs will do this by contracting with dental practices, corporate bodies or private providers which agree to provide primary dental services or by providing the service itself through salaried NHS staff. These changes will be accompanied by devolution of the centrally held general dental services budget which will go to LHBs to commission dental services

These Directions set out what payments a contractor holding a General Dental Services (GDS) contract or a Personal Dental Services (PDS) agreement is entitled to. They also set out what persons providing general dental services under the old regime will be entitled to by way of a minimum contract value guarantee.

1. This memorandum is submitted to the Assembly's Business Committee in relation to Directions to LHBs as to the GDS and PDS Statement of Financial Entitlements (SFE).
2. A copy of the draft Directions are submitted with this draft Memorandum.

Enabling Power:

3. The power enabling these Directions to be made is contained in sections 28N and 126 of the National Health Service Act 1977. Responsibility for issues relating to the contents of the Directions has been delegated to my portfolio as Minister for Health and Social Services.

Effect:

4. The intended effect of the Directions is that they provide LHBs with details of the payments to be made to a contractor under a GDS Contract or PDS Agreement. The

SFEs are divided into parts which cover information on annual contract and agreement values, including the calculation of the value of the contracts and whether any revision or adjustments need to be made. The SFEs include details of payments for specific purposes such as domiciliary and sedation services, vocational training, maternity and sickness payments. They also detail any deductions to be made and the administrative provisions including the payment mechanisms.

Target Implementation:

5. It is intended that the proposed Directions should be made as soon as possible and come into force on 1 April 2006. The need for the Directions to be made in advance of their coming into force date is to enable LHBs and dentists to enter into their new contracts - and they need to be able to access final form legislation to be able to do this. The equivalent Directions in England are due to come into force on the same day. The new dental contract is based closely on that being introduced in England although officials have been working with British Dental Association Wales and the dental profession to amend the contract where possible to reflect needs and address difficulties here. However, our timetable is linked to the one in England.

6. Any delay in implementation in Wales would put Wales seriously out of step and have an immediate and negative effect on retention and recruitment of dentists providing NHS care. There would also be substantial additional cost in maintaining different payment and charging arrangements for dentists in Wales with the Dental Practice Board.

Financial Implications:

7. The overall intention is to secure the existing level of NHS dental services within existing resources. Growth of NHS dental services, and increasing access, is a key aim of the reforms. However, I'm unable to confirm specific budget allocations for 2006-07 in advance of formal Assembly agreement to the final budget proposals. Current expenditure on GDS is non-cash limited. Net expenditure in 2004-05 was some £80.041 million. It is proposed that current expenditure on dentistry will be protected so that when spend on GDS moves from a national budget into local allocations, there will be a floor, so that LHBs will be required to spend at least at the current level on dentistry. They can spend more than this if they wish but cannot spend less.

8. Practices are guaranteed the same level of gross income as that in the test period (October 2004-September 2005), increased by the agreed Doctors and Dentists Review Body (DDRB) uplift, for comparable levels of commitment work.

9. To support LHBs, local dental committees and dentists to help prepare for the changes and to implement reform, funding of £990,000 was incurred in 2004-05. This was made up as follows:

- £440,000. £20,000 to each LHB in terms of supporting the dental change agenda allowing them to support leadership in LHBs; improve organisational development to successfully implement the contract; support Local Dental Committees; developing dental leadership skills; improve communication and review and update dental competencies in line with the development of the dental reforms; and
- £550,000. The equivalent of £1,000 per dental practice (pro rata on NHS commitment). This was in response to the DDRB recommendation that financial assistance to practices was required to assist them to prepare for the new contractual arrangements.

10. The above allocation to LHBs to help them get to grips with the changes is recurrent in 2005-06 and 2006-07. This funding has come from the Health and Social Services Main Expenditure Group (Payments to Contractors Budget Expenditure Line).

Regulatory Appraisal:

11. Having regard to National Assembly guidance, I have concluded that a regulatory appraisal is not appropriate in this instance as these Directions are being made under Standing Order 29 – subordinate legislation not required to be made by Statutory Instrument – and the Assembly’s published guidance on regulatory appraisals excludes such legislation.

Consultation with stakeholders:

12. The SFE Directions build on the detail which was included in the guide which accompanied the draft GDS and PDS Regulations which were sent out for information and comment on 9 September 2005. In addition the draft GDS SFE was published for consultation on 9 December 2005. The information has also been published on the Welsh Assembly Government website and details included in updates sent to all dentists and LHBs in Wales. This is part of wider discussion with the dental profession on an England and Wales, and Wales only basis. The Regulations and guidance were particularly aimed at dentists, including representative bodies such as British Dental Association Wales (BDA Wales), and LHB Directors of Primary Care who have an interest and responsibility for negotiating the new contract values and for managing the new system of local dental commissioning.

Consultation with Subject Committee:

13. The draft Directions were notified to the Health and Social Services Committee at its meeting on 3 November 2005 (HSS(2)-11-05(p.7)) and were identified for scrutiny. This took place on 19 January 2006.

14. (To be completed after 19 January).

Recommended procedure

15. I recommend that the Directions should be made under Standing Order 29.

Compliance

16. The proposed Directions will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 Section 120);
- be compatible with the Assembly's scheme for sustainable development (Section 121);
- be compatible with Community law (Section 106);
- be compatible with the Assembly's human rights legislation (Section 107);
- be compatible with any international obligations binding the UK Government and the Assembly (Section 108).

18. The information in this memorandum has been cleared with the Directorate of Legal Services (DLS) and the Assembly Compliance Officer (ACO).

19. Drafting lawyer: Sarah Wakeling, ext. 3754.

20. Head of Division: John Sweeney, ext. 3570.

21. Drafting policy official: Andrew Powell-Chandler, ext. 1689.

Dr Brian Gibbons AM
Minister for Health and Social Services

Date: December 2005

NATIONAL ASSEMBLY FOR WALES

S T A T U T O R Y I N S T R U M E N T S

2006 No. (W.)

NATIONAL HEALTH SERVICE, WALES

**Functions of Local Health Boards (Dental Public Health)
(Wales) Regulations 2006**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the functions to be exercised by Local Health Boards in Wales in relation to oral health.

Those functions relate to oral health promotion programmes, dental inspection of pupils in schools maintained by local education authorities and oral health surveys.

2006 No. (W.)

NATIONAL HEALTH SERVICE, WALES

**Functions of Local Health Boards (Dental Public Health)
(Wales) Regulations 2006**

Made - - - - - *28 February 2006*

Coming into force - - - - - *1 March 2006*

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred by section 16CB(2) of the National Health Service Act 1977(1):

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Functions of Local Health Boards (Dental Public Health) (Wales) Regulations 2006 which come into force on 1 March 2006.

(2) In these Regulations—

“the Act” means the National Health Service Act 1977;

“oral health promotion programme” means a health promotion and disease prevention programme the underlying purpose of which is to educate and support members of the public about ways in which they may improve their oral health; and

“oral health survey” means a survey to establish the prevalence and incidence of disease or abnormality of the oral cavity.

(3) These Regulations apply in relation to Wales.

Exercise of functions of Local Health Boards

2.—(1) A Local Health Board will have the following functions.

(2) A Local Health Board will provide, or secure the provision of, the following, to the extent that it considers necessary to meet all reasonable requirements within its area—

(a) oral health promotion programmes;

(b) dental inspection of pupils in attendance at schools maintained by local education authorities; and

(c) oral health surveys to facilitate—

(i) the assessment and monitoring of oral health needs,

(1) 1977 c.49. Section 16CB(2) was inserted by section 171(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c.43).

- (ii) the planning and evaluation of oral health promotion programmes, and
- (iii) the planning and evaluation of the provision of primary and specialist dental services.

(3) A Local Health Board will participate in any survey required by the National Assembly for Wales as part of a survey conducted or sponsored under section 5(2)(d) of the Act (1) (other services).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(2)

Date

The Presiding Officer of the National Assembly

(1) Subsection (2) of section 5 has been amended by section 1 of the Public Health Laboratory Service Act 1979, (c. 23), and S.I. 2002/2759.
(2) 1998 c.38.

DRAFT

To: Business Committee

From: Dr Brian Gibbons AM

Explanatory Memorandum:

Functions of Local Health Boards (Dental Public Health) (Wales) Regulations 2006

Summary:

From 1 April 2006 Local Health Boards (LHBs) will have a duty to secure or provide primary dental services in its area to the extent that it considers necessary to meet all reasonable requirements. LHBs will do this by contracting with dental practices, corporate bodies or private providers which agree to provide primary dental services or by providing the service itself through salaried NHS staff. These changes will be accompanied by devolution of the centrally held general dental services budget which will go to LHBs to commission dental services

These Regulations sets out the functions to be exercise by LHBs in relation to public health.

1. This memorandum is submitted to the Assembly's Business Committee in relation to the Functions of Local Health Boards (Dental Public Health) (Wales) Regulations 2006 in accordance with Standing Order 24.6.

2. A copy of the final version of the draft Regulations is submitted with this draft Memorandum.

Enabling power:

3. The power enabling these Regulations to be made is contained in sections 16CB of the National Health Service Act 1977 (the 1977 Act) which was inserted by section 171(1) of the Health and Social Care (Community Health and Standards) Act 2003. The 2003 Act provides for new arrangements to be made for Local Health Boards and general dental practitioners and amends the 1977 Act. Responsibility for issues relating to the contents of the Regulations has been delegated to my portfolio as Minister for Health and Social Services.

Effect:

4. The Health and Social Care (Community Health and Standards) Act 2003 ("the 2003 Act") provides the legislative framework for the establishment of primary dental services. It is intended that the new contracting arrangements will underpin modernised, locally sensitive primary dental services properly integrated with the rest of the NHS.

5. From 1 April 2006 it is intended to establish new contractual arrangements for high street dentists which move away from the general dental services item of service remuneration to an annual payment no longer directly related to the dentists activity. This will enable dentists to spend more time with their patients and adopt a more preventive approach to oral health care.

6. The 2003 Act inserts new section 16CB into the 1977 Act which gives power to confer on LHBs dental public health functions. Functions prescribed under section 16CB(1) include school screening as well as oral health promotion and local oral health surveys to help plan services. LHBs may involve other agencies in discharging dental public health functions, such as Community Dental Services (CDS), (the CDS is already a service commissioned by LHBs from NHS Trusts), independent dental contractors or other appropriate health providers. For example, an LHB might wish to involve providers in providing a specific oral health promotion programme such as smoking cessation.

7. The CDS is commissioned by LHBs from NHS Trusts to ensure that people who may not otherwise seek or be able to access care within the GDS, such as patients with special needs, can receive NHS dentistry. The CDS also has a dental public health function. The CDS functions are set out in guidance issued in 1989 (WHC (89)28), there is no statutory basis for these functions. The dental public health functions include dental health promotion, oral screening for children in state funded schools and epidemiological field work for use in planning national and local services.

8. Dental health promotion and oral screening for children in state funded schools are currently provided under section 5(1A) of the 1977 Act. Other public health functions are either provided as part of the National Assembly's general duty under section 3 of the 1977 Act which has been delegated to LHBs or under section 5(2)(d) in relation to epidemiological field work for use in planning dental services. The new section 16CB provides for these dental public health functions to be directly conferred on LHBs.

9. The three functions to be conferred are:

- oral health promotion;
- oral screening for children in state funded schools; and
- epidemiological field work for use in planning services.

Target implementation:

10. It is intended that the proposed Regulations should be made on 1 March 2006 and come into force on 1 April 2006. The need for the Regulations to be made in advance of their coming into force date is to enable LHBs and dentists to enter into their new contracts - and they need to be able to access final form legislation to be able to do this. The equivalent Regulations in England are due to come into force on the same day. The new dental contract is based closely on that being introduced in England although officials have been working with British Dental Association Wales and the dental profession to amend the contract where possible to reflect needs and address difficulties here. However, our timetable is linked to the one in England.

11. Any delay in implementation in Wales would put Wales seriously out of step and have an immediate and negative effect on retention and recruitment of dentists providing NHS care. There would also be substantial additional cost in maintaining different payment and charging arrangements for dentists in Wales with the Dental Practice Board.

Financial implications

12. The overall intention is to secure the existing level of NHS dental services within existing resources. Growth of NHS dental services, and increasing access, is a key aim of the reforms. However, I'm unable to confirm specific budget allocations for 2006-07 in advance of formal Assembly agreement to the final budget proposals.

13. Current expenditure on GDS is non-cash limited. Net expenditure in 2004-05 was some £80.041 million. It is proposed that current expenditure on dentistry will be protected so that when spend on GDS moves from a national budget into local allocations, there will be a floor, so that LHBs will be required to spend at least at the current level on dentistry. They can spend more than this if they wish but cannot spend less.

14. Practices are guaranteed the same level of gross income as that in the test period (October 2004-September 2005), increased by the agreed Doctors and Dentists Review Body (DDRB) uplift, for comparable levels of commitment work.

15. To support LHBs, local dental committees and dentists to help prepare for the changes and to implement reform, funding of £990,000 was incurred in 2004-05. This was made up as follows:

- £440,000. £20,000 to each LHB in terms of supporting the dental change agenda allowing them to support leadership in LHBs; improve organisational development to successfully implement the contract; support Local Dental Committees; developing dental leadership skills; improve communication and review and update dental competencies in line with the development of the dental reforms; and
- £550,000. The equivalent of £1,000 per dental practice (pro rata on NHS commitment). This was in response to the DDRB recommendation that financial assistance to practices was required to assist them to prepare for the new contractual arrangements.

16. The above allocation to LHBs to help them get to grips with the changes is recurrent in 2005-06 and 2006-07. This funding has come from the Health and Social Services Main Expenditure Group (Payments to Contractors Budget Expenditure Line).

Regulatory appraisal:

17. A draft regulatory appraisal has been carried out in relation to these draft Regulations and is attached.

Consultation with stakeholders:

18. The Regulations form part of the wider reform of NHS dental services which has been discussed with the dental profession on an England and Wales and Wales only basis. Consultation on the main enabling Regulations, along with accompanying guidance, has been aimed at dentists, including representative bodies such as British Dental Association Wales (BDA Wales), and LHB Directors of Primary Care who have an interest and responsibility for negotiating the new contract values and for managing the new system of local dental commissioning. In addition they have been published on the Welsh Assembly Government website and details included in updates sent to all dentists in Wales.

Consultation with Subject Committee:

19. The draft Regulations were notified to the Health and Social Services Committee at its meeting on 3 November 2005 (HSS(2)-11-05(p.7)) and were identified for scrutiny. This took place on 19 January 2006.

20. (To be completed after 19 January).

Recommended procedure:

21. Subject to the views of the Business Committee I recommend that the regulations continue to proceed to Plenary under the standard procedure.

Compliance:

22. The proposed Regulations will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 Section 120);
- be compatible with the Assembly's scheme for sustainable development (Section 121);
- be compatible with Community law (Section 106);
- be compatible with the Assembly's human rights legislation (Section 107);
- be compatible with any international obligations binding the UK Government and the Assembly (Section 108).

23. The information in this memorandum has been cleared with the Directorate of Legal Services (DLS) and the Assembly Compliance Officer (ACO).

24. Drafting lawyer: Sarah Wakeling, ext. 3754.

25. Head of Division: John Sweeney, ext. 3570.

26. Drafting policy official: Andrew Powell-Chandler, ext. 1689.

Regulatory appraisal

1. Title of Proposal

Functions of Local Health Boards (Dental Public Health) (Wales) Regulations 2006.

2. Purpose and intended effect of measure

(i) The objective

To strengthen the public health function in Wales by giving Local Health Boards (LHBs) new powers in relation to dental public health so as to educate and support members of the public about ways in which they may improve their oral health.

(ii) Background

Routes to Reform, A Strategy for Primary Dental Care in Wales published in 2002 highlighted the importance of developing a preventive focus within dentistry and identified a key function for a modernised NHS dental service as the need to tackle oral health inequalities, particularly in children.

The Health and Social Care (Community Health and Standards) Act 2003 ("the 2003 Act") legislated for far-reaching reform of NHS dental services to deliver the *Routes to Reform* objectives. Section 171 of the 2003 Act inserted new section 16CB (dental public health) into the National Health Service Act 1977 ("the 1977 Act"). To meet their new responsibilities for dental services under the 2003 Act, LHBs will assess local oral health needs in order to tackle long standing oral health inequalities.

(iii) Reason for change

The Community Dental Service (CDS) is commissioned by LHBs from NHS Trusts to ensure that people who may not otherwise seek or be able to access care within the General Dental Service, such as patients with special needs, can receive NHS dentistry. The CDS also has a dental public health function. The CDS functions are set out in guidance issued in 1989 (WHC (89)28), there is no statutory basis for these functions. The dental public health functions include dental health promotion, oral screening for children in state funded schools and epidemiological field work for use in planning national and local services.

Dental health promotion and oral screening for children in state funded schools are currently provided under section 5(1A) of the 1977 Act. Other public health functions are either provided as part of the National Assembly's general duty under section 3 of the 1977 Act, which has been delegated to LHBs, or under section 5(2)(d) in relation to epidemiological field work for use in planning dental services. The new section 16CB provides for these dental public health functions to be directly conferred on LHBs.

The three functions to be conferred are:

- oral health promotion;
- oral screening for children in state funded schools; and
- epidemiological field work for use in planning services.

To enable general dental practitioners to participate in dental public health programmes and adopt a more preventive approach to oral healthcare, both the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006 and the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006 provide for “dental public health services” within the definition of “additional services” to make clear these services may be included in both types of local contract.

3. Options

The following options were considered before the powers were taken in the 2003 Act:

Option 1 - Leave things unchanged. The dental public health functions would not be conferred on LHBs and remain subject to guidance.

Option 2 - Introduce legislation under a new section 16CB of the 1977 Act to establish prescribed functions for LHBs in relation to dental public health.

4. Costs and benefits

(i). Sectors and groups affected

The 1989 guidance affects:

- LHBs, and NHS Trusts from whom CDS is commissioned; and
- Persons or groups receiving the service.

Functions of Local Health Boards (Dental Public Health) (Wales) Regulations 2006 will affect similar groups and the work undertaken by the same NHS staff. Administration of the new arrangements will continue to be the responsibility of LHBs. Both option 1 and option 2 have similar affect on administration by these NHS bodies.

(ii) Analysis of costs and benefits

Option 1

Economic impacts

Provision of the services would remain the financial responsibility of the LHB or Trust and the costs met from their NHS allocations.

Social impacts

The same groups of people would continue to benefit from the health promotion programmes and advice.

Environmental impacts

There are no environmental impacts from continuing with the current dental public health arrangements.

Option 2Economic impacts

Option 2 means similar services provided to similar groups of people in the LHB area. The services will be provided by the same staff groups as at present and employed by the NHS.

Social impacts

By virtue of Regulation 2, LHBs will have a direct responsibility for improving the oral health in its area, undertaking dental inspections of school children and undertaking epidemiological local dental services.

Environmental impacts

There are no environmental impacts from this measure.

Summary of Costs and Benefits

Option	Total benefit : economic, environmental, social and administrative	Total cost per annum: economic, environmental, social and administrative
Option 1 Do nothing	CDS continue to provide a dental public health programme in the LHB area to assess local oral health need and provide oral health promotion.	Covered by current staffing costs of CDS in Wales (treatment and dental public health functions).
Option 2 Implement new dental public health arrangements	LHBs have direct responsibilities to assess local oral health needs and better information from epidemiological surveys to plan services to improve oral health in the area	Similar costs to option 1. Administrative burden similar to option 1

5. Impact on Small Firms

The measures have no impact on small businesses.

6. Competition assessment

These regulations will have no impact on competition.

7. Consultation

The National Assembly has new powers pursuant to the amendments made to the 1977 Act by the 2003 Act to make regulations providing for prescribed functions of LHBs in relation to dental public health.

The proposal is not new policy and there has therefore been no public consultation.

8. Enforcement, Monitoring and Review

It is planned to issue Directions under section 17 of the 1977 Act in relation to survey protocols to ensure comparability between successive surveys. The epidemiological surveys of children, coordinated by the British Association for the Study of Community Dentistry, will provide a national overview of the oral health of the population.

NATIONAL ASSEMBLY FOR WALES

S T A T U T O R Y I N S T R U M E N T S

2006 No. (W.)**NATIONAL HEALTH SERVICE, WALES****The General Dental Services and Personal Dental Services Transitional Provisions (Wales) Order 2006****EXPLANATORY NOTE***(This note is not part of the Order)*

This Order makes transitory and transitional provisions relating to—

- (a) the new arrangements on 1 April 2006 for the provision of general dental services under section 28L of the National Health Service Act 1977 (“the 1977 Act”) in respect of general dental services contracts entered into under section 28K of that Act (as inserted by section 172(1) of the Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”); and
- (b) the abolition on 31 March 2006 of pilot schemes for personal dental services by section 178 of the 2003 Act and their replacement from 1 April 2006 with permanent arrangements for personal dental services under section 28C of the 1977 Act (personal medical or dental services).

Part 2 of the Order relates to general dental services contracts. Chapter 1 of Part 2 sets out the circumstances in which those currently providing general dental services and personal dental services will be entitled to enter into a general dental services contract (articles 3 to 6). Article 7 provides a right of appeal to the National Assembly for Wales where a Local Health Board refuses to enter into a general dental services contract because it is not satisfied that the criteria relating to suspended dental practitioners are met. Article 8 makes provision in relation to the duration of entitlement to a general dental services contract in the case of a suspended dental practitioner who has appealed under article 7 and of dental practitioners who are performing relevant service (certain service in the armed forces). Article 9 provides a right of appeal where a contract is not entered into because of a failure to act by a Local Health Board. Chapter 2 of Part 2 makes provision in relation to general dental services contracts entered into under Chapter 1.

Part 3 of the Order relates to personal dental services agreements. Chapter 1 of Part 3 sets out the circumstances in which those currently providing general dental services and personal dental services will be entitled to enter into a personal dental services agreement (articles 14 to 17). Article 18 provides a right of appeal to the National Assembly for Wales where a Local Health Board refuses to enter into a personal dental services agreement for the provision of orthodontic care and treatment because it is not satisfied that the criteria relating to suspended dental practitioners are met. Article 19 makes provision in relation to the duration of entitlement to a personal dental services contract in the case of a suspended dental practitioner who has appealed under article 18 and of dental practitioners who are performing relevant service. Article 20 provides a right of appeal where an agreement is not entered into because of a failure to act by a Local Health Board. Chapter 2 of Part 3 makes provision in relation to personal dental services agreements entered into under Chapter 1.

Part 4 includes transitory provisions relating to current arrangements for general dental services under section 35 of the 1977 Act and pilot schemes, in particular with regard to treatment plans.

2006 No. (W.)

NATIONAL HEALTH SERVICE, WALES

The General Dental Services and Personal Dental Services Transitional Provisions (Wales) Order 2006

Made - - - - - *28 February 2006*

Coming into force - - - - - *3 March 2006*

The National Assembly for Wales makes the following Order in exercise of the powers conferred by sections 173, 195, 200 and 201 of the Health and Social Care (Community Health and Standards) Act 2003⁽¹⁾.

PART 1
GENERAL

Title, commencement and application

1.—(1) The title of this Order is the General Dental Services and Personal Dental Services Transitional Provisions (Wales) Order 2006 which comes into force on 3 March 2006.

(2) This Order applies in relation to Wales.

Interpretation

2.—(1) In this Order—

“the 1977 Act” means the National Health Service Act 1977⁽²⁾;

“the 1990 Act” means the National Health Service Act 1990⁽³⁾;

“the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003;

“the 1992 Regulations” means the National Health Service (General Dental Services) Regulations 1992⁽⁴⁾;

“capitation arrangement” means an arrangement made under paragraph 5 of Schedule 1 to the 1992 Regulations;

“care and treatment” means—

(a) all proper and necessary care which a dentist usually undertakes for a patient and which the patient is willing to undergo, including advice, planning of treatment and preventive care; and

(b) treatment;

⁽¹⁾ 2003 c.43.
⁽²⁾ 1977 c.49.
⁽³⁾ 1990 c.19.
⁽⁴⁾ S.I.1992/661.

“course of treatment” has the meaning given to it in the GDS Contracts Regulations;

“dental list” means the list of dental practitioners undertaking to provide general dental services for persons in its area that is or was kept by a Local Health Board under section 36(1)(a) of the 1977 Act (regulations as to section 35)(1);

“dental performers list” means a list of dental practitioners prepared in accordance with the Performers List Regulations;

“Dentists Act” means the Dentists Act 1984(2);

“Dentists Register” means the register kept by the General Dental Council under section 14 of the Dentists Act (the dentists register and the registrar);

“GDS Contracts Regulations” means the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006(3);

“general dental services contract” means a contract under section 28K of the 1977 Act (general dental services contracts)(4);

“mandatory services” has the meaning given to it in the GDS Contracts Regulations;

“NHS Charges Regulations” means the National Health Service (Dental Charges) (Wales) Regulations 2006(5);

“orthodontic course of treatment” has the meaning given to it in the GDS Contracts Regulations;

“PDS Agreements Regulations” means the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006(6);

“PDS Directions” means the Directions to Health Authorities concerning the implementation of pilot schemes (personal dental services)(7);

“Performers Lists Regulations” means the National Health Service (Performers Lists) (Wales) Regulations 2004(8);

“personal dental services agreement” means an agreement for primary dental services under section 28C of the 1977 Act (personal medical or dental services)(9);

“pilot dentist” means, in relation to a particular pilot scheme agreement, a dentist who performs dental services by giving care and treatment in connection with that pilot scheme;

“pilot scheme agreement” means an agreement made under Part 1 of the National Health Service (Primary Care) Act 1997(10);

“pilot scheme provider” means the person or persons, other than a Local Health Board, who provide personal dental services under a pilot scheme agreement and who is a party or are parties to that agreement;

“relevant service” means—

- (a) whole-time service in the armed forces of the Crown in a national emergency either as a volunteer or otherwise;
- (b) compulsory whole-time service in those forces, including service resulting from any reserve liability; or
- (c) any equivalent service by a person liable for compulsory whole-time service in those forces;

(1) Section 36(1)(a) was substituted by the National Health Service Reform and Health Care Professions Act 2002 (“the 2002 Act”), Schedule 2, paragraph 10(1) and (2).

(2) 1984 c.24; as amended by S.Is 2001/3926 and 2005/2011.

(3) S.I. 2006/[] (W.).

(4) Section 28K was inserted into the 1977 Act by section 172(1) of the 2003 Act.

(5) S.I. 2006/[] (W.).

(6) S.I. 2006/[] (W.).

(7) The Directions were made in August 1998.

(8) S.I. 2004/1020 (W.117) as amended by S.I. 2005/258 (W.24).

(9) Section 28C was inserted into the 1977 Act by section 21(1) of the National Health Service (Primary Care) Act 1997 (c.46) (“the 1997 Act”).

(10) 1997 c.46.

“SDR” means the Statement of Dental Remuneration determined and published by the National Assembly for Wales under regulation 19 of the 1992 Regulations, as that statement has or had effect on 31 March 2006;

“section 35 arrangements” means arrangements made under section 35 of the 1977 Act (arrangements for general dental services); and

“treatment” in respect of a period before 1 April 2006, will have the same meaning as in regulation 2 of the 1992 Regulations.

(2) In this Order, the use of the term “it” in relation to the contractor will be deemed to include a reference to a contractor that is an individual dental practitioner or two or more individuals practising in partnership and related expressions will be construed accordingly.

PART 2 GENERAL DENTAL SERVICES

CHAPTER 1

Entitlement to General Dental Services Contracts

Entitlement to a general dental services contract

3.—(1) For the purposes of section 173(2) of the 2003 Act, the circumstances in which a Local Health Board must enter into a general dental services contract with a person who, on 31 March 2006, is providing services under section 35 of the 1977 Act are prescribed in articles 4 and 5.

(2) Nothing in this Order will require a Local Health Board to enter into a general dental services contract with any person (whether as an individual or as a member of a partnership) on more than one occasion.

Individual dental practitioner

4.—(1) Subject to paragraphs (2) and (3), a Local Health Board must, if a person so wishes, enter into a general dental services contract with him or her as an individual dental practitioner if—

- (a) on 31 March 2006 or, if earlier, on the date on which the contract is to be signed, he or she is included in the dental list of that Local Health Board;
- (b) on the date on which the contract is to be signed, he or she is practising as an individual dental practitioner and—
 - (i) no other dental practitioner, or
 - (ii) no other person providing services under section 35 arrangements, practises in partnership with him or her; and
- (c) in the case of a contract that is to be signed after 31 March 2006, he or she is, at the date on which the contract is to be signed, included in a dental performers list.

(2) A person will not be entitled to enter into a general dental services contract if he or she is an individual dental practitioner who is included in the dental list and in accordance with regulation 4(2)(b)(i) of the 1992 Regulations, it is indicated in the dental list that the dental practitioner provides only orthodontic treatment.

(3) A person will be treated as practising for the purposes of paragraph (1)(b) if he or she would have been so practising on the date in question except for the fact that on that date he or she is—

- (a) suspended from the—
 - (i) Dentists Register under section 32 of the Dentists Act (interim suspension)(1) or by a direction or order of the Health Committee under that Act (health cases),

(1) 1984 c.24; as amended by S.Is 2001/3926 and 2005/2011.

- (ii) dental list under section 49I (suspension for the protection of the public or in the public interest) or 49J (suspension pending appeal) of the 1977 Act⁽¹⁾, or
- (iii) dental performers list under regulation 13 of the Performers Lists Regulations (suspension for the protection of public or in the public interest);
- (b) on maternity, paternity or adoption leave and is, on that date, in receipt of payments in respect of such leave by virtue of Determination VI of the SDR;
- (c) on long term sickness leave and is, on that date, in receipt of payments pursuant to Determination VII of the SDR; or
- (d) performing relevant service.

(4) Where a person is suspended under or as a consequence of any of the provisions referred to in paragraph (3)(a), a Local Health Board will only be required under paragraph (1) to enter into a general dental services contract with him or her during the period of that suspension if it is satisfied that—

- (a) having regard to the grounds for suspension he or she is able to provide (but not perform) services under the contract and the Local Health Board is not at risk of material financial loss;
- (b) the entering into the contract would not—
 - (i) put at risk the safety of the contractor’s patients, or
 - (ii) be prejudicial to the efficiency of the provision of primary dental services in the area of the Local Health Board; and
- (c) the practitioner has in place adequate arrangements for the provision of services under the contract during the period of his or her suspension.

(5) Where a Local Health Board refuses to enter into a general dental services contract as a consequence of paragraph (4), it will notify the prospective contractor in writing of its decision, reasons for that decision and of the individual’s right of appeal under article 7.

(6) Where the contracting parties are unable to agree on a particular term of the general dental services contract and the dispute is referred to the National Assembly for Wales for determination in accordance with section 4 of the 1990 Act (NHS contracts) or regulation 8(1) of the GDS Contracts Regulations (pre-contract disputes), the determination may if it is made after the contract has been entered into—

- (a) vary the terms of the contract; or
- (b) bring the contract to an end.

(7) Where a determination is made in accordance with paragraph (6), section 4(8)(a) and (b) of the 1990 Act will apply in respect of the determination where the terms of the general dental services contract is varied or brought to an end.

Partnerships

5.—(1) Subject to paragraph (2), a Local Health Board must, if a person so wishes, enter into a general dental services contract with him or her as one of two or more individuals practising in partnership if—

- (a) on 31 March 2006 or, if earlier, on the date on which the contract is to be signed, he or she is included in the dental list of that Local Health Board and is practising;
- (b) on 31 March 2006 or, if earlier, on the date on which the contract is to be signed, he or she is in partnership with one or more persons who are—
 - (i) included in the dental list of the Local Health Board, or
 - (ii) providing general dental services under section 35 arrangements (and are not dental practitioners); and
- (c) he or she wishes to enter into a contract as an individual practising in partnership with the persons referred to in paragraph (b).

⁽¹⁾ Sections 49I and 48J are inserted into the 1977 Act by the Health and Social Care Act 2001 (c.15) (“the 2001 Act”), section 25.

(2) A dental practitioner does not fall within paragraph (1)(a) if he or she is included in the dental list on the date in question, and in accordance with regulation 4(2)(b)(i) of the 1992 Regulations, it is indicated in the dental list that the dental practitioner only provides orthodontic treatment.

(3) A person will be treated as practising for the purposes of paragraph (1)(a) if he or she would have been so practising on the date in question except for the fact that on that date he or she is—

- (a) suspended from the—
 - (i) Dentists Register by order under section 32 of the Dentists Act or by a direction or order of the Health Committee under that Act,
 - (ii) dental list under section 49I or 49J of the 1977 Act, or
 - (iii) dental performers list under regulation 13 of the Performers Lists Regulations;
- (b) on maternity, paternity or adoption leave and is, on that date, in receipt of payments in respect of such leave pursuant to Determination VI of the SDR;
- (c) on long term sickness leave and is, on that date, in receipt of payments pursuant to Determination VII of the SDR; or
- (d) performing relevant service.

(4) Where the person referred to in paragraph (1)(a) is suspended under or as a consequence of any of the provisions referred to in paragraph (3)(a), a Local Health Board will only be required under paragraph (1) to enter into a general dental services contract with that person and the persons practising in partnership with him or her, if it is satisfied that—

- (a) having regard to the grounds for suspension the individual so suspended is able to provide (but not perform) services under the contract and the Local Health Board is not at risk of material financial loss;
- (b) the entering into the contract would not—
 - (i) put at risk the safety of the contractor's patients, or
 - (ii) be prejudicial to the efficiency of the provision of primary dental services in the area of the Local Health Board; and
- (c) the partnership has in place adequate arrangements for the provision of services under the contract during the period of the individual's suspension.

(5) Where a Local Health Board refuses to enter into a general dental services contract as a consequence of paragraph (4), it will notify the individual who is suspended in writing of its decision, reasons for that decision and of the individual's right of appeal under article 7.

(6) Where the contracting parties are unable to agree on a particular term of the general dental services contract, article 4(6) and (7) will apply.

Pilot scheme providers

6.—(1) Subject to section 28M(1) of the 1977 Act (but not subject to regulation 4 and 5 of the GDS Contracts Regulations), a Local Health Board must, if a pilot scheme provider so wishes, enter into a general dental services contract instead of a personal dental services agreement where the pilot scheme provider—

- (a) is entitled to enter into a personal dental services agreement with the Local Health Board under article 14;
- (b) is on 31 March 2006, or if earlier, on the date on which the contract is to be signed, providing services that are equivalent to mandatory services under the pilot scheme agreement; and
- (c) wishes to enter into a general dental services contract instead of a personal dental services agreement.

(2) Where a pilot scheme provider enters into a general dental services contract under paragraph (1), it will have no entitlement to enter into a personal dental services agreement with the Local Health Board under article 14.

(1) Section 28M is inserted into the 1977 Act by section 172 of the 2003 Act.

(3) Where the contracting parties are unable to agree on a particular term of the contract, article 4(6) and (7) will apply.

Appeal against refusal to enter into a contract as a consequence of a suspension

7.—(1) A person who has been notified by a Local Health Board under article 4(5) or 5(5) of its refusal to enter into a general dental services contract may appeal to the National Assembly for Wales by giving notice in writing to the National Assembly for Wales within a period of six weeks beginning on the day that the Local Health Board notified him or her of the refusal.

(2) A notice of appeal under paragraph (1) will include—

- (a) the names and addresses of the parties to the dispute;
- (b) a copy of the notification received from the Local Health Board under article 4(5) or 5(5); and
- (c) a brief statement of the grounds for appeal.

(3) The National Assembly for Wales may determine the appeal itself or, if it considers it appropriate, appoint a person or persons to consider and determine it.

(4) Before reaching a decision as to who should determine the dispute, the National Assembly for Wales will, within the period of seven days beginning with the date on which the notice of appeal was sent to it, send a written request to the parties to make in writing, within a specified period, any representations which they may wish to make about the matter.

(5) The National Assembly for Wales will give, with the notice under paragraph (4), to the Local Health Board which is a party to the appeal, a copy of the notice of appeal.

(6) The National Assembly for Wales will—

- (a) give a copy of any representations received from a party to the other party; and
- (b) in each case request (in writing) a party to whom a copy of the representations is given to make, within a specified period, any written observations on those representations.

(7) Following receipt of any representations from the parties or, if earlier, at the end of the period for making such representations specified in the request sent under paragraph (4) or (6), the National Assembly for Wales will, if it decides to appoint a person or persons to consider and determine the dispute—

- (a) inform the parties in writing of the name of the person or persons whom it has appointed; and
- (b) pass to the person or persons so appointed any documents received from the parties pursuant to paragraph (2), (4) or (6).

(8) For the purpose of assisting it, him or her in its, his or her consideration of the matter, the adjudicator may—

- (a) invite representatives of the parties to appear before it, him or her to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which it, he or she wishes them to give special consideration; or
- (b) consult other persons whose expertise it, he or she considers will assist it, him or her in its, his or her consideration of the matter.

(9) Where the adjudicator consults another person under paragraph (8)(b), it, he or she will notify the parties accordingly in writing and, where it, he or she considers that the interests of any party might be substantially affected by the results of the consultation, it, he or she will give to the parties such opportunity as it, he or she considers reasonable in the circumstances to make observations on those results.

(10) In considering the matter, the adjudicator will consider—

- (a) any written representations made in response to a request under paragraph (4), but only if they are made within the specified period;
- (b) any written observations made in response to a request under paragraph (6), but only if they are made within the specified period;
- (c) any oral representations made in response to an invitation under paragraph (8)(a);
- (d) the results of any consultation under paragraph (8)(b); and

(e) any observations made in accordance with an opportunity given under paragraph (9).

(11) In this article, “specified period” means such period as the National Assembly for Wales will specify in the request, being not less than two, nor more than four, weeks beginning with the date on which the notice referred to is given, but the National Assembly for Wales may, if it considers that there is good reason for doing so, extend any such period (even after it has expired) and, where it does so, a reference in this article to the specified period is to the period as so extended.

(12) The adjudicator may, when determining the appeal require the Local Health Board to enter into a general dental services contract with the prospective contractor on terms to be agreed between the parties or, where necessary, determined under the pre-contract dispute resolution procedure in section 4(4) of the 1990 Act (NHS contracts) or under regulation 8 of the GDS Contracts Regulations (pre-contract disputes) (whichever is applicable) but may not require the prospective contractor to proceed with the contract.

(13) The adjudicator will record it, his or her determination in writing and will give notice of the determination (including the record of the reasons) to the parties.

(14) The determination of the adjudicator will be binding upon the parties.

(15) Subject to the other provisions of this article, the adjudicator will have wide discretion in determining the procedure of the appeal to ensure the just, expeditious, economical and final determination of the dispute.

(16) In this article, “adjudicator” means the National Assembly for Wales or a person or persons appointed by it under this article.

Duration of entitlement to a general dental services contract

8.—(1) In a case where—

(a) the prospective contractor has appealed in accordance with article 7; and

(b) the determination requires the Local Health Board to enter into a general dental services contract,

the entitlement of the prospective contractor to enter into such a contract continues for the period of six weeks beginning with the date on which the parties were notified of the determination.

(2) Where a person who is entitled to enter into a general dental services contract under article 4(1) or 5(1) has been unable to do so before 1 April 2006 because he or she is performing relevant service, his or her entitlement will continue until the end of the period of six weeks beginning with the date on which he or she ceases to perform relevant service.

Appeal against failure of a Local Health Board to enter into a general dental services contract

9.—(1) This article applies where a person has—

(a) offered to enter into a general dental services contract under article 4, 5 or 6; and

(b) as a result of a failure to act by the Local Health Board—

(i) been unable to sign such a contract before 1 April 2006, or

(ii) in a case where article 8 applies, been unable to sign such a contract within the period of entitlement provided for in accordance with that article.

(2) Where this article applies, the prospective contractor must, if he or she wishes to enter into a general dental service contract, apply in writing to the National Assembly for Wales—

(a) before 15 April 2006; or

(b) in a case where article 8 applies, no later than the end of the period of 14 days beginning on the date his or her entitlement to enter into such a contract ceases.

(3) An application under paragraph (2) will specify—

(a) the names and addresses of the parties to the dispute;

(b) the grounds on which the applicant claims to be entitled to enter into a general dental services contract; and

(c) the grounds for alleging default by the Local Health Board.

(4) Article 7(3) to 7(16) will apply to an application made under paragraph (1), subject to the modification that the references in article 7(4) and (5) to a notice of appeal will be read as references to an application under paragraph (2) of this article.

CHAPTER 2

Contracts: Required Terms

Number of units of dental activity

10.—(1) The number of units of dental activity to be provided by the contractor under a general dental services contract entered into under Chapter 1 will be determined in accordance with—

- (a) paragraphs (2) to (8) in the case of entitlement to a general dental services contract under article 4 or 5; or
- (b) paragraphs (5) to (7) in the case of entitlement to a general dental services contract under article 6.

(2) The Local Health Board will, by—

- (a) analysing the data it holds in respect of the care and treatment provided under section 35 arrangements during the year 1 October 2004 to 30 September 2005 by the person or persons with whom the contract is to be entered into;
- (b) categorising that care and treatment in accordance with Schedules 1 to 4 of the NHS Charges Regulations, and the principles set out in regulation 4(2) to (5) of those Regulations; and
- (c) reference to the conversion criteria to units of dental activity specified in Part 1 of Schedule 2 to the GDS Contracts Regulations,

calculate how many units of dental activity is the equivalent to the care and treatment provided by that person or persons during the year 1 October 2004 to 30 September 2005.

(3) For the purposes of analysing the data in cases where a patient was accepted for care and treatment under a capitation arrangement, the Local Health Board will make an assumption that two clinical examinations have taken place during the year 1 October 2004 to 30 September 2005.

(4) The Local Health Board will reduce the number of units of dental activity calculated in accordance with paragraphs (2) and (3) by 10 per cent in order to determine how many units of dental activity the contractor will provide in each financial year.

(5) Where—

- (a) data does not exist for the period specified in paragraph (2)(a); or
- (b) data does exist, but it is appropriate to adjust the data,

the contractor and the Local Health Board will agree the number of units of dental activity to be provided.

(6) Where the contractor and the Local Health Board cannot agree the number of units of dental activity as provided for in paragraph (5), the general dental services contract will state this to be the case, and will specify a number of units of dental activity which is determined by the Local Health Board.

(7) In determining the number of units of dental activity to be specified under paragraph (6), the Local Health Board will have regard to any data it holds regarding the amount of care and treatment provided under section 35 arrangements or, as the case may be, the pilot scheme agreement, by the person or persons with whom the general dental services contract is to be entered into in the period since 1 October 2004.

(8) Nothing in paragraphs (2) to (4) will prevent the contracting parties agreeing that the contractor will provide a number of units of dental activity that is higher or lower than the number calculated in accordance with those paragraphs.

Number of units of orthodontic activity

11.—(1) The number of units of orthodontic activity to be provided by the contractor under a general dental services contract entered into under Chapter 1 will be determined in accordance with—

- (a) paragraphs (2) to (6) in the case of entitlement to a general dental services contract under article 4 or 5; or

- (b) paragraphs (3) to (5) in the case of entitlement to a general dental services contract under article 6.
- (2) The Local Health Board will, by—
- (a) analysing the data it holds in respect of the orthodontic care and treatment provided under section 35 arrangements during the year 1 October 2004 to 30 September 2005 by the person or persons with whom the general dental services contract is to be entered into; and
 - (b) reference to the conversion criteria to units of orthodontic activity specified in Part 2 of Schedule 2 to the GDS Contracts Regulations,

calculate how many units of orthodontic activity is the equivalent to the orthodontic care and treatment provided by that person or persons during the year 1 October 2004 to 30 September 2005.

- (3) Where—
- (a) data does not exist for the period specified in paragraph (2)(a); or
 - (b) data does exist, but it is appropriate to adjust the data,

the contractor and the Local Health Board will agree the number of units of orthodontic activity to be provided.

(4) Where the contractor and Local Health Board cannot agree the number of units of orthodontic activity as provided for in paragraph (3), the general dental services contract will state this to be the case, and will specify a number of units of orthodontic activity which is determined by the Local Health Board.

(5) In determining the number of units of orthodontic activity to be specified under paragraph (4), the Local Health Board will have regard to any data it holds regarding the amount of orthodontic care and treatment provided under section 35 arrangements or, as the case may be, the pilot scheme agreement, by the person or persons with whom the general dental services contract is to be entered into in the period since 1 October 2004.

(6) Nothing in paragraph (2) will prevent the contracting parties agreeing that the contractor will provide a number of units of orthodontic activity that is higher or lower than the number calculated in accordance with paragraph (2).

Premises, facilities and equipment

12.—(1) Where a Local Health Board is not satisfied that the prospective contractor has practice premises to be used for the provision of services under the contract that are—

- (a) suitable premises for the delivery of those services; or
- (b) sufficient to meet the reasonable needs of the contractor’s patients,

paragraph 12 of Schedule 3 to the GDS Contracts Regulations will apply as substituted by paragraph (2).

- (2) For that paragraph 12 substitute the following—

“Premises, facilities and equipment

12.—(1) The Local Health Board and prospective contractor will ensure that the contract includes a plan that—

- (a) is drawn up and agreed by the Local Health Board and the prospective contractor; and
- (b) specifies—
 - (i) the steps to be taken by the contractor to bring the practice premises up to the appropriate standard,
 - (ii) any financial support that may be available from the Local Health Board, and
 - (iii) the timescale on which the steps referred to in sub-paragraph (i) will be taken.

(2) Subject to the plan referred to in sub-paragraph (1), the contractor will ensure that the practice premises used for the provision of services under the contract are—

- (a) suitable for the delivery of those services; and
- (b) sufficient to meet the reasonable needs of the contractor’s patients.

(3) The obligation in sub-paragraph (2) includes providing proper and sufficient waiting-room accommodation for patients.

(4) The contractor will provide, in relation to all of the services to be provided under the contract, such other facilities and equipment as are necessary to enable it to perform those services properly.

(5) In this paragraph, “practice premises” includes a mobile surgery.”.

Treatment commenced before 1 April 2006

13.—(1) Where care and treatment is commenced under section 35 arrangements or, as the case may be, a pilot scheme agreement, before 1 April 2006 and is not completed on 31 March 2006, the contractor will use its best endeavours to complete that treatment under its general dental services contract in accordance with paragraph 5(3) of Schedule 1 or, as the case may be, paragraph 6(2) of Schedule 3 to the GDS Contracts Regulations.

(2) Subject to paragraph (3), where treatment specified in a treatment plan provided in accordance with—

(a) paragraph 4 of Schedule 1 to the 1992 Regulations (as amended by article 27); or

(b) the PDS Directions as modified by article 28,

is not completed by 1 April 2006 that plan will, after that date, be treated as though it were a treatment plan provided in accordance with paragraph 7 of Schedule 3 to the GDS Contracts Regulations and with regard to it, the requirements in sub-paragraph (1) of that paragraph were satisfied.

(3) Where treatment specified in a treatment plan in respect of orthodontic care and treatment provided in accordance with—

(a) paragraph 4 of Schedule 1 to the 1992 Regulations (as amended by article 27); or

(b) the PDS Directions (as modified by article 28),

is not completed by 1 April 2006 that plan will, after that date, be treated as though it were a treatment plan provided in accordance with paragraph 6 of Schedule 1 to the GDS Contracts Regulations and with regard to it, the requirements in sub-paragraph (1) of that paragraph were satisfied.

(4) Where care and treatment is commenced prior to 1 April 2006 and continues or is completed on or after that date, all of that care and treatment provided will be treated as though it were a course of treatment or, as the case may be, an orthodontic course of treatment provided in accordance with the GDS Contracts Regulations.

PART 3

PERSONAL DENTAL SERVICES

CHAPTER 1

Entitlement to Personal Dental Services Agreements

Pilot scheme providers

14.—(1) A Local Health Board must, if a pilot scheme provider so wishes, enter into a personal dental services agreement with a provider if, on 31 March 2006 or, if earlier, on the date the agreement is to be signed, the pilot scheme provider is providing services to that Local Health Board under a pilot scheme agreement.

(2) Where a pilot scheme provider enters into a personal dental services agreement under paragraph (1), it will have no entitlement to enter into a general dental services contract under article 6.

(3) Where the contracting parties are unable to agree on a particular term of the agreement and the dispute is referred to the National Assembly for Wales for determination in accordance with section 4 of the 1990 Act (NHS contracts) or regulation 8(1) of the PDS Agreements Regulations (pre-contract disputes), the determination may if it is made after the agreement has been entered into—

(a) vary the terms of the agreement; or

(b) bring the agreement to an end.

(4) Where a determination is made in accordance with paragraph (3), section 4(8)(a) and (b) of the 1990 Act will apply in respect of the determination where the agreement is varied or brought to an end.

Persons who would be entitled to enter into a general dental services contract

15.—(1) A Local Health Board must, if a person so wishes, enter into a personal dental services agreement instead of a general dental services contract, where—

- (a) the person would be entitled to enter into a general dental services contract with it under article 4 or 5; and
- (b) that person wishes to enter into a personal dental services agreement instead of a general dental services contract.

(2) Where the person would be entitled to enter into a general dental services contract under article 5, the personal dental services agreement must be with that person and the persons referred to in article 5(1)(b).

(3) Where a person enters into a personal dental services agreement under paragraph (1), he or she will have no entitlement to enter into a general dental services contract under article 4 or 5.

(4) Where the contracting parties are unable to agree on a particular term of the agreement, article 14(3) and (4) will apply.

Individual dental practitioners who provide only orthodontic care and treatment

16.—(1) Subject to paragraph (2), a Local Health Board must, if a person so wishes, enter into a personal dental services agreement with him or her as the only other party to an agreement if—

- (a) on 31 March 2006 or, if earlier, on the date on which the agreement is to be signed, he or she is included in the dental list of that Local Health Board and, in accordance with regulation 4(2)(b)(i) of the 1992 Regulations, it is indicated in the dental list that the dental practitioner provides only orthodontic care and treatment;
- (b) on the date on which the agreement is to be signed, he or she is practising as an individual dental practitioner and—
 - (i) no other dental practitioner, or
 - (ii) no other person providing services under section 35 arrangements, practises in partnership with him or her; and
- (c) in the case of an agreement that is to be signed after 31 March 2006, he or she is, at the date on which the agreement is to be signed, included in a dental performers list.

(2) A person will be treated as practising for the purposes of paragraph (1)(b) if he or she would have been so practising on the date in question except for the fact that on that date he or she is—

- (a) suspended from the—
 - (i) Dentists Register under section 32 of the Dentists Act (interim suspension) or by a direction or order of the Health Committee under that Act (health cases),
 - (ii) dental list under section 49I (suspension for protection of the public or in the public interest) or 49J (suspension pending appeal) of the 1977 Act, or
 - (iii) dental performers list under regulation 13 of the Performers List Regulations (suspension for the protection of public or in the public interest);
- (b) on maternity, paternity or adoption leave and is, on that date, in receipt of payments in respect of such leave by virtue of Determination VI of the SDR;
- (c) on long term sickness leave and is, on that date, in receipt of payments pursuant to Determination VII of the SDR; or
- (d) performing relevant service.

(3) Where a person is suspended under or as a consequence of any of the provisions referred to in paragraph (2)(a), a Local Health Board will only be required under paragraph (1) to enter into a personal dental services agreement with him or her during the period of that suspension if it is satisfied that—

- (a) having regard to the grounds for suspension he or she is able to provide (but not perform) services under the agreement and the Local Health Board is not at risk of material financial loss;
- (b) the entering into the agreement would not—
 - (i) put at risk the safety of the contractor's patients, or
 - (ii) be prejudicial to the efficiency of the provision of primary dental services in the area of the Local Health Board; and
- (c) the practitioner has in place adequate arrangements for the provision of services under the agreement during the period of his or her suspension.

(4) Where a Local Health Board refuses to enter into a personal dental services agreement as a consequence of paragraph (3), it will notify the prospective contractor in writing of its decision, reasons for that decision and of the individual's right of appeal under article 18.

(5) Where the contracting parties are unable to agree on a particular term of the personal dental services agreement, article 14(3) and (4) will apply.

Partnerships that provide only orthodontic care and treatment

17.—(1) A Local Health Board must, if a person so wishes, enter into a personal dental services agreement with him or her (and the persons referred to in paragraph (b)) if—

- (a) on 31 March 2006 or, if earlier, on the date on which the agreement is to be signed, he or she is—
 - (i) included in the dental list of that Local Health Board and, in accordance with regulation 4(2)(b)(i) of the 1992 Regulations, it is indicated in that list that the dental practitioner provides only orthodontic care and treatment, and
 - (ii) practising;
- (b) on 31 March 2006 or, if earlier, on the date on which the agreement is to be signed, he or she is practising in partnership with one or more persons who are—
 - (i) included in the dental list of the Local Health Board and, in accordance with regulation 4(2)(b)(i) of the 1992 Regulations, it is indicated in the list that they provide only orthodontic care and treatment, or
 - (ii) providing general dental services under section 35 arrangements (and are not dental practitioners); and
- (c) he or she wishes the Local Health Board to enter into an agreement with him or her and the persons referred to in paragraph (b).

(2) A person will be treated as practising for the purposes of paragraph (1)(a) if he or she would have been so practising on the date in question except for the fact that on the date he or she is—

- (a) suspended from the—
 - (i) Dentists Register under section 32 of the Dentist Act or by a direction or order of the Health Committee under that Act,
 - (ii) dental list under section 49I or 49J of the 1977 Act, or
 - (iii) dental performers list under regulation 13 of the Performers Lists Regulations;
- (b) on maternity, paternity or adoption leave and is, on that date, in receipt of payments in respect of such leave by virtue of Determination VI of the SDR;
- (c) on long term sickness leave and is, on that date, in receipt of payments pursuant to Determination VII of the SDR; or
- (d) performing relevant service.

(3) Where the person referred to in paragraph (1)(a) is suspended under or as a consequence of any of the provisions referred to in paragraph (2)(a), a Local Health Board will only be required under paragraph (1) to

enter into a personal dental services agreement with that person and the persons referred to in paragraph (1)(b), if it is satisfied that—

- (a) having regard to the grounds for suspension the individual so suspended is able to provide (but not perform) services under the agreement and the Local Health Board is not at risk of material financial loss;
- (b) the entering into the agreement would not—
 - (i) put at risk the safety of the contractor's patients, or
 - (ii) be prejudicial to the efficiency of the provision of primary dental services in the area of the Local Health Board; and
- (c) the partnership has in place adequate arrangements for the provision of services under the agreement during the period of the individual's suspension.

(4) Where the Local Health Board refuses to enter into a personal dental services agreement as a consequence of paragraph (3), it will notify the individual who is suspended in writing of its decision, reasons for that decision and of the individual's right of appeal under article 18.

(5) Where the contracting parties are unable to agree on a particular term of the personal dental services agreement, article 14(3) and (4) will apply.

Appeal against refusal to enter into an agreement as a consequence of a suspension

18.—(1) A person who has been notified by a Local Health Board under article 16(4) or 17(4), of its refusal to enter into a personal dental services agreement may appeal to the National Assembly for Wales by giving notice in writing to the National Assembly for Wales within a period of six weeks beginning on the day that the Local Health Board notified him or her of the refusal.

(2) The procedure referred to in article 7(2) to (16) will apply as if the reference—

- (a) in paragraph (2)(b), to article 4(5) or 5(5) were to article 16(4) or 17(4); and
- (b) in paragraph (12)—
 - (i) to a general dental services contract were to a personal dental services agreement,
 - (ii) to GDS Contracts Regulations were to PDS Agreements Regulations, and
 - (iii) to the contract were to the agreement.

Duration of entitlement to a personal dental services agreement

19.—(1) In a case where—

- (a) the prospective contractor has appealed in accordance with article 18; and
- (b) the determination requires the Local Health Board to enter into a personal dental services agreement,

the entitlement of the prospective contractor to enter into such an agreement continues for the period of six weeks beginning on the date on which the parties were notified of the determination.

(2) Where a person who is entitled to enter into an agreement under article 14(1), 15(1), 16(1) or 17(1) has been unable to do so before 1 April 2006 because he or she is performing relevant service, he or she will be entitled to exercise his or her entitlement to enter into a personal dental services agreement until the end of the period of six weeks beginning on the date on which he or she ceases to perform relevant service.

(3) Nothing in this Order will require a Local Health Board to enter into a personal dental services agreement with any person (whether that person contracts alone or with others) on more than one occasion.

Appeal against failure of a Local Health Board to enter into a personal dental services agreement

20.—(1) This article applies where a person or persons has—

- (a) offered to enter into a personal dental services agreement under article 14, 15, 16 or 17; and
- (b) as a result of a failure to act by the Local Health Board—

- (i) been unable to sign such an agreement before 1 April 2006, or
 - (ii) in a case where article 19 applies, been unable to sign such an agreement within the period of entitlement provided for in accordance with that article.
- (2) Where this article applies, the prospective contractor must, if he or she wishes to enter into a personal dental service agreement, apply in writing to the National Assembly for Wales—
- (a) before 15 April 2006, or
 - (b) in a case where article 19 applies, no later than the end of the period of 14 days beginning on the date his or her entitlement to enter into such an agreement ceases.
- (3) An application under paragraph (2) will specify—
- (a) the names and addresses of the parties to the dispute;
 - (b) the grounds on which the applicant claims to be entitled to enter into a personal dental services agreement; and
 - (c) the grounds for alleging default by the Local Health Board.
- (4) Article 7(3) to (16) will apply to an application made under paragraph (2) subject to the modifications in paragraph (5).
- (5) In article 7—
- (a) in paragraphs (4) and (5), the references to notice of appeal will be read as references to an application under this article; and
 - (b) in paragraph (12)—
 - (i) to a general dental services contract were to a personal dental services agreement,
 - (ii) to GDS Contracts Regulations were to PDS Agreements Regulations, and
 - (iii) to the contract were to the agreement.

CHAPTER 2

Agreements: Required Terms

Duration of agreements

21.—(1) In the case of entitlement to a personal dental services agreement under article 14, the duration of the agreement to be entered into will be a period of not less than the unexpired period as at the 31 March 2006 of the pilot scheme agreement.

(2) In the case of entitlement to a personal dental services agreement under article 16 or 17, the duration of the agreement to be made on 1 April 2006 or, where a person is performing relevant service, the date the agreement is to be entered into will be for a period of not less than five years.

Number of units of dental activity

22.—(1) The number of units of dental activity to be provided by the contractor under a personal dental services agreement entered into under Chapter 1 will be determined in accordance with—

- (a) paragraphs (5) to (7) in the case of entitlement to a personal dental services agreement under article 14; or
- (b) paragraphs (2) to (8) in the case of entitlement to a personal dental services agreement under article 15.

(2) The Local Health Board will, by—

- (a) analysing the data it holds in respect of the care and treatment provided under section 35 arrangements during the year 1 October 2004 to 30 September 2005 by the person or persons with whom the agreement is to be entered into;
- (b) categorising that care and treatment in accordance with Schedules 1 to 4 of the NHS Charges Regulations, and the principles set out in regulation 4(2) to (5) of those Regulations; and

- (c) reference to the conversion criteria to units of dental activity specified in Part 1 of Schedule 2 to the GDS Contracts Regulations,

calculate how many units of dental activity is the equivalent to the care and treatment provided by that person or persons during the year 1 October 2004 to 30 September 2005.

(3) For the purposes of analysing the data in cases where a patient was accepted for care and treatment under a capitation arrangement, the Local Health Board will make an assumption that two clinical examinations have taken place during the year 1 October 2004 to 30 September 2005.

(4) The Local Health Board will reduce the number of units of dental activity calculated in accordance with paragraphs (2) and (3) by 10 per cent in order to determine how many units of dental activity the contractor will provide in each financial year.

(5) Where—

- (a) data does not exist for the period specified in paragraph (2)(a); or
- (b) data does exist, but it is appropriate to adjust the data,

the contractor and the Local Health Board will agree the number of units of dental activity to be provided.

(6) Where the contractor and the Local Health Board cannot agree the number of units of dental activity as provided for in paragraph (5), the personal dental services agreement will state this to be the case, and will specify a number of units of dental activity which is determined by the Local Health Board.

(7) In determining the number of units of dental activity to be specified under paragraph (6), the Local Health Board will have regard to any data it holds regarding the amount of care and treatment provided under section 35 arrangements or, as the case may be, the pilot scheme agreement, by the person or persons with whom the personal dental services agreement is to be entered into in the period since 1 October 2004.

(8) Nothing in paragraphs (2) to (4) will prevent the contracting parties agreeing that the contractor will provide a number of units of dental activity that is higher or lower than the number calculated in accordance with those paragraphs.

Number of units of orthodontic activity

23.—(1) The number of units of orthodontic activity to be provided by the contractor under a personal dental services agreement entered into under Chapter 1 will be determined in accordance with—

- (a) paragraphs (3) to (5) in the case of entitlement to a personal dental services agreement under article 14;
- (b) paragraphs (2) to (5) and (7) in the case of entitlement to a personal dental services agreement under article 15; or
- (c) paragraph (6) in the case of entitlement to a personal dental services agreement under article 16 or 17.

(2) The Local Health Board will, by—

- (a) analysing the data it holds in respect of the orthodontic care and treatment provided under section 35 arrangements during the year 1 October 2004 to 30 September 2005 by the person or persons with whom the personal dental services agreement is to be entered into; and
- (b) reference to the conversion criteria to units of orthodontic activity specified in Part 2 of Schedule 2 to the GDS Contracts Regulations,

calculate how many units of orthodontic activity is the equivalent to the orthodontic care and treatment provided by that person or persons during the year 1 October 2004 to 30 September 2005.

(3) Where—

- (a) data does not exist for the period specified in paragraph (2)(a); or
- (b) data does exist, but it is appropriate to adjust the data,

the contractor and the Local Health Board will agree the number of units of orthodontic activity to be provided.

(4) Where the contractor and Local Health Board cannot agree the number of units of orthodontic activity as provided for in paragraph (3), the personal dental services agreement will state this to be the case, and will specify a number of units of orthodontic activity which is determined by the Local Health Board.

(5) In determining the number of units of orthodontic activity to be specified under paragraph (4), the Local Health Board will have regard to any data it holds regarding the amount of orthodontic care and treatment provided under section 35 arrangements or, as the case may be, the pilot scheme agreement, by the person or persons with whom the personal dental services agreement is to be entered into in the period since 1 October 2004.

(6) In the case to which paragraph (1)(c) applies, the number of units of orthodontic activity to be provided under the personal dental services agreement will be one fifty-fifth of the negotiated annual agreement value of that agreement, as determined in accordance with directions under section 28E(3A) of the 1977 Act (personal dental services: regulations)(1) (so the contractor and the Local Health Board must agree the number of units of orthodontic activity to be provided and the negotiated annual agreement value simultaneously).

(7) Nothing in paragraph (2) will prevent the contracting parties from agreeing that the contractor will provide a number of units of orthodontic activity that is higher or lower than the number calculated in accordance with that paragraph.

Premises, facilities and equipment

24.—(1) Where a Local Health Board is not satisfied that the prospective contractor has practice premises to be used for the provision of services under the personal dental services agreement that are—

- (a) suitable premises for the delivery of those services; or
- (b) sufficient to meet the reasonable needs of the contractor’s patients,

paragraph 13 of Schedule 3 to the PDS Agreements Regulations will apply as substituted by paragraph (2).

(2) For that paragraph 13 substitute the following—

“Premises, facilities and equipment

13.—(1) The Local Health Board and prospective contractor will ensure that the agreement includes a plan that—

- (a) is drawn up and agreed by the Local Health Board and the prospective contractor; and
- (b) specifies—
 - (i) the steps to be taken by the contractor to bring the practice premises up to the appropriate standard,
 - (ii) any financial support that may be available from the Local Health Board, and
 - (iii) the timescale on which the steps referred to in sub-paragraph (i) will be taken.

(2) Subject to the plan referred to in sub-paragraph (1), the contractor will ensure that the practice premises used for the provision of services under the agreement are—

- (a) suitable for the delivery of those services; and
- (b) sufficient to meet the reasonable needs of the contractor’s patients.

(3) The obligation in sub-paragraph (2) includes providing proper and sufficient waiting-room accommodation for patients.

(4) The contractor will provide, in relation to all of the services to be provided under the agreement, such other facilities and equipment as are necessary to enable it to perform those services properly.

(5) In this paragraph, “practice premises” includes a mobile surgery.”.

(1) Section 28E was inserted into the 1977 Act by the 1997 Act, section 22(1) and subsection (3A) was inserted into section 28E by the 2003 Act, section 177(8).

Treatment commenced prior to 1 April 2006

25.—(1) Where care and treatment is commenced under section 35 arrangements or, as the case may be, a pilot scheme agreement, before 1 April 2006 and is not completed on 31 March 2006 the contractor will use its best endeavours to complete that treatment under its personal dental services agreement in accordance with paragraph 5(3) of Schedule 1 or, as the case may be, paragraph 7(2) of Schedule 3 to the PDS Agreements Regulations.

(2) Subject to paragraph (3), where treatment specified in a treatment plan provided in accordance with—

- (a) paragraph 4 of Schedule 1 to the 1992 Regulations (as amended by article 27); or
- (b) the PDS Directions (as modified by article 28),

is not completed by 1 April 2006 that plan will, after that date, be treated as though it were a treatment plan provided in accordance with paragraph 8 of Schedule 3 to the PDS Agreements Regulations and with regard to that plan, the requirements in sub-paragraph (1) of that paragraph were satisfied.

(3) Where treatment specified in a treatment plan in respect of orthodontic care and treatment provided in accordance with—

- (a) paragraph 4 of Schedule 1 to the 1992 Regulations (as amended by article 27); or
- (b) the PDS Directions as modified by article 28,

is not completed by 1 April 2006 that plan will, after that date, be treated as though it were a treatment plan provided in accordance with paragraph 6 of Schedule 1 to the PDS Agreements Regulations and with regard to that plan, the requirements in sub-paragraph (1) of that paragraph were satisfied.

(4) Where care and treatment is commenced prior to 1 April 2006 and continues or is completed on or after that date, all of that care and treatment provided will be treated as though it were a course of treatment or, as the case may be, an orthodontic course of care and treatment provided in accordance with the PDS Agreements Regulations.

PART 4

MISCELLANEOUS TRANSITORY PROVISIONS

Prior approval of treatment

26. Notwithstanding the requirement for prior approval of treatment required as a consequence of the following provisions of the 1992 Regulations—

- (a) paragraph 26 of Schedule 1 (terms of service for dentists);
- (b) Schedule 4 (prior approval treatment); and
- (c) regulation 3 (terms of service) (in so far as it relates to those Schedules),

paragraphs 26 (prior approval of care and treatment) and 27 (completion of estimate) of Schedule 1 to those Regulations will not apply in respect of care and treatment to be provided on or after 4 March 2006 which, save for this article, would require or include prior approval treatment.

Amendment to the 1992 Regulations in respect of treatment plans

27.—(1) Schedule 1 to 1992 Regulations (terms of service) will apply as amended by this article in respect of care and treatment provided on or after 3 March 2006.

(2) In paragraph 4 of Schedule 1 to the 1992 Regulations—

- (a) for sub-paragraph (2)(c), there is substituted—

“(c) in the opinion of the dentist, additional care and treatment not included in the treatment plan is necessary to secure and maintain the oral health of the patient.”; and

- (b) sub-paragraph (3) is omitted.

(3) In paragraph 5 of Schedule 1 to the 1992 Regulations for sub-paragraph (2)(c) there is substituted—

“(c) in the opinion of the dentist, additional care and treatment not included in the treatment plan is necessary to secure and maintain the oral health of the patient.”.

Treatment plans in respect of pilot scheme agreements

28.—(1) For the purposes of regulation 13(1) of the NHS Charges Regulations, paragraphs (2) to (4) will apply in respect of care and treatment provided under a pilot scheme agreement on or after 3 March 2006 as though it were a direction made in the PDS Directions and incorporated as a term of a pilot scheme agreement.

(2) At the first examination and assessment of a patient, a pilot dentist will provide the patient with a plan for treatment on a form supplied for that purpose by the Local Health Board.

(3) The form referred to in paragraph (2) will specify—

- (a) the name of the patient;
- (b) the name of the pilot dentist and the telephone number at which the dentist may be contacted in normal working hours;
- (c) the name of the pilot scheme provider;
- (d) details of the care and treatment, if any, which in the opinion of the pilot dentist, at the date of the relevant examination, is necessary to secure and maintain the oral health of the patient;
- (e) particulars of the places where the patient will receive treatment;
- (f) the approximate period following which a further examination is recommended by the pilot dentist;
- (g) his or her estimate of the NHS Charge, if any, in respect of that care and treatment; and
- (h) any proposals the pilot dentist may have for private care and treatment as an alternative to the care and treatment proposed under the pilot scheme agreement, including particulars of the cost to the patient.

(4) A pilot dentist will, where at any time during the continuing care and treatment of the patient—

- (a) the treatment provided, in the opinion of the dentist, needs to be varied;
- (b) the patient requests a new plan for treatment;
- (c) the patient and the dentist have agreed that all or part of the treatment which is necessary to secure and maintain oral health is to be provided privately; or
- (d) in the opinion of the dentist, additional care and treatment not included in the treatment plan, is necessary to secure and maintain the oral health of the patient,

provide the patient, in the case of sub-paragraph (a) with a revised plan, or with a new plan for treatment which complies with the requirements of paragraph (3).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽¹⁾

Date

The Presiding Officer of the National Assembly

⁽¹⁾ 1998 c.38.

DRAFT

To: Business Committee

From: Dr Brian Gibbons AM

Explanatory Memorandum:**General Dental Services and Personal Dental Services Transitional Provisions (Wales) Order 2006****Summary:**

From 1 April 2006 Local Health Boards (LHBs) will have a duty to secure or provide primary dental services in its area to the extent that it considers necessary to meet all reasonable requirements. LHBs will do this by contracting with dental practices, corporate bodies or private providers which agree to provide primary dental services or by providing the service itself through salaried NHS staff. These changes will be accompanied by devolution of the centrally held general dental services budget which will go to LHBs to commission dental services

This Order sets out the arrangements to be put in place to move contractors and potential contractors from the General Dental Services Regulations 1992 ("the 1992 Regulations") and PDS piloting under the National Health Service Act (Primary Care) Act 1997 to provision of primary dental services under GDS contracts and PDS agreements.

1. This memorandum is submitted to the Assembly's Business Committee in relation to the General Dental Services and Personal Dental Services Transitional Provisions (Wales) Order 2006 in accordance with Standing Order 24.6.
2. A copy of the final version of the draft Order is submitted with this draft Memorandum.

Enabling power:

3. The power enabling this Order to be made is contained in sections 173, 195, 200 and 201 of the Health and Social Care (Community Health and Standards) Act 2003. The 2003 Act provides for new arrangements to be made for Local Health Boards and general dental practitioners and amends the National Health Service Act 1977. Responsibility for issues relating to the contents of the Regulations has been delegated to my portfolio as Minister for Health and Social Services.

Effect:

4. The Health and Social Care (Community Health and Standards) Act 2003 ("the 2003 Act") provides the legislative framework for the establishment of primary dental services. It is intended that the new contracting arrangements will underpin modernised, locally sensitive primary dental services properly integrated with the rest

of the NHS.

5. The National Health Service (General Dental Services Contracts) (Wales) Regulations 2006 (“the GDS Regulations”) replace the 1992 Regulations which provide for general dental services under sections 35 of the 1977 Act.

6. The National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006 (“the PDS Regulations”) replace the PDS piloting regime under the National Health Service (Primary Care) Act 1997 (“the 1997 Act”). The policy intention is to “mainstream” the successful piloting of local contracts as a permanent part of NHS contracting.

7. Contracts made under these Regulations are for the provision of primary dental services.

8. From 1 April 2006 it is intended to establish new contractual arrangements for high street dentists which move away from the general dental services item of service remuneration to an annual payment no longer directly related to the dentists activity. This will enable dentists to spend more time with their patients and adopt a more preventive approach to oral health care.

9. Breaking the direct link between remuneration and items of treatment provided requires a new system of dental charging, no longer based on the dentists’ remuneration. The National Health Service (Dental Charges) (Wales) Regulations 2006 (“the Dental Charges Regulations”) introduce a new system of charging for dental services based mainly on a 3 banded system, where treatment provided or appliances supplied will attract one of the 3 set charges depending on the complexity of the treatment provided.

10. The General Dental Services and Personal Dental Services Transitional Provisions (Wales) Order 2006 (“the Transitional Order 2006”) sets out the arrangements to be put in place to move contractors and potential contractors from the 1992 Regulations and PDS piloting under the 1997 Act to provision of primary dental services under GDS contracts and PDS agreements.

11. Part 2 of the Order makes provisions about the conditions and entitlement of dentists providing general dental services under section 35 of the 1977 Act and contractors providing services under a PDS pilot agreement to a GDS contract from 1 April 2006.

12. Part 3 makes similar provisions about conditions and entitlements for dentists providing general dental services under section 35 of the 1977 Act and contractors providing services under a PDS pilot agreement to a PDS agreement from 1 April 2006.

13. Part 4 includes miscellaneous provisions consequent upon the ending of general dental services under section 35 of the 1977 Act (s172(2) of the 2003 Act) and abolition of PDS piloting (s178 of the 2003 Act)

Target implementation:

14. It is intended that the proposed Order should be made on 28 February 2006 and come into force on 3 March 2006. The need for the Order to be made in advance of their coming into force date is to enable LHBs and dentists to enter into their new contracts - and they need to be able to access final form legislation to be able to do this. The equivalent Order in England is due to come into force on the same day. The new dental contract is based closely on that being introduced in England although officials have been working with British Dental Association Wales and the dental profession to amend the contract where possible to reflect needs and address difficulties here. However, our timetable is linked to the one in England.

15. Any delay in implementation in Wales would put Wales seriously out of step and have an immediate and negative effect on retention and recruitment of dentists providing NHS care. There would also be substantial additional cost in maintaining different payment and charging arrangements for dentists in Wales with the Dental Practice Board.

Financial implications

16. The overall intention is to secure the existing level of NHS dental services within existing resources. Growth of NHS dental services, and increasing access, is a key aim of the reforms. However, I'm unable to confirm specific budget allocations for 2006-07 in advance of formal Assembly agreement to the final budget proposals.

17. Current expenditure on GDS is non-cash limited. Net expenditure in 2004-05 was some £80.041 million. It is proposed that current expenditure on dentistry will be protected so that when spend on GDS moves from a national budget into local allocations, there will be a floor, so that LHBs will be required to spend at least at the current level on dentistry. They can spend more than this if they wish but cannot spend less.

18. Practices are guaranteed the same level of gross income as that in the test period (October 2004-September 2005), increased by the agreed Doctors and Dentists Review Body (DDRB) uplift, for comparable levels of commitment work.

19. To support LHBs, local dental committees and dentists to help prepare for the changes and to implement reform, funding of £990,000 was incurred in 2004-05. This was made up as follows:

- £440,000. £20,000 to each LHB in terms of supporting the dental change agenda allowing them to support leadership in LHBs; improve organisational development to successfully implement the contract; support Local Dental Committees; developing dental leadership skills; improve communication and review and update dental competencies in line with the development of the dental reforms; and
- £550,000. The equivalent of £1,000 per dental practice (pro rata on NHS commitment). This was in response to the DDRB recommendation that financial assistance to practices was required to assist them to prepare for the new contractual arrangements.

20. The above allocation to LHBs to help them get to grips with the changes is recurrent in 2005-06 and 2006-07. This funding has come from the Health and Social Services Main Expenditure Group (Payments to Contractors Budget Expenditure Line).

Regulatory appraisal:

21. Having regard to National Assembly guidance, I have concluded that a regulatory appraisal would not be appropriate in this instance as it has no impact on business, charities or voluntary bodies. Regulatory appraisals have been completed in respect of the main enabling Regulations, that is The National Health Service (General Dental Services Contracts)(Wales) Regulations 2006, The National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006 and The National Health Service (Dental Charges)(Wales) Regulations 2006.

Consultation with stakeholders:

22. The Order forms part of the wider reform of NHS dental services which has been discussed with the dental profession on an England and Wales and Wales only basis. Consultation on the main enabling Regulations, listed in paragraph 21, along with accompanying guidance, has been aimed at dentists, including representative bodies such as British Dental Association Wales (BDA Wales), and LHB Directors of Primary Care who have an interest and responsibility for negotiating the new contract values and for managing the new system of local dental commissioning. In addition they have been published on the Welsh Assembly Government website and details included in updates sent to all dentists in Wales.

Consultation with Subject Committee:

23. The draft Order was notified to the Health and Social Services Committee at its meeting on 3 November 2005 (HSS(2)-11-05(p.7)) and was identified for scrutiny. This took place on 19 January 2006.

24. (To be completed after 19 January).

Recommended procedure:

25. Subject to the views of the Business Committee I recommend that the Order continue to proceed to Plenary under the standard procedure.

Compliance:

26. The proposed Order will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 Section 120);
- be compatible with the Assembly's scheme for sustainable development (Section 121);
- be compatible with Community law (Section 106);
- be compatible with the Assembly's human rights legislation (Section 107);

- be compatible with any international obligations binding the UK Government and the Assembly (Section 108).

27. The information in this memorandum has been cleared with the Directorate of Legal Services (DLS) and the Assembly Compliance Officer (ACO).

28. Drafting lawyer: Sarah Wakeling, ext. 3754.

29. Head of Division: John Sweeney, ext. 3570.

30. Drafting policy official: Andrew Powell-Chandler, ext. 1689.

Dr Brian Gibbons AM

Date: December 2005