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STATUTORY INSTRUMENTS

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**2013 No. 364**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013**

*Made* - - - - *18th February 2013*  
*Laid before Parliament* *27th February 2013*  
*Coming into force* - - *1st April 2013*

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 102, 104, 105, 108, 109, 176, 177, 272(7) and (8) of the National Health Service Act 2006(1).

**PART 1**

**General**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013 and come into force on 1st April 2013.

(2) In these Regulations—

“the GDS Contracts Regulations” means the National Health Service (General Dental Services Contracts) Regulations 2005(2); and

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(1) [2006 c.41](#). Section 102 is amended by sections 55(1) and 203 of, and paragraph 44 of Schedule 4 to, the Health and Social Care Act 2012 (“the 2012 Act”), section 104 is amended by section 55(1) of, and paragraph 46 of Schedule 4 to, the 2012 Act, section 108 is amended by section 55(1) and 204 of, and paragraphs 49 to, the 2012 Act, section 109 is amended by section 55(1) of, and paragraph 50 of Schedule 4 to, the 2012 Act, section 176 is amended by section 55(1) of, and paragraph 94 of Schedule 4 to, the 2012 Act, section 177 is amended by section 55(1) of, and paragraph 95 of Schedule 4 to, the 2012 Act. *See* section 275(1) for the definition of “prescribed” and “regulations”. By virtue of section 271(1), the powers conferred by these sections are exercisable by the Secretary of State only in relation to England.

(2) [S.I.2005/3361](#) as amended by [S.I.2006/563](#), [2007/544](#), [2008/528](#), [1514](#), and [1700](#), [2009/309](#) and [462](#), [2010/22](#) and [1881](#), [2011/1182](#) and [2012/502](#), [2273](#) and [2404](#).

“the PDS Agreements Regulations” means the National Health Service (Personal Dental Services Agreements) Regulations 2005(3).

## PART 2

Miscellaneous amendments of the GDS Contracts Regulations relating to the Health and Social Care Act 2012 and other miscellaneous amendments

2. The GDS Contracts Regulations are amended in accordance with this Part.

### Amendment of regulation 2

3.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph 1—

(a) after the definition of “the Act” insert—

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

“the 2012 Act” means the Health and Social Care Act 2012;”;

(b) after the definition of “bank holiday” insert ““the Board” means the National Health Service Commissioning Board;”;

(c) after the definition of “Capitation and Quality Scheme Agreement” insert ““Capitation and Quality Scheme 2 Agreement” means an agreement containing such terms and conditions relating to the provision of primary dental services as are required by, and which is made in accordance with, directions given by the Secretary of State under section 114A of the 2006 Act 2006;”;

(d) in the definition of “course of treatment”—

(i) in paragraph (a), before “an examination of a patient”, insert “subject to paragraph (c)”; and

(ii) after (b) insert—

“(c) but where the course of treatment is an interim care course of treatment provided under a Capitation and Quality Scheme 2 Agreement in the context of regulation 13A of the NHS Charges Regulations, it does not include the treatment mentioned in paragraph (a);”;

(e) for the definition of “dental performers list”, substitute—

““dental performers list”, means the list of dental practitioners maintained by the Board in accordance with regulations made under section 106 of the 2006 Act;”;

(f) in the definition of “normal surgery hours”, for “the Primary Care Trust” substitute “the Board”;

(g) omit the definition of “NPSA”;

(h) in the definition of “patient record”, for “a Primary Care Trust” substitute “the Board”;

(i) omit the definition of “Primary Care Trust”; and

(j) omit the definition of “relevant Strategic Health Authority”.

(3) In paragraph (2), in sub-paragraph (b), for “the Primary Care Trust” substitute “the Board”.

(3) S.I.2005/3373 as amended by S.I.2006/563, 2007/544, 2008/528, and 1514, 2009/309 and 462, 2010/22 and 1881, 2011/1182 and 2012/502, 2273 and 2404.

### **Substitution of regulation 3**

4. For regulation 3 (conditions: introductory), substitute—

#### **“Conditions: introductory**

3. Subject to the provisions of any scheme made by the Secretary of State under section 300 (transfer schemes) and any order made under section 303 (power to make consequential provision) of the 2012 Act, the Board may only enter into a contract if the conditions set out in—

- (a) regulation 4; and
- (b) in the case of a contract to be entered into with a dental corporation on or after the coming into force for all purposes of article 39 of the Dentists Act Order (substitution of sections 43 and 44), regulation 5,

are met.”.

### **Amendment of regulation 4**

5.—(1) Regulation 4 (general prescribed conditions relating to all contracts), is amended as follows.

(2) In paragraph (2), after “corporation” insert “or any member of a limited liability partnership”.

(3) In paragraph (3), in sub-paragraph (i)(ii), after “(powers of the Court of Session to deal with management of charities)” insert “or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session)”.

(4) For paragraph (4), substitute—

“(4) A person shall not fall within paragraph (3)(b) where the Board is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and it does not make that person unsuitable to be—

- (a) a contractor;
- (b) a director, chief executive or secretary of a corporation entering into a contract, in the case of a contract with a dental corporation; or
- (c) a member of a limited liability partnership entering into a contract, in the case of a contract with a limited liability partnership,

as the case may be.”.

(5) For paragraph (6), substitute—

“(6) A person shall not fall within paragraph (3)(e) where the Board is satisfied that the conviction does not make that person unsuitable to be—

- (a) a contractor;
- (b) a director, chief executive or secretary of a corporation entering into a contract, in the case of a contract with a dental corporation; or
- (c) a member of a limited liability partnership entering into a contract, in the case of a contract with a limited liability partnership,

as the case may be.”.

(6) After paragraph (6), insert—

“(7) For the purposes of paragraph (3)(c)(i), a health service body includes a Strategic Health Authority or a Primary Care Trust which was established before the coming into force of sections 33 and 34 of the 2012 Act.”.

**Amendment of regulation 5**

6. In regulation 5 (additional prescribed conditions relating to contracts with dental corporations), in paragraph (2), for “the Primary Care Trust” substitute “the Board”.

**Amendment of regulation 6**

7. In regulation 6 (reasons)—

- (a) in paragraph (1) for “a Primary Care Trust”, substitute “the Board”; and
- (b) for paragraph (2) substitute—

“(2) The Board shall notify in writing its view and its reasons for that view to—

- (a) a director, chief executive or secretary of a dental corporation; or
- (b) the members of a limited liability partnership;

who is, or are, notified under paragraph (1) where its reasons for the decision relates to that person or those persons.”.

**Amendment of regulation 7**

8. In regulation 7 (appeal), for “the Primary Care Trust” substitute “the Board”.

**Amendment of regulation 8**

9. In regulation 8 (pre-contract disputes), in paragraph (5)(b), for “the Primary Care Trust” substitute “the Board”.

**Amendment of regulation 9**

10. In regulation 9 (health service body status), in paragraphs (1), (4)(a), (5), and (7)(b), for “the Primary Care Trust” substitute “the Board”.

**Amendment of regulation 13**

11. In regulation 13 (duration), in paragraph (2) for “the Primary Care Trust” substitute “the Board”.

**Amendment of regulation 17**

12. In regulation 17 (units of dental activity), at the beginning of paragraphs (1) and (2), for “Subject to regulation 24A,” substitute “Subject to regulation 24B.”.

**Amendment of regulation 19**

13. In regulation 19 (under provision of units of dental activity or units of orthodontic activity), in paragraphs (1), (2)(b)(ii), (3) and (4), for “the Primary Care Trust” substitute “the Board”.

**Amendment of regulation 21**

14. In regulation 21 (finance)—

- (a) at the beginning of paragraphs (1) and (3), for “Subject to regulation 24A,” substitute “Subject to regulation 24B.”;
- (b) in paragraphs (1) and (2), in each place, for “the Primary Care Trust” substitute “the Board”; and

(c) in paragraph (3), for “a Primary Care Trust” substitute “the Board”.

#### **Amendment of regulation 24**

**15.** In regulation 24 (other contractual terms), for “Subject to regulation 24A” substitute “Subject to regulation 24B”.

#### **Amendment of regulation 24A**

**16.** Omit regulation 24A (variation of contractual terms in respect of election to enter into a Capitation and Quality Scheme Agreement).

#### **Insertion of regulation 24B**

**17.** Immediately after regulation 24 (other contractual terms) insert—

##### **“Variation of contractual terms in respect of election to enter into a Capitation and Quality Scheme 2 Agreement**

**24B.—(1)** This regulation applies where the contractor and the Board elect to enter into a Capitation and Quality Scheme 2 Agreement.

(2) Where this Regulation applies, the terms of the contract which have the same effect as the provisions specified in paragraph (3) must be varied in accordance with paragraphs (4) and (5) with effect from the start of the day on which the Capitation and Quality Scheme 2 Agreement commences and for the period ending at the end of the day which is the date of the termination of the Capitation and Quality Scheme 2 Agreement, which must be no later than 31st March 2015.

(3) The provisions specified in this paragraph are—

- (a) regulation 17 (units of dental activity);
- (b) regulation 21(finance); and
- (c) in Schedule 3—
  - (i) paragraph 32(2) (patient records), which is a contractor’s discretion to keep patient records in electronic form,
  - (ii) paragraph 58 (mid-year reviews), in so far as it relates to units of dental activity,
  - (iii) paragraph 59 (action the Board can take following a mid-year review), in so far as it relates to units of dental activity, and
  - (iv) paragraph 61(1)(a) and (3)(a) (variation of a contract: activity under the contract), which relate to units of dental activity.

(4) The contract must include terms that have the effect of temporarily releasing the contractor and the Board from all of the obligations, conditions, payments, rights and liabilities relating to those terms (and only those terms) which have the same effect as the provisions specified in paragraph (3), including any right to enforce those terms.

(5) The contract must also include terms to have the effect of providing that immediately after the date of the termination of the Capitation and Quality Scheme 2 Agreement the terms of the contract that subsisted between the parties immediately before—

- (i) in the case of a contractor who held a Capitation and Quality Scheme Agreement, the Capitation and Quality Scheme Agreement commenced,  
or

(ii) the Capitation and Quality Scheme 2 Agreement commenced, and from which the parties were temporarily released in accordance with paragraph (4) must apply from the day after the date of termination; and all obligations, conditions, payments, rights and liabilities relating to those terms are to be enforceable from that day.”.

### **Amendment of Schedule 1**

**18.**—(1) Schedule 1 (additional services) is amended as follows.

(2) In paragraph 2 (referral services), in sub-paragraph (1), for “the Primary Care Trust” substitute “the Board”.

(3) In paragraph 5 (orthodontic course of treatment), in sub-paragraph 5(a)(i) and (iii), for “the Primary Care Trust” substitute “the Board”.

(4) In paragraph 6 (orthodontic treatment plans), in sub-paragraph (1), for “the Primary Care Trust” substitute “the Board”.

(5) In paragraph 8 (completion of orthodontic courses of treatment), in sub-paragraphs (1), (2) and (3), at each place, for “the Primary Care Trust” substitute “the Board”.

### **Amendment of Schedule 3**

**19.**—(1) Schedule 3 (other contractual terms), is amended as follows.

(2) In paragraph 3 (violent patients)—

(a) in sub-paragraphs (1) and (4), for “the Primary Care Trust”, in each place, substitute “the Board”;

(b) in sub-paragraph (2), after paragraph (c) insert—

“(ca) in the case of a contract with a limited liability partnership, a member of that partnership;”;

(c) in sub-paragraph (5), for “The Primary Care Trust” substitute “The Board”.

(3) In paragraph 5 (irrevocable breakdown in relationship between contractor and patient), for “the Primary Care Trust” substitute “the Board”.

(4) In paragraph 6 (course of treatment), in sub-paragraphs (5)(a)(i) and (iii) and (6), for “the Primary Care Trust” substitute “the Board”.

(5) In paragraph 7 (treatment plans), in sub-paragraphs (1) and (7), in each place, for “the Primary Care Trust”, substitute “the Board”.

(6) In paragraph 8 (completion of courses of treatment), in sub-paragraphs (1) and (2), for “the Primary Care Trust” substitute “the Board”.

(7) In paragraph 9 (referral to another contractor, a hospital or other relevant service provider for advanced mandatory, domiciliary or sedation services), in sub-paragraph (2)(a), for “the Primary Care Trust” substitute “the Board”.

(8) In paragraph 19 (issue of prescription forms), in sub-paragraph (3), for “the Primary Care Trust” substitute “the Board”.

(9) For sub-paragraph 21 (dental practitioners), substitute—

#### **“Dental Practitioners**

**21.** A dental practitioner may perform dental services under the contract provided—

(a) that dental practitioner is included in the dental performers list held by the Board; and

(b) that dental practitioner’s inclusion in that list is not subject to a suspension.”.

(10) In paragraph 23 (performers: further requirements), in sub-paragraph (2)(b), for “in a dental performers list” substitute “in the dental performers list held by the Board”.

(11) In paragraph 24 (conditions for employment and engagement: dental practitioners performing dental services), for sub-paragraph (1) substitute—

“(1) A contractor must not employ or engage a dental practitioner to perform dental services under the contract unless the contractor has checked that the practitioner meets the requirements in paragraph 21.”.

(12) For paragraph 30 (appraisal and assessment), substitute—

**“Appraisal and assessment**

**30.** The contractor shall ensure that any dental practitioner performing services under the agreement—

- (a) participates in the appraisal system (if any) provided by the Board; and
- (b) co-operates with the Board in relation to patient safety.”.

(13) In paragraph 31 (sub-contracting of clinical matters), in sub-paragraph (2), in each place, for “the Primary Care Trust” substitute “the Board”.

(14) In paragraph 32 (patient records), in sub-paragraph (3)(d)—

- (a) for “the Primary Care Trust” substitute “the Board”; and
- (b) in paragraph (i) after “accordance” insert “with”.

(15) In paragraph 34 (patient information), in sub-paragraph (1)(b), for “the Primary Care Trust” substitute “the Board”.

(16) In paragraph 35 and its heading (provision of and access to information: Primary Care Trust)

- (a) in sub-paragraphs (1) and (2)(a), in each place, for “the Primary Care Trust”, substitute “the Board”; and
- (b) in sub-paragraph (2)(b) for “the Primary Care Trust’s” substitute “the Board’s”; and
- (c) in the heading for “the Primary Care Trust” substitute “the Board”.

(17) In paragraph 37 (inquiries about prescriptions and referrals), in sub-paragraphs (1), (2) and (3), in each place, for “the Primary Care Trust”, substitute “the Board”.

(18) In paragraph 38 (notification of a course of treatment, orthodontic course of treatment etc), in sub-paragraph (1), for “send to the Primary Care Trust, on a form supplied by that Trust” substitute “send to the Board, on a form supplied by it”.

(19) In paragraph 39 (annual report and review)—

- (a) in sub-paragraph (1)—
  - (i) for “the Primary Care Trust” substitute “the Board”, and
  - (ii) for “with that Trust” substitute “with the Board”; and
- (b) in sub-paragraphs (2), and (3), in each place, for “the Primary Care Trust, substitute “the Board”.

(20) In paragraph 40 and its heading (notification to the Primary Care Trust)—

- (a) in sub-paragraphs (1) to (3), in each place, for “the Primary Care Trust”, substitute “the Board”;
- (b) in sub-paragraph (1)(b) for “the Primary Care Trust’s”, substitute “the Board’s”; and
- (c) in the heading, for “the Primary Care Trust” substitute “the Board”.

(21) In paragraph 41 (notice provisions specific to a contract with a dental corporation), for “the Primary Care Trust” substitute “the Board”.

(22) In paragraph 42 (notice provisions specific to a contract with two or more individuals practising in partnership), in sub-paragraph (1), for “the Primary Care Trust” substitute “the Board”.

(23) After paragraph (42), insert—

**“Notice provisions specific to a contract with a limited liability partnership**

**42B.**—(1) Where a limited liability partnership is a party to a contract it shall give notice to the Board forthwith when—

- (a) it passes a resolution or a court of competent jurisdiction makes an order that the contractor be wound up;
- (b) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the contractor;
- (c) circumstances arise which would enable the court to make a winding up order in respect of the contractor;
- (d) the contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (definition of inability to pay debts); and
- (e) any membership changes are notified in accordance with section 9 of the Limited Liability Partnership Act 2000<sup>(4)</sup> (registration of membership changes) to the registrar (within the meaning of that Act) in relation to a person who becomes or ceases to be a member or designated member (within the meaning of that Act) and the notice must specify the date on which that person becomes or ceases to be a member or designated member (as the case may be).

(2) A notice under sub-paragraph (e) must confirm—

- (a) that any new member joining the partnership meets the conditions imposed by regulation 4 (general prescribed conditions relating to all contracts); and
- (b) following the membership changes, the partnership continues to satisfy the conditions in section 102(2A) of the 2006 Act.”.

(24) In paragraph 44 and in the heading (entry and inspection by the Primary Care Trust)—

- (a) in sub-paragraphs (1) and (3)(a), for “the Primary Care Trust” substitute “the Board”; and
- (b) in the heading, for “the Primary Care Trust” substitute “the Board”.

(25) For the paragraph 46A (entry and viewing by local involvement network representatives) inserted by the [Local Involvement Networks \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1514\)](#)<sup>(5)</sup> substitute—

**“Entry and viewing by Local Healthwatch organisations**

**46A.** The contractor must comply with the requirement to allow an authorised representative to enter and view premises and observe the carrying-on of activities on those premises in accordance with regulations made under section 225 (duties of services- providers to allow entry by Local Healthwatch organisations or contractors) of the Local Government and Public Involvement Health Act 2007<sup>(6)</sup>.”

(4) [2000 c.12](#).

(5) Another paragraph 46A is inserted into Schedule 3 to the GDS Contracts Regulations by [S.I. 2009/309](#), but has since been renumbered 46B by a correction slip.

(6) [2007 c.28](#). Section 225 is amended by section 186(6) to (11) of, and paragraphs 148 and 151 of Schedule 5 and paragraphs 103 and 106 of Schedule 14 to, the 2012 Act.



(26) Omit paragraphs 47 (complaints procedure), 48 (making of complaints), 49 (period for making complaints) and 50 (further requirements for complaints procedures).

(27) In paragraph 51 (co-operation with investigations)—

(a) in sub-paragraphs (1)(a)(i) and (3)(a) and (b), for “the Primary Care Trust” substitute “the Board”; and

(b) in sub-paragraph (2), in the definition of “NHS Body”—

(i) for “a Primary Care Trust” substitute “the Board”; and

(ii) omit “a Strategic Health Authority.”.

(28) In paragraph 52 (provision of information)—

(a) in each place, for “the Primary Care Trust” substitute “the Board”; and

(b) for “this Part” substitute “the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009”.

(29) In paragraph 53 (local resolution of contract disputes), for “the Primary Care Trust” substitute “the Board”.

(30) In paragraph 54 (dispute resolution: non-NHS contracts), in sub-paragraph (1)(a) and (b), for “the Primary Care Trust” substitute “the Board”.

(31) In paragraph 58 (mid-year reviews), in sub-paragraphs (3) to (7), in each place, for “the Primary Care Trust”, substitute “the Board”.

(32) In paragraph 59 and its heading (action the Primary Care Trust can take following a mid-year review)—

(a) in sub-paragraphs (1), (2), (4) and (5), in each place, for “the Primary Care Trust”, substitute “the Board”; and

(b) in the heading, for “the Primary Care Trust” substitute “the Board”.

(33) In paragraph 60 (variation of a contract: general), in each place, for “the Primary Care Trust”, substitute “the Board”.

(34) In paragraph 61 (variation of a contract: activity under the contract), in sub-paragraphs (1) and (2), for “the Primary Care Trust” substitute “the Board”.

(35) In paragraph 62 (variation provisions specific to a contract with an individual dental practitioner), in sub-paragraphs (1), (4), (5) and (6), in each place, for “the Primary Care Trust” substitute “the Board”.

(36) In paragraph 63 (variation provisions specific to a contract with two or more individuals practising in partnership)—

(a) in sub-paragraphs (2), (4)(b), (6) and (7), in each place, for “the Primary Care Trust”, substitute “the Board”; and

(b) in sub-paragraph (5)—

(i) for “the Primary Care Trust” substitute “the Board”, and

(ii) for “the Trust” substitute “the Board”.

(37) In paragraph 64 (termination by agreement), for “The Primary Care Trust” substitute “The Board”.

(38) In paragraph 65 (termination on the death of an individual dental practitioner), in sub-paragraphs (1) to (3), in each place, for “the Primary Care Trust” substitute “the Board”.

(39) In paragraph 66 (termination by the contractor), in sub-paragraph (1), for “the Primary Care Trust” substitute “the Board”.

(40) In paragraph 67 (late payment notices)—

- (a) in sub-paragraph (1)—
    - (i) for “the Primary Care Trust” substitute “the Board”; and
    - (ii) for “the Trust”, in each place, substitute “the Board”; and
  - (b) in sub-paragraphs (2) and (3), in each place, for “the Primary Care Trust” substitute “the Board”.
- (41) In paragraph 68 and its heading (termination by the Primary Care Trust: general), in each place, for “the Primary Care Trust”, substitute “the Board”.
- (42) In paragraph 69 and its heading (termination by the Primary Care Trust: no longer eligible to enter into and breach of conditions of the contract)—
- (a) in sub-paragraphs (1) to (5), in each place, for “the Primary Care Trust” substitute “the Board”;
  - (b) after sub-paragraph (5) insert—
    - “(5A) Where the contract was entered into pursuant to section 102(1)(d) of the 2006 Act, and the contractor ceases to—
    - (a) be a limited liability partnership; or
    - (b) satisfy the conditions in section 102(2A) of that Act;

the Board shall serve notice in writing on the contractor terminating the contract forthwith.”;

and

    - (c) in the heading, for “the Primary Care Trust” substitute “the Board”.
- (43) In paragraph 70 and the heading (termination by the Primary Care Trust for the provision of untrue etc. information), for “the Primary Care Trust”, in each place, substitute “the Board”.
- (44) In paragraph 71 and its heading (termination by the Primary Care Trust on grounds of suitability, etc)—
- (a) in sub-paragraphs (1), (2)(c) and (m) and (3) to (5), in each place, for “the Primary Care Trust”, substitute “the Board”;
  - (b) in sub-paragraphs (3) to (5), for “a Primary Care Trust” substitute “the Board”;
  - (c) in sub-paragraph (1)(b), omit “and”;
  - (d) in sub-paragraph (1)(c)(ii), for “the secretary of the corporation,” substitute “the secretary of the corporation; and”
  - (e) after sub-paragraph (1)(c), insert—
    - “(d) in the case of a contract with a limited liability partnership—
    - (i) the limited liability partnership; or
    - (ii) any member of the limited liability partnership,”
  - (f) in sub-paragraph (2)(k)(ii) after “(powers of the Court of Session to deal with management of charities)” insert “or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session)”;
  - (g) in sub-paragraph (2)(m) for “or with a dental corporation,” substitute “, with a dental corporation or a limited liability partnership”;
  - (h) in sub-paragraph (3)—
    - (i) in sub-paragraph (3)(b), omit “or”;
    - (ii) in sub-paragraph (3)(c), after “the corporation” insert “; or”;
    - (iii) after sub-paragraph (3)(c), insert—



- (b) in sub-paragraph (2), for “the Primary Care Trust’s” substitute “the Board’s”.
- (49) In paragraph 76 (contract sanctions and the NHS dispute resolution procedure), in sub-paragraphs (1) to (4), in each place, for “the Primary Care Trust” substitute “the Board”.
- (50) In paragraph 77 (termination and the NHS dispute resolution procedure), in sub-paragraphs (1) to (4) and (5), in each place, for “the Primary Care Trust”, substitute “the Board”.
- (51) In paragraph 79 (clinical governance arrangements), in sub-paragraph (1), for “the Primary Care Trust” substitute “the Board”.
- (52) After paragraph 79 (clinical governance arrangements) insert—

**“Duty as to education and training**

**79A.** The contractor must co-operate with the Secretary of State in the discharge of the Secretary of State’s duty under section 1F of the 2006 Act (duty as to education and training), or, co-operate with Health Education England where Health Education England is discharging that duty by virtue of a direction under section 7 of that Act.”

- (53) In paragraph 83 (gifts)—
- (a) after sub-paragraph (2)(b), insert—
- “(ba) where the contract is with a limited liability partnership, a member of that limited liability partnership;” and
- (b) in sub-paragraph (6), for “the Primary Care Trust” substitute “the Board”.
- (54) In paragraph 84 (compliance with legislation and guidance), for sub-paragraph (b) substitute—
- “(b) have regard to all relevant guidance issued by the Board and the Secretary of State”.

**Amendment of Schedule 4**

- 20.** Schedule 4 (patient information leaflet) is amended as follows—
- (a) in paragraphs 15 and 21, for “the Primary Care Trust” substitute “the Board”;
- (b) after paragraph 2 insert—
- “2A.** In the case of a contract with a limited liability partnership—
- (a) whether or not it is a limited liability partnership;
- (b) the names of the members of the limited liability partnership; and
- (c) the registered premises address of the limited liability partnership.”; and
- (c) for paragraph 21, substitute—
- “The full name, postal, email and website address, and telephone number of the Board.”

**Transitional provision**

- 21.** The transitional provisions set out in Schedule 1 have effect.

**PART 3**

Miscellaneous amendments of the PDS Agreements Regulations relating to the Health and Social Care Act 2012 and other amendments

- 22.** The PDS Agreements Regulations are amended in accordance with this Part.

## **Amendment of regulation 2**

23.—(1) Regulation 2 (interpretation), is amended as follows.

(2) In paragraph (1)—

(a) after the definition of “the Act”, insert—

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

“the 2012 Act” means the Health and Social Care Act 2012;”;

(b) after the definition of “bank holiday”, insert ““the Board” means the National Health Service Commissioning Board;”;

(c) after the definition of “Capitation and Quality Scheme Agreement”, insert—

““Capitation and Quality Scheme 2 Agreement” means an agreement containing such terms and conditions relating to the provision of primary dental services as are required by, and which is made in accordance with, directions given by the Secretary of State under section 114A of the 2006 Act;”;

(d) for the definition of “contractor”, substitute—

““contractor” means a person other than the Board, who is a party to the agreement”;

(e) in the definition of “course of treatment”—

(i) in paragraph (a), before “an examination of a patient”, insert “subject to paragraph (c)”; and

(ii) after (b) insert—

“(c) but where the course of treatment is an interim care course of treatment provided under a Capitation and Quality Scheme 2 Agreement in the context of regulation 13A of the NHS Charges Regulations, it does not include the treatment mentioned in paragraph (a);”;

(f) for the definition of “dental performers list”, substitute—

““dental performers list”, means the list of dental practitioners maintained by the Board in accordance with regulations made under section 106 of the 2006 Act;”;

(g) in the definition of “normal surgery hours”, for “the Relevant Body” substitute “the Board”;

(h) omit the definition of “NPSA”;

(i) in the definition of “patient record”, for “a Relevant Body” substitute “the Board”;

(j) in the definition of “primary care list”, in paragraph (a), after “medical” insert “services, primary ophthalmic services”;

(k) omit the definition of “Relevant Body”; and

(l) omit the definition of “relevant Strategic Health Authority”.

(3) In paragraph (2)(b), for “the Primary Care Trust” substitute “the Board”.

## **Substitution of regulation 3**

24. For regulation 3 (conditions: introductory), substitute—

### **“Conditions: introductory**

3. Subject to the provision of any scheme made by the Secretary of State under section 300 (transfer schemes) or any order made under section 303 (power to make

consequential provision) of the 2012 Act, the Board may only enter into an agreement if the conditions set out in—

- (a) regulation 4; and
- (b) in the case of an agreement to be entered into with a dental corporation on or after the coming into force for all purposes of article 39 of the Dentists Act Order (substitution of sections 43 and 44), regulation 5,

are met.”.

#### **Amendment of regulation 4**

**25.**—(1) Regulation 4 (general conditions relating to all agreements) is amended as follows.

(2) In paragraph (1), for “a Relevant Body”, substitute “the Board”.

(3) For paragraph (2) substitute—

“(2) The Board may make an agreement with a person only if—

- (a) in the case of a dental corporation, that dental corporation, or any director, chief executive or secretary of that corporation; or
- (b) in the case of a company limited by shares, that company limited by shares, or any director, chief executive or secretary of that company; or
- (c) in the case of a limited liability partnership, that limited liability partnership, or any member of that partnership,

does not fall within paragraph (3).”.

(4) In paragraph (3)—

- (a) in sub-paragraph (a), for “(in the case of a qualifying body)”, substitute “(in the case of a dental corporation, a company limited by shares, or a limited liability partnership)”; and
- (b) in sub-paragraph (i)(ii) after “(powers of the Court of Session to deal with management of charities)” insert “or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session).”.

(5) For paragraph (4) substitute—

“(4) A person shall not fall within paragraph (3)(b) where the Board is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and it does not make that person unsuitable to be—

- (a) a party to an agreement;
- (b) a director, chief executive or secretary of a dental corporation, in the case of an agreement with a dental corporation;
- (c) a director, chief executive or secretary of a company limited by shares, in the case of an agreement with a company limited by shares; or
- (d) a member of a limited liability partnership, in the case of an agreement with a limited liability partnership.”.

(6) For paragraph (6) substitute—

“(6) A person shall not fall within paragraph (3)(e) where the Board is satisfied that the conviction does not make the person unsuitable to be—

- (a) a party to an agreement;
- (b) a director, chief executive or secretary of a dental corporation, in the case of an agreement with a dental corporation;

- (c) a director, chief executive or secretary of a company limited by shares, in the case of an agreement with a company limited by shares; or
  - (d) a member of a limited liability partnership, in the case of an agreement with a limited liability partnership.”.
- (7) After paragraph (6) insert—
- “(7) For the purposes of paragraph (3)(c)(i), a health service body includes a Strategic Health Authority or a Primary Care Trust which was established before the coming into force of sections 33 and 34 of the 2012 Act”.

#### **Amendment of regulation 5**

**26.** In regulation 5 and its heading (additional conditions relating to agreements with qualifying bodies)—

- (a) in paragraphs (1) and (2), for “a qualifying body”, substitute “a dental corporation or a company limited by shares”;
- (b) in paragraph (2), for “the Relevant Body” substitute “the Board”; and
- (c) in the heading, for “with qualifying bodies”, substitute “with dental corporations or companies limited by shares”.

#### **Amendment of regulation 6**

**27.** In regulation 6 (reasons)—

- (a) in paragraph (1), for “a Relevant Body” substitute “the Board”; and
- (b) for paragraph (2) substitute—

“The Board shall also notify in writing of its view and its reasons for that view to—

  - (a) a director, chief executive or secretary of a dental corporation;
  - (b) a director, chief executive or secretary of a company limited by shares; or
  - (c) the members of a limited liability partnership,

who is, or are, notified under paragraph (1) where its reasons for the decision relates to that person or persons.”.

#### **Amendment of regulation 7**

**28.** In regulation 7 (appeal) for “the Relevant Body” substitute “the Board”.

#### **Amendment of regulation 8**

**29.** In regulation 8 (pre-agreement disputes), in paragraph (4)(b), for “the Relevant Body” substitute “the Board”.

#### **Amendment of regulation 9**

**30.** In regulation 9 (health service body status)—

- (a) for paragraph (1) substitute—

“(1) A contractor shall be regarded as a health service body for the purposes of section 4 of the 1990 Act from the date it makes an agreement unless—

  - (a) in the case of an agreement with a single individual, that individual;
  - (b) in the case of an agreement with a dental corporation, that corporation;

- (c) in the case of a company limited by shares, that company; or
  - (d) in the case of a limited liability partnership, that partnership,
- object in a written notice served on the Board at any time prior to the agreement being made.”; and
- (b) in paragraphs (4)(a), (5), and (7)(b), for “the Relevant Body” substitute “the Board”.

### **Amendment of regulation 13**

**31.** In regulation 13 (units of dental activity), at the beginning of paragraphs (1) and (2), for “Subject to regulation 20A,” substitute “Subject to regulation 20B,”.

### **Amendment of regulation 15**

**32.** In regulation 15 (under-provision of units of dental activity or units of orthodontic activity), in paragraphs (1), (2)(b)(ii), (3), and (4), for “the Relevant Body” substitute “the Board”.

### **Amendment of regulation 17**

- 33.** In regulation 17 (finance)—
- (a) at the beginning of paragraphs (1) and (3), for “Subject to regulation 20A,” substitute “Subject to regulation 20B,”;
  - (b) in paragraphs (1)(a) and (b), and (2)(a) and (c), for “the Relevant Body” substitute “the Board”; and
  - (c) in paragraph (3) for “a Relevant Body”, substitute “the Board”.

### **Amendment of regulation 20**

**34.** In regulation 20 (other contractual terms), at the beginning of paragraph (1), for “Subject to regulation 20A,” substitute “Subject to regulation 20B,”.

### **Amendment of regulation 20A**

**35.** Omit regulation 20A (variation of contractual terms in respect of election to enter into a Capitation and Quality Scheme Agreement).

### **Insertion of regulation 20B**

**36.** Immediately after regulation 20 (other contractual terms) insert—

#### **“Variation of contractual terms in respect of election to enter into a Capitation and Quality Scheme 2 Agreement**

**20B.—(1)** This regulation applies where the contractor and the Board elect to enter into a Capitation and Quality Scheme 2 Agreement.

(2) Where this Regulation applies, the terms of the agreement which have the same effect as the provisions specified in paragraph (3) must be varied in accordance with paragraphs (4) and (5) with effect from the start of the day on which the Capitation and Quality Scheme 2 Agreement commences and for the period ending at the end of the day which is the date of the termination of the Capitation and Quality Scheme 2 Agreement, which must be no later than 31st March 2015.

(3) The provisions specified in this paragraph are—



- (a) regulation 13 (units of dental activity);
  - (b) regulation 17 (finance); and
  - (c) in Schedule 3—
    - (i) paragraph 33(2) (patient records), which is a contractor’s discretion to keep patient records in electronic form,
    - (ii) paragraph 58 (mid-year reviews), in so far as it relates to units of dental activity,
    - (iii) paragraph 59 (action the Board can take following a mid-year review), in so far as it relates to units of dental activity, and
    - (iv) paragraph 61(1)(a) and (3)(a) (variation of an agreement: activity under the agreement), which relate to units of dental activity.
- (4) The agreement must include terms that have the effect of temporarily releasing the contractor and the Board from all of the obligations, conditions, payments, rights and liabilities relating to those terms (and only those terms) which have the same effect as the provisions specified in paragraph (3), including any right to enforce those terms.
- (5) The agreement must also include terms to have the effect of providing that immediately after the date of the termination of the Capitation and Quality Scheme 2 Agreement—
- (a) the terms of the agreement that subsisted between the parties immediately before—
    - (i) in the case of a contractor who held a Capitation and Quality Scheme Agreement, the Capitation and Quality Scheme Agreement commenced, or
    - (ii) the Capitation and Quality Scheme 2 Agreement commenced,
- and from which the parties were temporarily released in accordance with paragraph (4) must apply from the day after the date of termination; and all obligations, conditions, payments, rights and liabilities relating to those terms are to be enforceable from that day.”.

### **Amendment of regulation 21**

**37.** In regulation 21 (right to a general dental services contract), in paragraphs (1), (2)(b), (4), (5), (7), (8) and (10), in each place, for “the Relevant Body”, substitute “the Board”.

### **Amendment of Schedule 1**

**38.**—(1) Schedule 1 (additional services) is amended as follows.

(2) In paragraph 2 (referral services), in sub-paragraph (1) for “the Relevant Body”, substitute “the Board”.

(3) In paragraph 5 (orthodontic course of treatment), in sub-paragraph (5)(a)(i) and (iii), for “the Relevant Body” substitute “the Board”.

(4) In paragraph 8 (completion of orthodontic courses of treatment)—

- (a) in sub-paragraphs (1) to (3), in each place, for “the Relevant Body”, substitute “the Board”; and
- (b) immediately after “pursuant to paragraph 5(3)” insert “of this Schedule”.

### **Amendment of Schedule 3**

**39.**—(1) Schedule 3 is amended as follows.

(2) In paragraph 3 (violent patients), in sub-paragraphs (1), (4), and (5), in each place, for “the Relevant Body”, substitute “the Board”.

(3) In paragraph 5 (irrevocable breakdown in relationship between contractor and patient), for “the Relevant Body” substitute “the Board”.

(4) In paragraph 6 (mandatory services), in sub-paragraph (a), for “the Relevant Body” substitute “the Board”.

(5) In paragraph 7 (course of treatment), in sub-paragraphs (5)(a)(i) and (iii), and (6), for “the Relevant Body” substitute “the Board”.

(6) In paragraph 8 (treatment plans)—

(a) in sub-paragraph (1) for “the Relevant Body” substitute “the Board”; and

(b) for sub-paragraph (7) substitute—

“(7) The summary referred to in sub-paragraph (6) shall be supplied to the patient on a form supplied for that purpose by the Board within 28 days of that request.”.

(7) In paragraph 9 (completion of courses of treatment)—

(a) for sub-paragraph (1) substitute—

“(1) The contractor shall indicate on the form supplied by the Board pursuant to paragraph 39 whether the course of treatment was completed, and if the course of treatment was not completed, provide the reason for the failure to complete the course of treatment.”; and

(b) in sub-paragraph (2) for “the Relevant Body” substitute “the Board”.

(8) In paragraph 10 (referral to another contractor, a hospital or other relevant service provider for advanced mandatory, domiciliary or sedation services), in sub-paragraph (2)(a)—

(a) for “the Relevant Body”, substitute “the Board”; and

(b) omit “(or where the contractor is the Primary Care Trust, the form it supplies to other contractors for that purpose)”.

(9) In paragraph 17 (treatment under general anaesthesia: prohibition), in sub-paragraph (2), for “a Primary Care Trust” substitute, “the Board, an”.

(10) In paragraph 20 (issue of prescription forms), for sub-paragraph (3) substitute—

“(3) For the purposes of this paragraph, “prescription form” means a form that is supplied for the purposes of paragraph (1) by the Board.”.

(11) For paragraph 22 (dental practitioners), substitute—

**“Dental Practitioners**

**22.** A dental practitioner may perform dental services under the contract provided—

(a) that dental practitioner is included in the dental performers list held by the Board; and

(b) that dental practitioner’s inclusion in that list is not subject to a suspension.”.

(12) In paragraph 24 (performers: further requirements), in sub-paragraph (2)(b) for “in a dental performers list”, substitute, “in the dental performers list held by the Board”.

(13) In paragraph 25 (conditions for employment and engagement: dental practitioners performing dental services), for sub-paragraph (1) substitute—

“(1) A contractor must not employ or engage a dental practitioner to perform dental services under the contract unless the contractor has checked that the practitioner meets the requirements in paragraph 22.”.

(14) For paragraph 31 (appraisal and assessment), substitute—

**“Appraisal and assessment**

**31.** The contractor shall ensure that any dental practitioner performing services under the agreement—

- (a) participates in the appraisal system (if any) provided by the Board; and
- (b) co-operates with the Board in relation to patient safety.”.

(15) In paragraph 32 (sub-contracting of clinical matters), in sub-paragraph (2)(a) and (b), for “the Relevant Body” substitute “the Board”.

(16) In paragraph 33 (patient records), in sub-paragraph (3)(d)—

- (a) for “the Relevant Body” substitute “the Board” and
- (b) omit “or, where the contractor is a Primary Care Trust, collated by that Trust”.

(17) In paragraph 35 (patient information), for sub-paragraph (1)(b) substitute—

- “(b) such information relating to NHS Charges as is supplied by the Board for the purposes of providing information to patients; and”.

(18) In paragraph 36 and its heading (provision of and access to information: the Relevant Body)

- (a) in sub-paragraph (1) and (2)(a), in each place, for “the Relevant Body”, substitute “the Board”;
- (b) in sub-paragraph (2)(b), for “the Relevant Body’s” substitute “the Board’s”; and
- (c) in the heading, for “the Relevant Body” substitute “the Board”.

(19) In paragraph 38 (inquiries about prescription and referrals), in sub-paragraphs (1) to (3), in each place, for “the Relevant Body”, substitute “the Board”.

(20) In paragraph 39 (notification of a course of treatment, orthodontic course of treatment etc.)—

- (a) in sub-paragraph (1), for “send to the Relevant Body, on a form supplied by the Primary Care Trust” substitute “send to the Board on a form supplied by it”; and
- (b) omit sub-paragraph (2).

(21) In paragraph 40 (annual report and review)—

- (a) in sub-paragraphs (1) to (3), in each place, for “the Relevant Body” substitute “the Board”; and
- (b) in sub-paragraph (1), for “that Body” substitute “the Board”.

(22) In paragraph 41 and its heading (notification to the Relevant Body)—

- (a) in sub-paragraphs (1) to (3), in each place, for “the Relevant Body”, substitute “the Board”;
- (b) in sub-paragraph(1)(b), for “the Relevant Body’s” substitute “the Board’s”;
- (c) in the heading, for “the Relevant Body” substitute “the Board”.

(23) For paragraph (42) and its heading (notice provisions specific to an agreement with a qualifying body) substitute—

**“Notice provisions specific to an agreement with a dental corporation**

**42.** Where a dental corporation is a party to the agreement, it shall give notice in writing to the Board forthwith when—

- (a) it passes a resolution or a court of competent jurisdiction makes an order that the contractor be wound up;
- (b) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the contractor;

- (c) circumstances arise which would enable the court to make a winding up order in respect of the contractor; or
  - (d) the contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (definition of inability to pay debts).”.
- (24) after paragraph (42) (notice provisions specific to an agreement with a dental corporation), insert—

**“Notice provisions specific to an agreement with a company limited by shares**

**42A.**—(1) Where a company limited by shares is a party to the agreement, it shall give notice in writing to the Board forthwith when—

- (a) it passes a resolution or a court of competent jurisdiction makes an order that the contractor be wound up;
  - (b) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the contractor;
  - (c) circumstances arise which would enable the court to make a winding up order in respect of the contractor;
  - (d) the contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (definition of inability to pay debts); or
  - (e) changes take place in relation to the ownership of shares in the company.
- (2) A notice under sub-paragraph (e) must—
- (a) provide the name of any person ceasing to own a share in the company;
  - (b) provide the name of any new person acquiring a share in the company; and
  - (c) confirm that following any changes in share ownership, that the company continues to meet the conditions in section 108(1A) of the 2006 Act.

**Notice provisions specific to an agreement with a limited liability partnership**

**42B.**—(1) Where a limited liability partnership is a party to an agreement it shall give notice to the Board forthwith when—

- (a) it passes a resolution or a court of competent jurisdiction makes an order that the contractor be wound up;
- (b) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the contractor;
- (c) circumstances arise which would enable the court to make a winding up order in respect of the contractor;
- (d) the contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (definition of inability to pay debts); or
- (e) any membership changes are notified in accordance with section 9 of the Limited Liability Partnership Act 2000(7) (registration of membership changes) to the registrar (within the meaning of that Act) in relation to a person who becomes or ceases to be a member or designated member (within the meaning of that Act) and the notice must specify the date on which that person becomes or ceases to be a member or designated member (as the case may be).

- (2) A notice under sub-paragraph (e) must confirm—

- (a) that any new member joining the partnership meets the conditions imposed by regulation 4 (general conditions relating to all agreements); and
  - (b) following the membership changes, that sub-sections 108(1B) or 108(1C) of the 2006 Act continue to apply to the partnership.”
- (25) In paragraph 44 and its heading (entry and inspection by the Relevant Body)—
- (a) in sub-paragraphs (1) and (3)(a), for “the Relevant Body” substitute “the Board”, and
  - (b) in the heading for “the Relevant Body” substitute “the Board”.
- (26) For the paragraph 46A (entry and inspection by local involvement network representatives) inserted by the [Local Involvement Networks \(Miscellaneous Amendments\) Regulations \(S.I. 2008/1514\)](#)(8) substitute—

#### **“Entry and viewing by Local Healthwatch organisations**

**46A.** The contractor must comply with the requirement to allow an authorised representative to enter and view premises and observe the carrying-on of activities on those premises in accordance with regulations made under section 225 (duties of services-providers to allow entry by Local Healthwatch organisations or contractors) of the Local Government and Public Involvement Health Act 2007(9).”

- (27) Omit paragraphs 47 (complaints procedure), 48 (making of complaints), 49 (period for making complaints) and 50 (further requirements for complaints procedures).
- (28) In paragraph 51 (co-operation with investigations)—
- (a) in sub-paragraph (1)—
    - (i) immediately after “The contractor” omit “(other than a Primary Care Trust)”; and
    - (ii) in sub-paragraph (1)(a)(i), for “the Relevant Body” substitute “the Board”;
  - (b) in sub-paragraph (2) in the definition of NHS Body—
    - (i) for “a Primary Care Trust” substitute “the Board”; and
    - (ii) omit “a Strategic Health Authority,”; and
  - (c) in sub-paragraph (3)(a), (b) and (c), for “the Relevant Body” substitute “the Board”.
- (29) In paragraph 52 (provision of information)—
- (a) immediately after “The contractor” omit “(other than a Primary Care Trust)”; and
  - (b) for “the Relevant Body”, in each place, substitute “the Board”.
- (30) In paragraph 53 (local resolution of agreement disputes), for “the Relevant Body” substitute “the Board”.
- (31) In paragraph 54 (dispute resolution: non-NHS contracts), in sub-paragraphs (1)(a) and (b), for “the Relevant Body” substitute “the Board”.
- (32) In paragraph 58 (mid-year reviews), in sub-paragraphs (3) to (7), in each place, for “the Relevant Body”, substitute “the Board”.
- (33) In paragraph 59 and its heading (action the Relevant Body can take following a mid-year review)—
- (a) in sub-paragraphs (1), (2), (4) and (5), in each place, for “the Relevant Body”, substitute “the Board”; and

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(8) Another paragraph 46A is inserted into Schedule 3 to the PDS Agreements Regulations by [S.I. 2009/309](#), but has since been renumbered 46B by a correction slip.

(9) [2007 c.28](#). Section 225 is amended by section 186(6) to (11) of, and paragraphs 148 and 151 of Schedule 5 and paragraphs 103 and 106 of Schedule 14 to, the 2012 Act.

- (b) in the heading, for “the Relevant Body” substitute “the Board”.
- (34) In paragraph 60 (variation and termination of agreements), in each place, for “the Relevant Body”, substitute “the Board”.
- (35) In paragraph 61 (variation of an agreement: activity under the agreement), in sub-paragraphs (1) and (2), in each place, for “the Relevant Body”, substitute “the Board”.
- (36) In paragraph 62 (termination by agreement), for “the Relevant Body”, substitute “the Board”.
- (37) In paragraph 63 (termination on the death of an individual), in sub-paragraphs (1)(a) and (b), (2) and (3), for “the Relevant Body” substitute “the Board”.
- (38) In paragraph 64 (termination by the contractor), in sub-paragraph (1), for “the Relevant Body” substitute “the Board”.
- (39) In paragraph 65 (late payment notices), in sub-paragraphs (1) to (3), in each place, for “the Relevant Body”, substitute “the Board”.
- (40) In paragraph 66 and its heading (termination by the Relevant Body: general provisions)—
- (a) for “The Relevant Body” substitute “The Board”; and
  - (b) in the heading, for “the Relevant Body” substitute “the Board”.
- (41) In paragraph 67 and its heading (termination by the Relevant Body: notice)—
- (a) in sub-paragraph (1), for “The Relevant Body” substitute “The Board”; and
  - (b) in the heading, for “the Relevant Body” substitute “the Board”.
- (42) In paragraph 68 and its heading (termination by the Relevant Body for the provision of untrue etc. information), for “the Relevant Body”, in each place, substitute “the Board”.
- (43) In paragraph 69 and its heading (termination by the Relevant Body on grounds of suitability etc.)—
- (a) in sub-paragraph (1)—
    - (i) for “the Relevant Body” substitute “the Board, and
    - (ii) for sub-paragraph (1)(b), substitute—
      - “(b) in the case of an agreement with a dental corporation, any director, chief executive or secretary of that corporation;
      - (c) in the case of a company limited by shares, any director, chief executive or secretary of that company; or
      - (d) in the case of a limited liability partnership, any member of that partnership,”;
  - (b) in sub-paragraph (2)—
    - (i) in sub-paragraphs (2)(c) and (1), for “the Relevant Body” substitute “the Board”; and
    - (ii) in sub-paragraph (2)(j)(ii), after “(powers of the Court of Session to deal with management of charities)” insert “or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session)”;
  - (c) in sub-paragraph (3)—
    - (i) for “A Relevant Body” substitute “The Board”;
    - (ii) in sub-paragraph (3)(a), omit “or”; and
    - (iii) for sub-paragraph (3)(b), substitute—
      - “(b) in the case of an agreement with a dental corporation, any director, chief executive or secretary of that corporation;

- (c) in the case of a company limited by shares, any director, chief executive or secretary of that company; or
    - (d) in the case of a limited liability partnership, any member of that partnership.”;
  - (d) in sub-paragraph (4), for “a Relevant Body” and for “the Relevant Body”, substitute “the Board” respectively;
  - (e) in sub-paragraph (5)—
    - (i) for “A Relevant Body” substitute “The Board”;
    - (ii) in sub-paragraph (5)(a) omit “or”; and
    - (iii) for sub-paragraph (5)(b) substitute—
      - “(b) in the case of an agreement with a dental corporation, any director, chief executive or secretary of that corporation;
      - (c) in the case of a company limited by shares, any director, chief executive or secretary of that company; or
      - (d) in the case of a limited liability partnership, any member of that partnership.”; and
  - (f) in the heading, for “the Relevant Body” substitute “the Board”.
- (44) In paragraph 70 and its heading (termination by the Relevant Body: patient safety and material financial loss), at each place, for “the Relevant Body” substitute “the Board”.
- (45) In paragraph 71 and its heading (termination by the Relevant Body: remedial notices and breach notices)—
  - (a) in sub-paragraphs (1), (2)(b) and (3) to (8), in each place, for “the Relevant Body”, substitute “the Board”;
  - (b) in sub-paragraph (4), for “a Relevant Body” substitute “the Board”; and
  - (c) in the heading, for “the Relevant Body”, substitute “the Board”.
- (46) In paragraph 72 and its heading (termination by the Relevant Body: additional provisions specific to contracts with qualifying bodies)—
  - (a) in sub-paragraph (1)—
    - (i) for “qualifying body”, at each place, substitute, “dental corporation, company limited by shares, or limited liability partnership”; and
    - (ii) for “the Relevant Body”, at each place, substitute “the Board”;
  - (b) in sub-paragraph (2)—
    - (i) for “qualifying body”, at each place, substitute “dental corporation or company limited by shares; and
    - (ii) for “the Relevant Body” substitute “the Board”;
  - (c) after sub-paragraph (2) insert—
    - “(3) Where the contractor is a company limited by shares and the company ceases—
      - (a) to be a company limited by shares; or
      - (b) to satisfy the conditions in section 108(1A) of the 2006 Act,the Board shall serve notice in writing on the contractor terminating the contract forthwith.
    - (4) Where the contractor is a limited liability partnership and—
      - (a) the partnership ceases to be a limited liability partnership; or

- (b) section 108(1B) or (1C) of the 2006 Act ceases to apply in respect of that partnership,  
the Board shall serve notice in writing on the contractor terminating the contract forthwith.”; and
- (d) for the heading, substitute “Termination by the Board: additional provisions specific to contracts with dental corporations, companies limited by shares and limited liability partnerships”.
- (47) In paragraph 73 (agreement sanctions), in sub-paragraphs (2) to (5), in each place, for “the Relevant Body” substitute “the Board”.
- (48) In paragraph 74 (agreement sanctions and the NHS dispute resolution procedure), in sub-paragraphs (1) to (4), in each place, for “the Relevant Body”, substitute “the Board”.
- (49) In paragraph 75 (termination and the NHS dispute resolution procedure), in sub-paragraphs (1) to (3)(c), (4)(a) and (5), in each place, for “the Relevant Body”, substitute “the Board”.
- (50) In paragraph 77 (clinical governance arrangements)—
- (a) in sub-paragraph (1) for “the Relevant Body”, substitute “the Board”; and
  - (b) omit sub-paragraph (2).
- (51) After paragraph 77 (clinical governance arrangements), insert—

**“Duty as to education and training**

**77A.** The contractor must co-operate with the Secretary of State in the discharge of the Secretary of State’s duty under section 1F of the 2006 Act (duty as to education and training), or co-operate with Health Education England where Health Education England is discharging that duty by virtue of a direction under section 7 of that Act.”

- (52) In paragraph 81 (gifts)—
- (a) in sub-paragraph (2)(b), for “qualifying body”, substitute “dental corporation”;
  - (b) after sub-paragraph (2)(b), insert—
    - “(ba) where the agreement is with a company limited by shares, a director, chief executive or secretary of the company;
    - (bb) where the agreement is with a limited liability partnership, a member of the partnership;” and
  - (c) in sub-paragraph (6), for “the Relevant Body” substitute “the Board”.
- (53) In paragraph 82 (compliance with legislation and guidance), for sub-paragraph (b) substitute—
- “(b) have regard to all relevant guidance issued by the Board and the Secretary of State.”.

**Amendment of Schedule 4**

**40.**—(1) Schedule 4 (patient information leaflet), is amended as follows.

(2) After paragraph 2 insert—

**“2A.** In the case of an agreement with a company limited by shares—

- (a) whether or not it is a company limited by shares;
- (b) the names of the directors, chief executive and secretary of the company, in so far as those positions exist in relation to the company; and
- (c) the address of the company’s registered office.



- 2B.** In the case of an agreement with a limited liability partnership—
- (a) whether or not it is a limited liability partnership;
  - (b) the names of the members of the partnership; and
  - (c) the registered premises address of the limited liability partnership.”.
- (3) In paragraphs 14, and 20, for “the Relevant Body” substitute “the Board”.
- (4) For paragraph 21 substitute—
- “**21.** The full name, postal, email and website address, and telephone number of the Board.”.

#### **Amendment of Schedule 5**

**41.** Omit Schedule 5 (modification of patient provisions where the contractor is a Primary Care Trust).

#### **Transitional provisions**

**42.** The transitional provisions set out in Schedule 2 have effect.

## **PART 4**

### **Miscellaneous amendments of the National Health Service (Dental Charges) Regulations 2005**

**43.** The National Health Service (Dental Charges) Regulations 2005<sup>(10)</sup> are amended in accordance with this Part.

#### **Amendment of regulation 2**

- 44.**—(1) Regulation 2 (interpretation) is amended as follows.
- (2) In paragraph (1)—
- (a) after the definition of “the Act” insert—
    - ““the 2006 Act” means the National Health Service Act 2006<sup>(11)</sup>;
    - “the 2012 Act” means the Health and Social Care Act 2012<sup>(12)</sup>”;
  - (b) after the definition of “the 2012 Act” insert ““the Board” means the National Health Service Commissioning Board;”;
  - (c) after the definition of “bridge” insert—
    - ““Capitation and Quality Scheme 2” means the scheme of that name, introduced by the Secretary of State on 1st April 2013, following the termination of the Capitation and Quality Scheme on 31st March 2013, that the Secretary of State has developed to assist in continuing to promote and secure improvement in the provision of dental services in accordance with the 2006 Act;”;
    - “Capitation and Quality Scheme 2 Agreement” means an Agreement which forms a temporary part of a GDS contract or a PDS agreement and which is entered into

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<sup>(10)</sup> S.I.2005/3477, as amended by S.I. 2006/1837, 2007/544, 2008/547, 2009/407, 2011/519 and 2012/502.

<sup>(11)</sup> 2006 c.41.

<sup>(12)</sup> 2012 c.7.

- as part of the Capitation and Quality Scheme 2 and in accordance with Directions made under section 114A of the 2006 Act”;
- (d) in the definition of “course of treatment”—
- (i) in paragraph (a), before “an examination of a patient”, insert “subject to paragraph (c)”;
- (ii) after (b) insert—
- “(c) but where the course of treatment is an interim care course of treatment provided under a Capitation and Quality Scheme 2 Agreement in the context of regulation 13A, it does not include the treatment mentioned in paragraph (a);”;
- (e) after the definition of “dental public health services” insert—
- ““GDS Contract” is a contract within the meaning of section 100 of the 2006 Act (general dental services contracts: introductory)(13);”;
- (f) in the definition of “patient record” for “a Primary Care Trust” substitute “the Board”;
- (g) after the definition of “patient record” insert—
- ““Primary Care Trust” means the body which until the date section 34 (abolition of Primary Care Trusts) of the 2012 Act comes into force, was—
- (a) where the Primary Care Trust was a party to the GDS contract or the PDS agreement, that Primary Care Trust;
- (b) where the Primary Care Trust was providing primary dental services under section 99(2) of the 2006 Act(14), the Primary Care Trust in whose area those services were provided; or
- (c) where the Primary Care Trust, NHS Trust, or NHS foundation trust supplied dental appliances other than as part of relevant primary dental services, that Primary Care Trust, or the Primary Care Trust in whose area all or most of the hospitals, establishments and facilities of the NHS Trust or NHS foundation trust, were situated;”
- (h) after the definition of “Primary Care Trust” insert—
- ““PDS Agreement means an agreement within the meaning of section 107 of the 2006 Act(15);”;
- (i) in the definition of “prisoner” for “by, or under arrangements made by, a Primary Care Trust otherwise than by virtue of section 18A(5) of the Act (provision of services etc)” substitute “under arrangements made by the Board”;
- (j) omit the definition of “relevant Primary Care Trust”;
- (k) in the definition of “relevant primary dental services”—
- (i) for sub-paragraph (i), substitute “(i) under section 56(2) of the National Health Service (Wales) Act 2006 provided by a Local Health Board”, and
- (ii) for sub-paragraph (iii), substitute “(iii) under arrangements made under section 107 of the 2006 Act”; and
- (3) for paragraph (2), substitute—

“A reference to the Secretary of State includes a reference to a Special Health Authority or the Board exercising functions on the Secretary of State’s behalf.”.

(13) Section 100 is amended by section 55(1) of, and paragraph 43 of Schedule 4 to, the 2012 Act.

(14) Section 99(2) of the 2006 Act is being repealed also on the date that section 34 comes into force, by section 55(1) of, and paragraphs (1) and (3) of Schedule 4 to, the 2012 Act.

(15) Section 107 is amended by section 55(1) of, and paragraphs 48(1) to (5) of, Schedule 4 to, the 2012 Act.

### **Amendment of regulation 3**

45. In regulation 3 (charges for the provision of dental services)—
- (a) in paragraph (1), for “regulation 4”, substitute “regulations 4 or 13A(2)”; and
  - (b) in paragraph (2), after “Schedule 1,”, insert “1A,”.

### **Amendment of regulation 4**

46. In regulation 4 (calculation of charges)—
- (a) in paragraph (1), after “relevant primary dental services” insert “irrespective of whether the remainder of the components of the course of treatment are set out in Schedule 1A.”;
  - (b) in paragraph (2), after “Schedule 1”, insert “or 1A”; and
  - (c) in paragraph (3), after “Schedule 1”, insert “, 1A”.

### **Amendment of regulation 5**

47. In regulation 5 (effect of referral to another provider of dental services on the calculation of charges), for “regulation 4”, substitute “regulation 4 or 13A(2)”.

### **Amendment of regulation 7**

48. In regulation 7 (conditions for exemption under the Act)—
- (a) in paragraph (1)(a), for “the relevant Primary Care Trust” substitute “the Board”; and
  - (b) in paragraphs (1)(b), and (4), for “a Primary Care Trust” substitute “the Board”.

### **Amendment of regulation 8**

49. In regulation 8 (making and recovery of charges)—
- (a) in paragraph (1), for “a Primary Care Trust” substitute “the Board”; and
  - (b) in paragraph (2), for “or (5)”, substitute “, (5) or 13A(2)”; and
  - (c) in paragraph (3), for “regulation 4”, substitute “regulation 4 or 13A(2)”; and
  - (d) in paragraphs (1)(c) and (2)(b) and (d)(i), for “the relevant Primary Care Trust” substitute “the Board”.

### **Amendment of regulation 12**

50. For regulation 12 (reduction of remuneration and accounting for charges in relation to providers of relevant primary dental services), substitute—

**“Reduction of remuneration and accounting for charges in relation to providers of relevant primary dental services**

12. Where a provider of relevant primary dental services has provided relevant primary dental services for which a charge is payable under these Regulations, the remuneration which would otherwise be payable by the Board to that provider shall be reduced by the amount of that charge, irrespective of whether or not that charge has been recovered by the provider.”.

### **New Regulation 13A**

51. After regulation 12 insert—

### **“Charges in respect of primary dental services provided under a Capitation and Quality Scheme 2 Agreement**

**13A.**—(1) This regulation applies in relation to primary dental services provided in accordance with a Capitation and Quality Scheme 2 Agreement.

(2) An additional charge to be known as a Band 1A charge of £17.50, may be made and recovered for the provision of any interim care course of treatment, the entirety of the components of which are set out in Schedule 1A.

(3) Subject to paragraph (5), the charge referred to in paragraph (2) is only payable where all of the components of an interim care course of treatment proposed for a person at the initial examination have been provided.

(4) For the purposes of paragraph (2), only one charge may be made for any one course of treatment or urgent course of treatment, notwithstanding that a number of individual treatments may be provided during that course of treatment.

(5) Where—

(a) during an interim care course of treatment a patient voluntarily withdraws from, or is withdrawn by the provider from treatment, and

(b) at least one of the components of that course of treatment has been completed,

the charge which may be made and recovered for that course of treatment is the charge which is payable under paragraph (2).

(6) Where an interim care course of treatment has been provided to a patient, but within 2 months of that course of treatment being completed, the provider determines that the patient requires further treatment which falls within this course of treatment, the charge for which is calculated in accordance with paragraph (2) of this regulation, or a Band 1 course of treatment, the charge for which is calculated in accordance with regulation 4(1), and that further treatment is provided (whether or not within 2 months of that course of treatment being completed) by the same provider, no charge may be made or recovered in respect of that further treatment.

(7) In paragraph (6) “completed” means that the patient has been provided with each and every component of the course of treatment.

### **Transitional provision relating to interim care**

**13B.** Where an initial examination occurred on or before the 31st March 2013 and a course of treatment is planned that would constitute an interim care course of treatment for the purposes of regulation 13A had it been planned after 1st April 2013, and some or all of that treatment is provided on or after 1st April 2013, the planned treatment must be treated as provided in accordance with the Capitation and Quality Scheme 2 Agreement under regulation 13A.”.

### **New Schedule 1A**

**52.** After Schedule 1 (Band 1 Charges – diagnosis, treatment planning and maintenance) insert the Schedule set out in Schedule 3 to these Regulations.

### **Schedule 6**

**53.** In Schedule 6 (manner of determining charge for replacement), in paragraph 4(c), for “the relevant Primary Care Trust” substitute “the Board”.

## PART 5

### Transitional provisions

#### **Transitional provisions in relation to the abolition of Primary Care Trusts**

**54.**—(1) This regulation applies in relation to dental charges following the coming into force of section 34 of the Health and Social Care Act 2012 (abolition of Primary Care Trusts).

(2) For the purposes of this regulation “the 2005 Regulations” means the National Health Service (Dental Charges) Regulations 2005”.

(3) Any act or omission by, or in relation to, the Primary Care Trust before 1st April 2013 in relation to the 2005 Regulations, is deemed to have been an act or omission of, or in relation to, the Board.

(4) Anything which, before 1st April 2013, is in the process of being done by, or in relation to, the Primary Care Trust in respect of, or in connection with, the 2005 Regulations, is deemed to have effect as if done by, or in relation to, and may be continued by, or in relation to, the Board.

(5) A form provided by a Primary Care Trust in connection with the 2005 Regulations in respect of the making and recovery of dental charges continues to be a valid form in relation to the Board until it is cancelled or withdrawn by the Board.

Signed by authority of the Secretary of State for Health.

18th February 2013

*Earl Howe*  
Parliamentary Under-Secretary of State  
Department of Health

## SCHEDULE 1

Regulation 21

## Transitional provision relating to GDS contacts

**Application of Schedule 1**

1. This Schedule applies to a GDS contract which is entered into before the appointed day, and the parties to the contract on or after the appointed day are the Contractor and Board as a consequence of a property scheme transfer made under section 300 of the 2012 Act.

**Interpretation**

2. In this Schedule—

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

“the 2012 Act” means the Health and Social Care Act 2012;

“the appointed day” means 1st April 2013;

“the Board” means the National Health Service Commissioning Board<sup>(16)</sup>;

“Contractor” means—

(a) in relation to a period before the appointed day, a party to a GDS contract, other than the Primary Care Trust; or

(b) in relation to a period on or after the appointed day, a party to the GDS contract other than the Board;

“GDS Contract” means a contract entered into in accordance with section 100 of the 2006 Act<sup>(17)</sup>;

“the GDS Contracts Regulations” means the National Health Service (General Dental Services Contracts) Regulations 2005<sup>(18)</sup>;

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

“Strategic Health Authority” means the Strategic Health Authority which was established and which subsisted immediately before the coming into force of section 33 (abolition of Strategic Health Authorities) of the 2012 Act.

**General transitional provisions relating to the terms of a GDS contract**

3.—(1) The Contractor and the Board must as soon as is reasonably practicable on or after the appointed day, enter into discussions with each other with a view to agreeing variations to the GDS contract in order to ensure that the contract complies with the GDS Contracts Regulations on or after the appointed day.

(2) Where the terms of the GDS contract have not been varied so as to include the terms which have the same effect as those terms specified in these Regulations, the GDS contract is deemed to have been so varied only to the extent that such terms are to have the same effect as those terms specified in these Regulations which have effect on or after the appointed day.

<sup>(16)</sup> The National Health Service Commissioning Board is established by section 1H of the National Health Service Act 2006. Section 1H is inserted by section 9 of the 2012 Act.

<sup>(17)</sup> Section 100 is amended by section 55(1) of, and paragraph 43 of Schedule 4 to, the 2012 Act.

<sup>(18)</sup> S.I. 2005/3361 as amended by S.I.2006/563, 2007/544, 2008/528, 1514, and 1700, 2009/309 and 462, 2010/22 and 1881, 2011/1182 and 2012/502, 2273 and 2404.

(3) The Contractor and the Board may not agree any variation to the GDS contract that is contrary to the GDS Contracts Regulations on or after the appointed day.

#### **Continuing validity of forms**

4. A form supplied by a Primary Care Trust continues to be a valid form in relation to the Board until it is cancelled or withdrawn by the Board.

#### **Notification of reasons by a Primary Care Trust in respect of entering into contracts**

5. Where a Primary Care Trust has given notification to a person pursuant to regulation 6 (reasons) of the GDS Contracts Regulations before the appointed day, the notification and the written views contained in that notification shall be treated, on or after that day, as notification by the Board and the written views of the Board.

#### **Appeals relating to eligibility to enter into a contract**

6. A person who has been served notice pursuant to regulation 6 of the GDS Contracts Regulations before the appointed day may on or after that day appeal to the First-tier Tribunal against the decision of the Primary Care Trust and that appeal must be treated as an appeal against a decision of the Board.

#### **Finance**

7. Any right that a Primary Care Trust had to set off against any amount payable to the contractor under the term that gives effect to regulation 21 (finance) of the GDS Contracts Regulations immediately before the appointed day, must be treated as a right of the Board under the term that gives effect to that regulation on or after the appointed day.

#### **Records, information, notifications and rights of entry**

8.—(1) Where a Primary Care Trust gave authorisation or notification or made a request under a term of the GDS contract that had the same effect as the provisions in Part 5 (records, information, notifications and rights of entry) of Schedule 3 to the GDS Contracts Regulations as in force immediately before the appointed day, such authorisation, notification or request is to be deemed to be that of the Board for the purposes of the application of the terms of the GDS contract that have the same effect as the provisions in Part 5 of Schedule 3 to the GDS Contracts Regulations on or after the appointed day.

(2) The reference to a request and authorisation in sub-paragraph (1) respectively includes any inquiries made in writing from the Primary Care Trust and appointments made by the Primary Care Trust in accordance with the terms of the GDS contract that have the same effect as the provisions in paragraph 37 (inquiries about prescriptions and referrals) of Schedule 3 to the GDS Contracts Regulations as in force immediately before the appointed day.

#### **Leaflets**

9.—(1) This paragraph applies where a contractor has compiled a patient information leaflet which complied with the requirements of paragraph 34 (patient information) of Schedule 3 to the GDS Contracts Regulations immediately before the appointed day.

(2) Notwithstanding the requirements in paragraph 34 of Schedule 3 to the GDS Contracts Regulations as in force on or after the appointed day, a contractor must review its practice leaflet and make any amendments necessary so as to include the information specified in Schedule 4 (patient information leaflet) not later than 1st May 2013.

## **Complaints**

**10.**—(1) This paragraph applies where an investigation of a complaint under the procedure referred to in paragraph 46A inserted by regulation 23 of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009<sup>(19)</sup> of Schedule 3 to the GDS Contracts Regulations is not completed before the appointed day.

(2) A complaint of a kind referred to in sub-paragraph (1) must continue to be dealt with in accordance with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009—

- (a) as if any reference to a Primary Care Trust in a document or form relating to the complaint were a reference to the Board; and
- (b) in respect of a complaint received prior to 1st April 2009, the Contractor—
  - (i) must deal with the complaint as far as it is able, in accordance with those Regulations; and
  - (ii) may if it is unable to comply with those Regulations as a consequence of the length of time it has taken to deal with the complaint vary the procedure only to the extent that it is necessary in order to dispose of the matter in a just manner.

## **Co-operation with investigations**

**11.** The Contractor must continue to co-operate with an investigation of a complaint which is pending immediately before the appointed day in accordance with the terms of the GDS contract that give effect to paragraph 51 of Schedule 3 to the GDS Contracts Regulations as in force on or after the appointed day as if any act or omission by, or reference to, a Primary Care Trust or a Strategic Health Authority were an act or omission by or reference to the Board.

## **Disputes**

**12.**—(1) Any dispute arising out of or in connection with a GDS contract in respect of a Contractor and Primary Care Trust that is ongoing immediately before the appointed day is deemed to be a dispute in respect of that Contractor and the Board.

(2) The terms of the contract which had the same effect as the provisions in Part 7 of Schedule 3 to the GDS Contracts Regulations as in force on or after the appointed day continue to apply to the dispute as if references to—

- (a) “Primary Care Trust” were to the “Board”; and
- (b) “the parties” mean the Contractor and the Board.

## **Variation and termination of GDS contracts**

**13.**—(1) This paragraph applies where a Primary Care Trust or a contractor has taken any steps in accordance with or in connection with a matter referred to in any of the provisions in Part 9 (variation and termination of contracts) of Schedule 3 to the GDS Contracts Regulations before the appointed day and had it not been for the coming into force of section 34 (abolition of Primary Care Trust) of the 2012 Act that matter would continue to fall to the Primary Care Trust to be dealt with in accordance with Part 9.

(2) Any action taken or omission by a Primary Care Trust in accordance with or in connection with any of the provisions in Part 9 of Schedule 3 to the GDS Contracts Regulations is to be deemed

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<sup>(19)</sup> S.I. 2009/309 as amended by S.I. 2009/309 and 1768, 2012/1909 and 2013/235 . Another paragraph 46A was inserted by S.I.2008/1514, but has since been renumbered 46B by a correction slip.



to be action taken or omitted by the Board for the purposes of the continuity of the application of those provisions that have effect on or after the appointed day.

(3) Where an agreement has been reached between a Contractor and a Primary Care Trust in accordance with or in connection with the provisions in Part 9 of Schedule 3 to the GDS Contracts Regulations before the appointed day, that agreement is to be deemed as an agreement made by that Contractor and the Board.

(4) Where notice has been given by the Contractor to the Primary Care Trust or notice has been given by the Primary Care Trust to the Contractor, that notice is to be deemed to have been given by that Contractor to the Board, or as the case may be, notice given by the Board to that Contractor.

(5) Notwithstanding the above paragraphs, the Board may, if it thinks necessary or desirable in order to dispose of a matter justly, review a decision or action taken that it is deemed to have made or taken as a consequence of this paragraph.

### **Continuing application of published guidance**

**14.**—(1) Where as a consequence of paragraph 84 (compliance with legislation and guidance) of Schedule 3 to the GDS Contracts Regulations a contractual term in a GDS contract requires a Contractor to have regard to guidance published before the appointed day which has effect immediately before that day, that contractual term continues to apply in respect of such guidance on or after the appointed day—

- (a) as if references to a Primary Care Trust or Strategic Health Authority in that guidance were to the Board; and
- (b) until such time as the Board, or as the case may be Secretary of State, cancels or withdraws the guidance.

### **Supplementary transitional provision**

**15.**—(1) Subject to the preceding provisions in this Schedule, any act or omission by, or in relation to, a Primary Care Trust before the appointed day in respect of—

- (a) the exercise of any functions of the Primary Care Trust under Part 5 of the 2006 Act; or
- (b) any rights or liabilities of the Primary Care Trust transferred as a consequence of a property transfer scheme made under section 300 of the 2012 Act,

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

(2) Anything which, when these Regulations take effect, is in the process of being done by, or in relation to, the Primary Care Trust in respect of, or in connection with—

- (a) the exercise by the Primary Care Trust of any of its functions under Part 5 of the 2006 Act; or
- (b) any rights or liabilities of the Primary Care Trust transferred as a consequence of a property transfer scheme made under section 300 of the 2012 Act,

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

(3) Where it is necessary for the Contractor or the Board—

- (a) to take account of a period of time; or
- (b) to calculate a period of time which is required in accordance with the GDS Contracts Regulations as in force on or after the appointed day,

any period of time that occurred before the appointed day and which is relevant to the matter under consideration is to be taken into account or used in order to calculate any time period for the purposes of that consideration or applying provisions in these Regulations on or after the appointed day only

if that period of time could have been taken into account or used in a calculation of a time period in respect of those mirror provisions as in force immediately before the appointed day.

## SCHEDULE 2

Regulation 42

### Transitional provisions relating to PDS agreements

#### Application of Schedule 2

1. This Schedule applies to a PDS agreement which is entered into before the appointed day, and the parties to the agreement on or after the appointed day are the Contractor and the Board as a consequence of a property scheme transfer made under section 300 of the 2012 Act.

#### Interpretation

2. In the Schedule—

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

“the 2012 Act” means the Health and Social Care Act 2012;

“the appointed day” means 1st April 2013;

“the Board” means the National Health Service Commissioning Board<sup>(20)</sup>;

“Contractor” means—

(a) in relation to a period before the appointed day, a party to a PDS Agreement, other than the Primary Care Trust; or

(b) in relation to a period on or after the appointed day, a party to the PDS Agreement contract other than the Board;

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

“PDS Agreement” means an agreement within the meaning of section 107 of the 2006 Act (arrangements by the Board for the provision of primary dental services)<sup>(21)</sup>;

“the PDS Agreements Regulations” means the National Health Service (Personal Dental Services Agreements) Regulations 2005<sup>(22)</sup>;

“Relevant Body” means, unless the context otherwise requires, the Primary Care Trust or the Strategic Health Authority, which was a party, or a prospective party, to a PDS agreement, immediately before the coming into force of section 33 or 34 of the 2012 Act, and

“Strategic Health Authority” means the Strategic Health Authority which was established and which subsisted immediately before the coming into force of section 33 (abolition of Strategic Health Authorities) of the 2012 Act.

<sup>(20)</sup> The National Health Service Commissioning Board is established by section 1H of the National Health Service Act 2006. Section 1H is inserted by section 9 of the 2012 Act.

<sup>(21)</sup> Section 107 is amended by section 55(1) of, and paragraph 48 of Schedule 4 to, the 2012 Act.

<sup>(22)</sup> S.I.2005/3373 as amended by S.I.2006/563, 2007/544, 2008/528, and 1514, 2009/309 and 462, 2010/22 and 1881, 2011/1182 and 2012/502, 2273 and 2404.

### **General transitional provisions relating to the terms of a PDS agreement**

3.—(1) The Contractor and the Board must as soon as is reasonably practicable on or after the appointed day, enter into discussions with each other with a view to agreeing variations to the PDS agreement in order to ensure that the contract complies with the PDS Agreements Regulations on or after the appointed day.

(2) Where the terms of the PDS agreement have not been varied so as to include the terms which have the same effect as those terms specified in these Regulations, the PDS agreement is deemed to have been so varied only to the extent that such terms are to have the same effect as those terms specified in these Regulations which have effect on or after the appointed day.

(3) The Contractor and the Board may not agree any variation to the PDS agreement that is contrary to the PDS Agreements Regulations on or after the appointed day.

### **Continuing validity of forms**

4. A form supplied by a Relevant Body continues to be a valid form in relation to the Board until it is cancelled or withdrawn by the Board.

### **Notification of reasons by a Primary Care Trust in respect of entering into contracts**

5. Where a Relevant Body has given notification to a person pursuant to regulation 6 (reasons) of the PDS Agreements Regulations before the appointed day, the notification and the written views contained in that notification shall be treated, on or after that day, as notification by the Board and the written views of the Board.

### **Appeals relating to eligibility to enter into a contract**

6. A person who has been served notice pursuant to regulation 6 of the PDS Agreements Regulations before the appointed day may on or after that day appeal to the First-tier Tribunal against the decision of the Relevant Body and that appeal must be treated as an appeal against a decision of the Board.

### **Finance**

7. Any right that a Relevant Body had to set off against any amount payable to the Contractor under the term that gives effect to regulation 17 (finance) of the PDS Agreements Regulations immediately before the appointed day, must be treated as a right of the Board under the term that gives effect to that regulation on or after the appointed day.

### **Records, information, notifications and rights of entry**

8.—(1) Where a Relevant Body gave authorisation or notification or made a request under a term of the PDS agreement that had the same effect as the provisions in Part 5 (records, information, notifications and rights of entry) of Schedule 3 to the PDS Agreements Regulations as in force immediately before the appointed day, such consent, authorisation, notification or request is to be deemed to be that of the Board for the purposes of the application of the terms of the PDS agreement that has the same effect as the provisions in Part 5 of Schedule 3 to the PDS Agreements Regulations on or after the appointed day.

(2) The reference to a request and authorisation in sub-paragraph (1) respectively includes any inquiries made in writing from the Relevant Body and appointments made by the Relevant Body in accordance with the terms of the PDS agreement that have the same effect as the provisions in paragraph 38 (inquiries about prescriptions and referrals) of Schedule 3 to the PDS Agreements Regulations as in force immediately before the appointed day.

**Leaflets**

**9.**—(1) This paragraph applies where a contractor has compiled a patient information leaflet which complied with the requirements of paragraph 35 (patient information) of Schedule 3 to the PDS Agreements Regulations immediately before the appointed day.

(2) Notwithstanding the requirements in paragraph 35 of Schedule 3 to the PDS Agreements Regulations as in force on or after the appointed day, a Contractor must review its practice leaflet and make any amendments necessary so as to include the information specified in Schedule 4 (patient information leaflet) not later than 1st May 2013.

**Complaints**

**10.**—(1) This paragraph applies where an investigation of a complaint under the procedure referred to in paragraph 46A inserted by regulation 23 of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009<sup>(23)</sup> into Schedule 3 to the PDS Agreements Regulations is not completed before the appointed day.

(2) A complaint of a kind referred to in sub-paragraph (1) must continue to be dealt with in accordance with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009—

- (a) as if any reference to a Relevant Body or a Primary Care Trust in a document or form relating to the complaint were a reference to the Board; and
- (b) in respect of a complaint received prior to 1st April 2009, the Contractor—
  - (i) must deal with the complaint as far as it is able, in accordance with those Regulations; and
  - (ii) may if it is unable to comply with those Regulations as a consequence of the length of time it has taken to deal with the complaint vary the procedure only to the extent that it is necessary in order to dispose of the matter in a just manner.

**Co-operation with investigations**

**11.** The Contractor must continue to co-operate with an investigation of a complaint which is pending immediately before the appointed day in accordance with the terms of the PDS agreement that give effect to paragraph 51 of Schedule 3 to the PDS Agreements Regulations as in force on or after the appointed day as if any act or omission by, or reference to, a Relevant Body were a reference to the Board.

**Disputes**

**12.**—(1) Any dispute arising out of or in connection with a PDS agreement in respect of a Contractor and a Relevant Body that is ongoing immediately before the appointed day is deemed to be a dispute in respect of that Contractor and the Board.

(2) The terms of the contract which had the same effect as the provisions in Part 7 of Schedule 3 to the PDS Agreements Regulations as in force on or after the appointed day continue to apply to the dispute as if references to—

- (a) “Relevant Body” were to the “Board”; and
- (b) “the parties” mean the Contractor and the Board.

(23) [S.I.2009/309](#) as amended by [S.I. 2009/309](#) and [1768, 2012/1909](#) and [2013/235](#). Another paragraph 46A was inserted by [S.I.2008/1514](#), but this has since been renumbered 46B by a correction slip.

### **Variation and termination of PDS agreements**

13.—(1) This paragraph applies where a Relevant Body or a Contractor has taken any steps in accordance with or in connection with a matter referred to in any of the provisions in Part 9 (variation and termination of agreements) of Schedule 3 to the PDS Agreements Regulations before the appointed day and had it not been for the coming into force of section 34 (abolition of Primary Care Trusts) or section 33 (abolition of Strategic Health Authorities) of the 2012 Act that matter would continue to fall to the Relevant Body to be dealt with in accordance with Part 9.

(2) Any action taken or omission by a Relevant Body in accordance with or in connection with any of the provisions in Part 9 of Schedule 3 to the PDS Agreements Regulations is to be deemed to be action taken or omitted by the Board for the purposes of the continuity of the application of those provisions that have effect on or after the appointed day.

(3) Where an agreement has been reached between a Contractor and a Relevant Body in accordance with or in connection with the provisions in Part 9 of Schedule 3 to the PDS Agreements Regulations before the appointed day, that agreement is to be deemed to be an agreement made by that Contractor and the Board.

(4) Where notice has been given by the Contractor to the Relevant Body or notice has been given by the Relevant Body to the Contractor, that notice is to be deemed to have been given by that Contractor to the Board, or as the case may be, notice given by the Board to that Contractor.

(5) Notwithstanding the above sub-paragraphs, the Board may, if it thinks necessary or desirable in order to dispose of a matter justly, review a decision or action taken that it is deemed to have made or taken as a consequence of this paragraph.

### **Continuing application of published guidance**

14. Where as a consequence of paragraph 82 (compliance with legislation and guidance) of Schedule 3 to the PDS Agreements Regulations a contractual term in a PDS agreement requires a Contractor to have regard to guidance published before the appointed day which has effect immediately before that day, that contractual term continues to apply in respect of such guidance on or after the appointed day—

- (a) as if references to a Primary Care Trust or Strategic Health Authority in that guidance were to the Board; and
- (b) until such time as the Board, or as the case may be Secretary of State, cancels or withdraws the document or guidance.

### **Supplementary transitional provision**

15.—(1) Subject to the preceding provisions in this Schedule, any act or omission by, or in relation to, a Relevant Body before the appointed day in respect of—

- (a) the exercise of any functions of the Relevant Body under Part 5 of the 2006 Act; or
- (b) any rights or liabilities of the Relevant Body transferred as a consequence of a property transfer scheme made under section 300 of the 2012 Act,

in relation to a PDS agreement, is deemed to have been an act or omission by, or in relation to the Board.

(2) Anything which, when these Regulations take effect, is in the process of being done by, or in relation to, the Relevant Body in respect of, or in connection with—

- (a) the exercise by the Relevant Body of any of its functions under Part 5 of the 2006 Act; or
- (b) any rights or liabilities of the Relevant Body transferred as a consequence of a property transfer scheme made under section 300 of the 2012 Act,

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

(3) Where it is necessary for the Contractor or the Board—

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

(b) to calculate a period of time which is required in accordance with the PDS Agreements Regulations as in force on or after the appointed day,

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

### SCHEDULE 3

Regulation 52

#### Band 1A Charges – Interim Care

#### “SCHEDULE 1A

Regulation 13A

#### Band 1A Charges – Interim Care

- (a) the giving of specific advice in relation to diet, hygiene, personal habits and oral health in respect of a person to enable that person to be aware and to be able to take steps to prevent dental and oral disease;
- (b) the giving of instructions on techniques and practice required by a person in relation to their dental hygiene to enable that person to improve their dental health and prevent oral disease;
- (c) checking a person’s compliance in relation to the self care plan proposed at the oral health assessment or oral health review;
- (d) the provision of a prescription for high fluoride toothpaste or mouth rinse if considered required (when delivered together with one or more of (a), (b), (c), (e), (f) or (g));
- (e) the surface application of primary preventive measures such as topical fluoride varnish applications, and fissure sealants if required and necessary;
- (f) scaling and polishing if required;
- (g) follow up root surface debridement if required.”

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service (General Dental Services Contracts) Regulations 2005 (“the GDS Contracts Regulations”), the National Health Service (Personal Dental Services Agreements) Regulations 2005 (“the PDS Agreements Regulations”) and the National Health Service (Dental Charges) Regulations 2005 (“the NHS Charges Regulations”).

Amendments made by these Regulations largely make amendments which are as a consequence of the transfer of primary dental services contracts and agreements to the National Health Service Commissioning Board (“the Board”) from Primary Care Trusts and as a consequence of the abolition of Strategic Health Authorities and Primary Care Trusts upon the coming into force of sections 33 and 34 of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”) and reflect changes made to the provision of primary dental services by the 2012 Act. These Regulations also make other minor amendments to the GDS Contracts Regulations, the PDS Agreements Regulations and the NHS Charges Regulations.

Part 2 contains amendments to the GDS Contracts Regulations. The majority of these amendments are made in consequence of the transfer of GDS contracts from Primary Care Trusts to the Board, the abolition of Primary Care Trusts and as a consequence of minor amendments made to Part 5 of the National Health Service Act 2006 (“the 2006 Act”) by section 203 of the 2012 Act. Amendments are also made in relation to the implementation of the Capitation and Quality Scheme 2 which will be introduced by the Secretary of State on 1st April 2013. In particular-

- (a) regulation 5 amends regulation 4 to reflect changes to section 102 of the 2006 Act by section 203 of the 2012 Act which provide that limited liability partnerships can enter GDS contracts;
- (b) regulations 16 and 17 respectively omit regulation 24A and insert new regulation 24B to require the terms of a GDS contract to be varied in a case where the contractor and the Board elect to enter into a Capitation and Quality Scheme 2 Agreement. A Capitation and Quality Scheme 2 Agreement is an agreement made in accordance with Directions made under section 114A of the 2006 Act, which set out the framework for piloting new arrangements for the provision of primary dental services. The piloted arrangements must come to an end on 31st March 2015;
- (c) regulation 19 amends Schedule 3—
  - (i) paragraph(23) inserts new paragraph 42B relating to notice provisions specific to a contract with a limited liability partnership, and paragraphs (43), (46), and (52) amend paragraphs (71), (74), and (83) to take account of limited liability partnerships;
  - (ii) paragraph (25) substitutes paragraph 46A as a consequence of the abolition of local involvement networks and the establishment of Local Healthwatch organisations in accordance with section 222(2A) of the National Health Service Act 2006 as amended by section 183(2) of the 2012 Act and
  - (iii) paragraph (52) inserts paragraph 79A into Schedule 3 as a consequence of section 1F of the 2006 Act;
- (d) regulation 20 amends Schedule 4 to reflect limited liability partnerships in patient information leaflets.

Schedule 1 makes transitional provisions in respect of GDS contracts which are transferred from Primary Care Trusts to the Board on 1st April 2013.

Part 3 and Schedule 2 make amendments to the PDS Agreements Regulations and transitional provision relating to agreements made under those Regulations which mirror those made to the GDS Contracts Regulations, apart from amendments relating to changes made to section 108 of the 2006 Act by section 204(2)(c) and (d) of the 2012 Act which substitute qualifying bodies with dental corporations, companies limited by shares and limited liability partnerships, in relation to bodies that can enter PDS agreements.

Part 4 makes amendments to the NHS Charges Regulations and Part 5 makes transitional provision relating to charges made under those Regulations. The majority of these amendments are made in consequence of the transfer of GDS contracts and PDS agreements from Primary Care Trusts to the Board and the abolition of Primary Care Trusts. Regulation 51 inserts a new regulation to

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provide for an additional charge to be known as a Band 1A charge of £17.50 which applies where an interim care course of treatment is provided to persons who receive primary dental services under the Capitation and Quality Scheme 2 which will be introduced by the Secretary of State on 1st April 2013. Regulation 52 inserts a new Schedule 1A which sets out the components of a Band 1A course of treatment.

A full Impact Assessment has not been produced for this instrument as it has no impact on the cost of business, charities or voluntary bodies.