

Dear Colleague

GENERAL DENTAL SERVICES

1. **NHS (General Dental Services) (Scotland) Regulations 2010**
2. **NHS (Tribunal) (Scotland) Amendment Regulations 2010**
3. **NHS (Discipline Committees) (Scotland) Amendment Regulations 2010**
4. **NHS (Vocational Training for General Dental Practice) (Scotland) Amendment Regulations 2010**
5. **Scottish Dental Practice Board Amendment Regulations 2010**
6. **Revised/New Forms**

Summary

1. This letter advises NHS Boards and Practitioner Services of:

- the introduction of the NHS (General Dental Services) (Scotland) Regulations 2010 ("the 2010 Regulations");
- consequential, and other, amendments made to 4 sets of inter-linked Regulations; and
- the revision and introduction of new forms.

2. All 5 sets of Regulations will take effect from 2 July 2010.

16 June 2010

Addresses

For action
Chief Executives,
NHS Boards

Director,
Practitioner Services

For information
Chief Executive,
NHS Education for Scotland

Chief Executive,
NHS National Services Scotland

Chair
Scottish Dental Practice Board

Enquiries to:

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1st Floor Rear
St Andrew's House
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Senga.Robertson@scotland.gsi.gov.uk

Lynne Morrison (All other GDS matters)
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1st Floor Rear
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Background

NHS (General Dental Services) (Scotland) Regulations 2010 (“the 2010 Regulations”)

3. The 2010 Regulations:

- consolidate the National Health Service (General Dental Services) (Scotland) Regulations 1996 (“The 1996 Regulations”) and subsequent amending Regulations to these;
- extend the NHS Board dental list system for the first time to a) dental bodies corporate; and b) those dentists who assist with the provision of general dental services (GDS);
- extend the requirements with which those who apply to join a dental list and those whose names appear on dental lists must comply in order to demonstrate their fitness to provide or assist with the provision of GDS in a NHS Board’s area;
- introduce a power for a NHS Board to suspend a dentist or dental body corporate on a dental list in a limited range of circumstances; and
- make consequential amendments to the National Health Service (Choice of Dental Practitioners) (Scotland) Regulations 1998 and the Police Act 1997 (Criminal Records) (Scotland) Regulations 1996.

4. Background information for NHS Boards is contained in Annex A to this letter.

5. Determinations which provide for payments to dental contractors suspended from the first part of dental lists and to assistants suspended from the second part of dental lists are attached as Appendix A and B to the Memorandum to this letter.

Replacement of a) Application Forms GP21 and GP21(EDS) and b) Forms GP 21A

6. 5 new GP 21 forms to apply to join a dental list have been designed as have 5 new declarations, undertakings and consent forms to accompany these. There are now separate application forms and declarations, undertakings and consents forms to be completed by:

- dentists wishing to join sub-part A of the first part of a dental list;
- the directors of dental bodies corporate wishing to join sub-part A of the first part of a dental list;
- dentists wishing to join sub-part B of the first part of a dental list;
- the directors of dental bodies corporate wishing to join sub-part B of the first part of a dental list;
- assistant dentists (including vocational trainees) wishing to join the second part of a dental list.

Pdf copies of these forms have been sent to NHS Boards.

7. Additionally, undertakings, declarations and consents forms have also been designed for NHS Boards to send for completion to those dentists who are already named on Part A or Part B of dental lists and whose names will therefore transfer over to the sub-part A or sub-part B of the first part of dental lists on 2 July 2010. Pdf copies of these forms have been sent to NHS Boards.

8. There are 3 new electronic forms GP21A (for sub-part A of the first part of a dental list; sub-part B of the first part of a dental list and the second part of the dental list) to be used by NHS Boards to inform Practitioner Services and the Scottish Government Health Directorates of dental list appointments, terminations or changes of status. Fiona Shepherd is the relevant contact at Practitioner Services (fionashepherd@nhs.net – telephone 0131 275 6765). All NHS Boards have already been asked to provide Fiona, by 25 June, with details of the relevant named contact within their Board who will action these forms, including the contact's nhs.net address.

9. A pdf template for seeking clinical references from 2 referees in respect of dental list applicants has also been sent to NHS Boards for their use.

NHS (Discipline Committees) (Scotland) Amendment Regulations 2010 and NHS (Tribunal) (Scotland) Amendment Regulations 2010

10. The above amendment Regulations bring dentists on the second part of dental lists (assistant dentists and vocational trainees) and dental bodies corporate within the jurisdictions of NHS Discipline Committees and the NHS Tribunal. The NHS (Tribunal) (Scotland) Amendment Regulations 2010 also change from 2 to 5 the number of copies of written material which the NHS Board or the practitioner must send to the NHS Tribunal and there is another minor technical amendment provided for in the NHS (Discipline Committees) (Scotland) Amendment Regulations 2010.

Scottish Dental Practice Board Amendment Regulations 2010 and the NHS (Vocational Training for General Dental Practice) (Scotland) Amendment Regulations 2010

11. The references to the 1996 Regulations in the Scottish Dental Practice Board Regulations 1997 and the NHS (Vocational Training for General Dental Practice) (Scotland) Regulations 2004 have been updated and the opportunity has been taken to update other statutory references. The NHS (Vocational Training for General Dental Practice) (Scotland) Amendment Regulations 2010 also make amendments to introduce provisions which will permit NHS Education for Scotland to issue a vocational training (orthodontic) (VT(O)) number to a dentist, subject to specific criteria and 2 further, minor consequential provisions have therefore been inserted into the NHS (General Dental Services) (Scotland) Regulations 2010 relating to the VT number. Where he or she has a VT(O) number, a dentist applying to join sub-part A of the first part of a dental list must inform the NHS Board of this as he/she will require to restrict his/her practice under general dental services to the provision of orthodontic treatment only – see paragraph 13 of Annex A to this letter.

12. Any enquiries about the NHS (Vocational Training for General Dental Practice) (Scotland) Amendment Regulations 2010 should be addressed to Dave McLeod,

Workforce Planning and Development Division, Ground Floor Rear, St Andrew's House, Edinburgh, EH1 3DG (0131 244 2486) or Dave.McLeod@scotland.gsi.gov.uk.

Action

13. **NHS Boards** are asked to:

- note the provisions in the new NHS (General Dental Services) (Scotland) Regulations 2010 as described in this letter and in Annex A;
- issue from 2 July 2010 onwards the new dental application forms and declarations, consents and undertakings forms supplied in pdf format and destroy on that date remaining copies of the old dental list application forms GP21 and GP21 (EDS);
- use from 2 July 2010 onwards the new electronic GP21A forms to inform Practitioner Services and SGHD of dental list appointments, terminations or changes of status and destroy on that date remaining copies of the GP21A and GP21A (EDS) forms;
- note the arrangements set out in paragraph 19 of Annex A for dealing with applications where the applicant wishes to join more than one dental list;
- ensure that they have adequate supplies of Disclosure Scotland application forms to send to list applicants and also to already listed dentists for the one-off exercise described at paragraph 22 of Annex A and comply with the payment arrangements for enhanced criminal record certificates set out at paragraph 10 of Annex A;
- issue the relevant declarations, consents and undertakings forms to dentists already named on Part A and part B of their dental lists at 2 July 2010 for the one-off exercise described at paragraph 22 of Annex A which the listed dentists are required to complete by 1 October 2010;
- note the Determinations at Appendices A and B to the Memorandum to this letter regarding payment to dental contractors or assistant dentists subject to suspension by an NHS Board or by the NHS Tribunal and authorise any future suspension payments in line with these;
- note the amendments to the NHS (Discipline Committees) (Scotland) Amendment Regulations 2010, the NHS (Tribunal) (Scotland) Amendment Regulations 2010, the Scottish Dental Practice Board Amendment Regulations 2010 and the NHS (Vocational Training for General Dental Practice) (Scotland) Amendment Regulations 2010; and
- ensure that those NHS Board officials dealing with matters relating to NHS Discipline Committees and the NHS Tribunal have sight of this PCA as well as those dealing with general dental services/vocational trainee matters.

14. **NHS Boards and Practitioner Services** are asked to note the information regarding:
- listed dental bodies corporate and those dentists who will assist the body corporate in the provision of GDS contained in paragraphs 2 and 3 of the attached Annex and paragraphs 29 to 33 in the Memorandum to this letter;
 - registering patients under capitation and continuing care arrangements contained in paragraph 34 of the Memorandum to this letter;
 - amendments to the Statement of Dental Remuneration contained in paragraph 36 to the Memorandum to this letter; and
 - the introduction of a new vocational training (orthodontic) number as explained in paragraph 11 of this letter.
15. **Practitioner Services** are asked to note the action points at paragraph 13 above and make any future suspension payments authorised by NHS Boards from 2 July onwards in line with the Determination at Appendices A and B to the Memorandum to this letter.
16. **NHS Education Scotland** are asked to note:
- and act in accordance with the amendments to the NHS (Vocational Training for General Dental Practice) (Scotland) Regulations 2004 in respect of vocational training (orthodontic) numbers from 2 July 2010 onwards; and
 - the information about clinical audit in paragraph 30 of Annex A to this letter.
17. Supplies of the NHS (General Dental Services) (Scotland) Regulations 2010 have already been sent to NHS Boards. A copy of these should be distributed **urgently** to each dentist included on their dental lists, together with the Memorandum only to this letter which should be copied locally. A pdf version of the Memorandum accompanies this letter. If a dentist has more than one address within an NHS Board area he/she should only be send one copy of the 2010 Regulations.
18. Copies of the NHS (Discipline Committees) (Scotland) Amendment Regulations 2010, the NHS (Tribunal) (Scotland) Amendment Regulations 2010 and the Scottish Dental Practice Board Amendment Regulations 2010 will be sent to NHS Boards as soon as they are available. A link to the NHS (Vocational Training for General Dental Practice) (Scotland) Amendment Regulations 2010 will be sent to NHS Boards as soon as it is available. NHS Boards should make copies of these regulations available for inspection by dentists and dental bodies corporate.

Yours sincerely

FRANK STRANG
Deputy Director

BACKGROUND FOR NHS BOARDS ON THE NATIONAL HEALTH SERVICE (GENERAL DENTAL SERVICES) (SCOTLAND) REGULATIONS 2010 (“the 2010 Regulations)

EXTENSION OF DENTAL LISTS TO DENTAL BODIES CORPORATE AND DENTISTS WHO ASSIST WITH THE PROVISION OF GENERAL DENTAL SERVICES (“GDS”)

Dental Lists

1. The dental list maintained by each NHS Board will be split into two parts, the first part listing dentists and dental bodies corporate who undertake to provide GDS in the Board’s area and the second part listing those dentists (including vocational trainees – but see paragraph 5 below) who are approved to assist with GDS provision in the Board’s area. The first part will be further sub-divided. Those dentists and dental bodies corporate named on sub-part A will provide GDS under normal arrangements. Those listed on sub-part B will provide emergency dental services (EDS) only, under regulation 19 arrangements for which the NHS Board is responsible, at a hospital or in premises approved by that NHS Board. If a dentist or dental body corporate is already listed on sub-part A and they provide EDS under regulation 19 arrangements, their names do not need to appear on sub-part B also. From 2 July 2010, any dentist or dental body corporate wishing to provide either GDS or emergency dental services in an area must join the appropriate sub-part of the first part of the dental list for that area. Those dentists whose names feature on Part A and Part B of current dental lists at 1 July 2010 will transfer to sub-Part A and sub-Part B of the first part of such lists from 2 July 2010. Those dentists who currently assist with GDS provision and are unlisted will have 3 months – i.e. until 1 October 2010 – to join the second part of the dental list for the areas where they work.

2. It should be noted that all dentists working for or in other arrangements with dental bodies corporate will be under a duty to join dental lists but dental bodies corporate will not be obliged to join dental lists. Certain grants and allowances however – for example some of those contained in the Statement of Dental Remuneration and Scottish Dental Access Initiative grants – will only be available to dental bodies corporate who have joined dental lists.

3. If a dental body corporate chooses to join a dental list to provide GDS then the dentists who work for or in arrangement with that body corporate will be listed on the second part of the dental list, not sub-part A of the first part, as they will be assisting the dental body corporate in the provision of GDS – see further information at paragraphs 29 to 33 of the Memorandum to this letter. NHS Boards should ensure that any dentists who work for a listed dental body corporate are on the second part of their dental list.

4. The listing for the first time of both dental bodies corporate and assistant dentists will bring them within the jurisdiction of NHS Discipline Committees and of the NHS Tribunal.

5. Graduate dentists will be able to undertake vocational training in general dental practice for up to 3 months of the vocational training year without being named on the second part of the relevant NHS Board’s dental list. This will give NHS Boards time to process the relevant applications for list entry.

6. Terms of service and other requirements will apply to all of those named on dental lists, with the terms of service for those on the second part being more limited than for those on the first part.

Applications

7. There will be five listing application forms and 5 declarations, undertakings and consents forms as follows:

- dentists wishing to join sub-part A of the first part of a dental list;
- the directors of dental bodies corporate wishing to join sub-part A of the first part of a dental list;
- dentists wishing to join sub-part B of the first part of a dental list;
- the directors of dental bodies corporate wishing to join sub-part B of the first part of a dental list;
- assistant dentists (including vocational trainees) wishing to join the second part of a dental list.

Pdf copies of these forms have been sent to NHS Boards for use from 2 July 2010.

8. The GP21A and GP21A (EDS) forms for notification to Practitioner Services and SGHD will be replaced. There will be 3 new electronic GP21A forms (for sub-parts A and B of the first part of the dental list and for the second part of the dental list). The Practitioner Services contact is Fiona Shepherd on 0131 275 6765 fionashepherd@nhs.net.

9. Dentists and dental bodies corporate wishing to join any part/sub-part of a NHS Board's dental list will need to provide more information, documents, consents and undertakings than was the case under the previous 1996 Regulations in support of a formal application for inclusion. Copies of these, together with new application forms have been sent to NHS Boards. Where directors of bodies corporate wish their dental body corporate to be named on a dental list, all of the Directors will need to complete an application form and each Director will need to sign a declarations, consents and undertakings form on an individual basis. NHS Boards will undertake checks on the information provided to determine if applicants meet the criteria to be included in their dental list. Dentist applicants (but not dental bodies corporate) must provide the names of 2 referees from whom the Board must request clinical references. A reference template has been sent to NHS Boards.

10. One of the documents which must be supplied is an original enhanced criminal record certificate. In the case of a dental body corporate, an enhanced criminal record certificate must be supplied for each director. Those dentists who are already named on NHS Board lists at 2 July 2010 will not need to pay or will receive reimbursement for the cost of the enhanced criminal record certificate (see paragraph 22 below regarding the one-off exercise which Boards will need to undertake in respect of dentists listed at 1 July 2010). Additionally, the costs of these certificates will not be paid by or will be reimbursed to those applicants whose applications have been submitted and are being processed by NHS Boards at 2 July 2010. Funding will be made available by the Scottish Government to NHS Boards for this purpose. The mechanics of payment/reimbursement are left to the discretion of individual Boards. Boards are asked to notify SGHD, General Dental Services Branch, St Andrews House, Regent Road, Edinburgh EH1 3DG by the end of November 2010 of the total reimbursement costs. SGHD will then arrange an allocation to each NHS Board's unified budget.

11. In many cases, applicants will not have enhanced criminal record certificates. Boards may therefore include Disclosure Scotland application forms as part of the pack to be sent out to applicants. The Disclosure Scotland application form should be countersigned by the NHS Board prior to being sent to Disclosure Scotland. In some cases, Human Resources may wish to countersign. It should be noted that, when completing Part C, the NHS Board must satisfy itself as to the identity of the applicant. A range of documents may be used for this, including a birth certificate or a passport. (There is provision in the 2010 Regulations – regulation 5(4) – under which an NHS Board may seek further information or documents from the applicant in order to determine an application.). Guidance on handling of enhanced criminal record certificates has been forwarded separately to all NHS Board GDS contacts.

Vocational Training (Orthodontic) Number

12. In order to join sub-part A of the first part of a dental list, an applicant who is a dentist must provide his/her vocational training (VT) number if he or she has one, including his/her vocational training (orthodontic) number.

13. From 2 July 2010, the NHS (Vocational Training for General Dental Practice) (Scotland) Regulations 2004 are being amended to introduce provisions which will permit NHS Education Scotland to issue a vocational training (orthodontic) (VT(O)) number to a dentist, subject to specific criteria, where that dentist intends to restrict his/her provision of GDS to orthodontics. The 2010 Regulations have therefore been amended also to provide that a dentist applying to join sub-part A of the first part of a dental list must inform the NHS Board of his/her VT(O) number, if he or she has one. Dentists who have a VT(O) number must give an undertaking to restrict their practice under general dental services to the provision of orthodontic treatment only.

Deferment/Refusal of Entry/Removals

14. In considering any application, an NHS Board must undertake checks to determine if the applicant meets the criteria to be included on its dental list. There are grounds specified in the 2010 Regulations for deferment; a power for an NHS Board to require further information from an applicant which the applicant must provide and grounds on which an NHS Board must refuse an application. The grounds on which a Board will now be required to remove someone from its dental list are broadly similar to those on which they must refuse entry.

15. The circumstances in which an NHS Board must refuse list entry or must remove a dentist or dental body corporate from its list are limited (regulations 7 and 12 of the 2010 Regulations refer). Two different types of example would be where an NHS Board is not satisfied that a dentist who has applied to join its dental list has an adequate knowledge of English to provide/assist with the provision of GDS (refusal of entry only); or where a list applicant or a listed person has been convicted of murder in the British islands (both entry refusal and list removal). In this latter case, there is a power for re-inclusion where an adverse finding is overturned on appeal. In all cases not covered by regulations 7 or 12, where an NHS Board considers that an applicant should not be allowed to join its dental list or a dentist or dental body corporate should no longer be named on its dental list, it may refer the case to the NHS Tribunal.

16. NHS Boards will have a power to call list applicants (the applicant dentist or one or more directors of a dental body corporate) to a meeting before determining a dental list application. Where a Board exercises this power, the applicant must attend the meeting. (Regulation 5(5)).

Practice Premises – Inspections

17. When an NHS Board receives a listing application and has not previously inspected the relevant practice premises, it must do so before determining the application. Where a Board receives a listing application and the relevant practice premises have in fact been inspected, the Board has a power to inspect the practice premises before determining the application. Where, after inspection, the Board is not satisfied that the premises comply with paragraph 42 of Schedule 1 to the 2010 Regulations (relating to the standards of premises and equipment required for GDS provision), the Board must specify the improvement work to be undertaken and provide the applicant with a reasonable period of time in which to carry it out. Where the Board remains unsatisfied with the premises however after the specified time has elapsed, it must refuse the application. (Regulations 5(6) and (7), 7(1)(p) and 8(1)(j) refer.)

18. NHS Boards will continue to be required to undertake a 3 year rolling programme of practice inspections (regulation 6(9) refers).

Co-operation regarding applications to more than one Board

19. In order to keep bureaucracy to a minimum, an applicant who wishes to join the dental list of more than one NHS Board should indicate in the application form the areas where the applicant wishes to join the dental list. The applicant will submit the application to one NHS Board (usually for the area in which the applicant will provide or assist with the provision of general dental services for the largest percentage of time) which will obtain all of the relevant information, documents etc on its own behalf and on behalf of the other Boards whose dental lists the applicant wishes to join. When the NHS Board which has obtained all of the information, documents etc has finished checking these, it will forward copies of the application form and the accompanying information and documents to the other relevant Boards, together with confirmation of whether or not it has allowed the applicant entry to its list. The other Boards will have a power to accept the applicant onto their dental lists without further enquiry (regulation 7(4) of the 2010 Regulations).

20. Where a contractor or assistant dentist is already named on the dental list of an NHS Board and applies to join the list of another Board, that Board will also have a power to accept the applicant onto its list without further enquiry (regulation 5(10) of the 2010 Regulations).

Requirements with which those on dental lists must comply

21. From 2 July 2010, there will be requirements with which those who are on a dental list must comply, including exercising a reasonable standard of professional and clinical judgement, behaviour, skill, knowledge and care towards patients, complying with the terms of service and with the same undertakings as list applicants and all other requirements of the Regulations.

One off Exercise

22. The criteria provided by the 2010 Regulations for inclusion on a dental list are intended to increase protection of patients and of NHS resources. The information, documents, consents, declarations and undertakings which applicants will have to provide are therefore very comprehensive. Those dentists already named on dental lists will be required to provide similar information, documents, consents, declarations and undertakings to each NHS Board on which his/her name appears and will need to inform the NHS

Board(s) within 7 days if there is any change in circumstances. This could be where the listed person becomes the subject of a criminal conviction or there are currently proceedings against him or her by a regulatory body such as the General Dental Council. Transitional provisions will provide that those dentists on sub-part A and sub-Part B of the first part of a dental list at 2 July 2010 must provide the required information, undertakings etc by 1 October 2010 but there will be a power for a NHS Board to extend this period in cases where it considers it is not practicable for the dentist concerned to provide the material within the prescribed period. This should be the exception rather than the rule.

Enhanced Criminal Record Certificates

23. Those dentists already named on dental lists at 2 July 2010 will be required to provide an enhanced criminal record certificate to one NHS Board only i.e. to the Board in whose area the dentist derives most GDS income and that Board may share the certificate information with any other Board on whose dental list the dentist's name appears. Guidance on handling of enhanced criminal record certificates has been forwarded separately to all NHS Board GDS contacts.

Dentists Completing Vocational Training

24. Under the 2010 Regulations, dentists undertaking vocational training and wishing to join the first part of a dental list on completion of that training, may apply to join the first part of an NHS Board's list at least four months before their vocational training year is completed. They must provide the same consents, certificates, information, declarations and undertakings as other applicants except for their vocational training number which they will only receive on satisfactory completion of their training. This allows the NHS Board to begin the required checks and therefore speeds up the application process. The vocational training number must be provided to the NHS Board as soon as the dentist receives this from NHS Education for Scotland.

Consents

25. The consents which will be required of list applicants and those who are already listed will allow the exchange of information between the NHS Board and specified bodies or persons. These will enable a Board to request, for example, information from a former employer or from the General Dental Council concerning an adverse finding or current proceedings involving the applicant or a person who is already listed. An NHS Board will also be able to notify, for example, a current employer or another NHS Board or an equivalent body (for example, a primary care trust in England) of its decision to refuse entry to a list applicant or to remove a listed person from its dental list. The full list of bodies and persons to be notified is set out in regulation 14 of the 2010 Regulations. For the Scottish Ministers, the contact will be Senga Robertson, Scottish Government Health Directorates, 1 East Rear, St Andrews House, Regent Road, Edinburgh EH1 3DG and for the Common Services Agency, the contact will be Julie Kidd, ISD, Gyle Square, 1 South Gyle Crescent, Edinburgh EH12 9EB. For the other UK Health Departments, notification should be sent to the Dental Services Branch at the following addresses:

- Richmond House, Whitehall, London SW1A 2NS (Department of Health);
- Castle Buildings, Stormont, Belfast BT4 3SQ (Department of Health, Social Security and Public Safety);
- Cathays Park, Cardiff CG10 3NQ (Welsh Assembly Health Department)

Powers to impose conditions on provision or assistance with provision of general dental services

26. Further protection for patients will be afforded by a power enabling an NHS Board to impose conditions on the provision, or assistance with provision, of GDS in cases where a dentist wishes to be included on its dental list and he or she has had conditions relating to his or her inclusion on an equivalent list in England, Wales or Northern Ireland. The NHS Board may modify the conditions as required to suit Scottish circumstances, provided the dentist concerned has been given the opportunity to make representations about these.

Suspension by an NHS Board

27. The 2010 Regulations introduce a power for an NHS Board to suspend a dentist or dental body corporate from its dental list on certain grounds. There are, however, only a limited number of grounds on which this power may be exercised – while the NHS Board awaits the findings of a court, a professional regulatory or licensing body or the NHS Tribunal or equivalent body; while it decides whether to refer a dentist or dental body corporate to the NHS Tribunal; while it decides whether to remove a dentist or dental body corporate from its dental list or where it has decided on removal from its list but before that decision takes effect. This power does not replace the power of the NHS Tribunal to direct a suspension. It provides NHS Boards with a choice of whether to suspend from its own list or make a Tribunal referral for suspension.

28. When deciding whether to suspend, it is important that NHS Boards are aware that no person should be treated less favourably because of their race, religion, ethnic origin, sex, sexual orientation, age, disability or political views than someone else would be treated in similar circumstances. NHS Boards are reminded that, in making decisions, or exercising statutory obligations or powers, it is good practice to always bear in mind the diverse nature of the practitioner community and patient populations and the consequent variations in practice, aspirations and need. In accordance with good practice, NHS Boards will wish to ensure that they neither discriminate against practitioners nor face allegations that their procedures are discriminatory. It is important that NHS Boards recognise that there is no excuse for imposing preferences, prejudices or to target the performance of individual practitioners purely because they fit a stereotype.

29. The 2010 Regulations recognise the right of the dental contractor or assistant dentist to receive payments while suspended either by an NHS Board or by the NHS Tribunal to reflect the neutrality of the suspension. Payments should be made in accordance with the relevant suspension payment determinations at Appendices A and B to the Memorandum to this letter.

Clinical Audit

30. It is a requirement that dentists, including assistants, undertake 15 hours of clinical audit activities every 3 years. The 3 years is a rolling programme beginning with the 1 April 2002, if the dentist was providing GDS at that time, or the date the dentist joined the dental list. Monitoring compliance with the 3 year rolling programme has been difficult for NHS Boards because of the different starting dates for dentists. A simplification of the process has therefore been agreed and further information about this will be issued shortly.

**DENTISTS
NATIONAL HEALTH SERVICE
GENERAL DENTAL SERVICES**

1. **NHS (General Dental Services) (Scotland) Regulations 2010**
2. **NHS (Tribunal) (Scotland) Amendment Regulations 2010**
3. **NHS (Discipline Committees) (Scotland) Amendment Regulations 2010**
4. **NHS (Vocational Training for General Dental Practice) (Scotland) Amendment Regulations 2010**
5. **Scottish Dental Practice Board Amendment Regulations 2010**
6. **Forms**

Summary

1. This Memorandum advises dentists and dental bodies corporate of:
 - the introduction of the NHS (General Dental Services) (Scotland) Regulations 2010 (“ the 2010 Regulations”) which take effect from 2 July 2010;
 - consequential, and other, amendments made to 4 sets of inter-linked Regulations which take effect from 2 July 2010.

Background

NHS (General Dental Services) (Scotland) Regulations 2010 (“the 2010 Regulations”)

EXTENSION OF DENTAL LISTS TO DENTAL BODIES CORPORATE AND DENTISTS WHO ASSIST WITH THE PROVISION OF GENERAL DENTAL SERVICES (“GDS”)

Dental Lists

2. The dental list maintained by each NHS Board will be split into two parts, the first part listing dentists and dental bodies corporate who undertake to provide GDS in the NHS Board's area and the second part listing those dentists (including vocational trainees – but see paragraph 6 below) who are approved to assist with GDS provision in the NHS Board's area. The first part will be further sub-divided. Those dentists and dental bodies corporate named on sub-part A will provide GDS under normal arrangements. Those listed on sub-part B will provide emergency dental services only, under regulation 19 arrangements for which the NHS Board is responsible, at a hospital or in premises approved by that NHS Board. If a dentist or dental body corporate is already listed on sub-part A, their names do not need to appear on sub-part B also. From 2 July 2010, any dentist or dental body corporate wishing to provide either GDS or emergency dental services under regulation 19 arrangements in an area must join the appropriate sub-part of the first part of the dental list for that area. Those dentists whose names feature on Part A or Part B of current dental lists at 1 July 2010 will transfer to sub-Part A or sub-Part B of the first part of such lists from 2 July 2010. Those dentists who currently assist with GDS provision and are unlisted will have 3 months – i.e. until 1 October 2010 – to join the second part of the dental list for the areas where they work.

3. If a dentist is not listed on the first part of the dental list or the second part of the dental list he/she will not be able to provide or assist in the provision of GDS in any shape or form.
4. It should be noted that all dentists working for or in other arrangements with dental bodies corporate will be under a duty to join dental lists but dental bodies corporate will not be obliged to join dental lists. Certain grants and allowances however – for example some of those contained in the Statement of Dental Remuneration and Scottish Dental Access Initiative grants – will only be available to dental bodies corporate who have joined dental lists. See further information at paragraphs 29 to 33 below.
5. The listing for the first time of both dental bodies corporate and assistant dentists will bring them within the jurisdiction of NHS Discipline Committees and of the NHS Tribunal.
6. Graduate dentists will be able to undertake vocational training in general dental practice for up to 3 months of the vocational training year without being named on the second part of the relevant NHS Board's dental list. This will give NHS Boards time to process the relevant applications for list entry.
7. Terms of service and other requirements will apply to all of those named on dental lists, with the terms of service for those on the second part being more limited than for those on the first part.

Applications

8. There will be five listing application forms and 5 declarations, undertakings and consents forms. The NHS Board will forward the appropriate forms to the list applicant depending on whether the applicant is a dentist or a dental body corporate and whether the applicant wishes to join sub-part A or sub-part B of the first part of a dental list or the second part of a dental list.
9. Dentists and dental bodies corporate wishing to join any part/sub-part of a NHS Board's dental list will need to provide more information, documents, consents and undertakings than was the case under the previous NHS (General Dental Services) (Scotland) Regulations 1996 ("the 1996 Regulations") in support of a formal application for inclusion. Where directors of dental bodies corporate wish their body corporate to be named on a dental list, all of the Directors will need to complete an application form and each Director will need to sign a declarations, consents and undertakings form on an individual basis. NHS Boards will undertake checks on the information provided to determine if applicants meet the criteria to be included in their dental list. Dentist applicants (but not dental bodies corporate) must provide the names of 2 referees from whom the Board must request clinical references.
10. One of the documents which must be supplied is an original enhanced criminal record certificate. In the case of a dental body corporate, an enhanced criminal record certificate must be supplied for each director. Those dentists who are already named on NHS Board lists at 2 July 2010 will either not need to pay or will receive reimbursement for the cost of the enhanced criminal record certificate (see paragraph 22 below regarding the one-off exercise which NHS Boards will need to undertake in respect of dentists listed at 2 July 2010). Additionally, those applicants whose applications have been submitted and are being processed by NHS Boards at 2 July 2010 will either not need to pay or will be reimbursed the relevant fee. The mechanics of payment/reimbursement are left to the discretion of individual Boards who will inform dentists and applicants of these.

11. In many cases, applicants will not have enhanced criminal record certificates. NHS Boards may therefore include Disclosure Scotland application forms as part of the pack to be sent out to applicants.

Vocational Training (Orthodontic) Number

12. In order to join sub-part A of the first part of a dental list, an applicant who is a dentist must provide his/her vocational training number if he or she has one, including his/her vocational training (orthodontic) (VT(O)) number.

13. From 2 July 2010, the NHS (Vocational Training for General Dental Practice) (Scotland) Regulations 2004 are being amended to introduce provisions which will permit NHS Education for Scotland to issue a VT(O) number to a dentist, subject to specific criteria, where that dentist intends to restrict his/her provision of GDS to orthodontics. Dentists who intend to restrict their provision of general dental services to orthodontics and who do not have a vocational training number and cannot be issued with such a number as they are not exempt from having to undertake vocational training (VT) or have experience or training regarded as equivalent to VT will be able to apply for a VT(O) number. Dentists who are eligible to obtain or have a general vocational training number should not apply for a VT(O) number. The 2010 Regulations have therefore been amended also to provide that a dentist applying to join sub-part A of the first part of a dental list must inform the NHS Board of his/her VT(O) number, if he or she has one. Dentists who have a VT(O) number must give an undertaking to the NHS Board that he/she will restrict his/her practice under GDS to the provision of orthodontic treatment only.

Deferment/Refusal of Entry/Removals

14. In considering any application, an NHS Board must undertake checks to determine if the applicant meets the criteria to be included on its dental list. There are grounds specified in the 2010 Regulations for deferment; a power for an NHS Board to require further information from an applicant which the applicant must provide and grounds on which an NHS Board must refuse an application. The grounds on which a Board will now be required to remove someone from its dental list are broadly similar to those on which they must refuse entry.

15. The circumstances in which an NHS Board must refuse list entry or must remove a dentist or dental body corporate from its list are limited (regulations 7 and 12 of the 2010 Regulations refer). Two different types of example would be where an NHS Board is not satisfied that a dentist who has applied to join its dental list has an adequate knowledge of English to provide/assist with the provision of GDS (refusal of entry only); or where a list applicant or a listed person has been convicted of murder in the British islands (both entry refusal and list removal). In this latter case, there is a power for re-inclusion where an adverse finding is overturned on appeal. In all cases not covered by regulations 7 or 12, where an NHS Board considers that an applicant should not be allowed to join its dental list or a dentist or dental body corporate should no longer be named on its dental list, it may refer the case to the NHS Tribunal.

16. NHS Boards will have a power to call list applicants (the applicant dentist or one or more directors of a dental body corporate) to a meeting before determining a dental list application. Where a Board exercises this power, the applicant must attend the meeting. (Regulation 5(5) of the 2010 Regulations refers).

Practice Premises – Inspections

17. When an NHS Board receives a listing application and has not previously inspected the relevant practice premises, it must do so before determining the application. Where a Board receives a listing application and the relevant practice premises have in fact been inspected, the Board has a power to inspect the practice premises before determining the application. Where, after inspection, the Board is not satisfied that the premises comply with paragraph 42 of Schedule 1 to the 2010 Regulations (relating to the standards of premises and equipment required for GDS provision), the Board must specify the improvement work to be undertaken and provide the applicant with a reasonable period of time to it carry out. Where the Board remains unsatisfied with the premises however after the specified time has elapsed, it must refuse the application. (Regulations 5(6) and (7), 7(1)(p) and 8(1)(j) refer.)

18. NHS Boards will continue to be required to undertake a 3 year rolling programme of practice inspections (regulation 6(9) of the 2010 Regulations refers). The provisions relating to premises and equipment (paragraphs 43 of Schedule 1 to the 2010 Regulations refers) have been amended and improved/extended to require a contractor to provide proper, sufficient and safe premises, equipment, instruments and procedures.

Co-operation regarding applications to more than one Board

19. In order to keep bureaucracy to a minimum, an applicant who wishes to join the dental list of more than one NHS Board should indicate in the application form the areas where the applicant wishes to join the dental list. The applicant will submit the application to one NHS Board (usually for the area in which the applicant will provide or assist with the provision of GDS for the largest percentage of time) which will obtain all of the relevant information, documents etc on its own behalf and on behalf of the other Boards whose dental lists the applicant wishes to join. When the NHS Board which has obtained all of the information, documents etc has finished checking these, it will forward copies of the application form and the accompanying information and documents to the other relevant NHS Boards, together with confirmation of whether or not it has allowed the applicant entry to its list. The other Boards may then if it wishes to do so accept the applicant onto their dental lists without further enquiry (regulation 7(4) of the 2010 Regulations).

20. Where a contractor or assistant dentist is already named on the dental list of an NHS Board and applies to join the list of another Board, that Board may also accept the applicant onto its list without further enquiry (regulation 5(10) of the 2010 Regulations).

Requirements with which those on dental lists must comply

21. From 2 July 2010, there will be requirements with which those who are on a dental list must comply, including exercising a reasonable standard of professional and clinical judgement, behaviour, skill, knowledge and care towards patients, complying with the terms of service and with the same undertakings as list applicants and all other requirements of the Regulations.

One off Exercise

22. The criteria provided by the 2010 Regulations for inclusion on a dental list are intended to increase protection of patients and of NHS resources. The information, documents, consents, declarations and undertakings which applicants will have to provide are therefore very comprehensive. Those dentists already named on dental lists at 2 July 2010 will be required to provide similar information, documents, consents, declarations and

undertakings to each NHS Board on which his/her name appears and will need to inform the NHS Board(s) within 7 days if there is any change in circumstances. This could be where the listed person becomes the subject of a criminal conviction or there are currently proceedings against him or her by a regulatory body such as the General Dental Council. Dentists already named on Part A or Part B of dental lists will transfer to sub-part A or sub-part B of the first part of a dental list at 2 July 2010 and they will need to provide the required information, undertakings etc by **1 October 2010** but there will be a power for a NHS Board to extend this period in cases where it considers it is not practicable for the dentist concerned to provide the material within the prescribed period.

Enhanced Criminal Record Certificates

23. Those dentists already named on dental lists at 2 July 2010 will be required to provide an enhanced criminal record certificate to one NHS Board only i.e. to the Board in whose area the dentist derives most GDS income by **1 October 2010** or by the extended period specified by the NHS Board.

Dentists Completing Vocational Training

24. Under the 2010 Regulations, dentists undertaking vocational training and wishing to join the first part of a dental list on completion of that training, may apply to join the first part of an NHS Board's list at least four months before their vocational training year is completed. They must provide the same consents, certificates, information, declarations and undertakings as other applicants except for their vocational training number which they will only receive on satisfactory completion of their training. This allows the NHS Board to begin the required checks and therefore speeds up the application process. The vocational training number must be provided to the NHS Board as soon as the dentist receives this from NHS Education for Scotland.

Consents

25. The consents which will be required of list applicants and those who are already listed will allow the exchange of information between the NHS Board and specified bodies or persons. These will enable a Board to request, for example, information from a former employer or from the General Dental Council concerning an adverse finding or current proceedings involving the applicant or a person who is already listed. An NHS Board will also be able to notify, for example, a current employer or another NHS Board or an equivalent body (for example, a primary care trust in England) of its decision to refuse entry to a list applicant or to remove a listed person from its dental list. The full list of bodies and persons to be notified is set out in regulation 14 of the 2010 Regulations.

Powers to impose conditions on provision or assistance with provision of general dental services

26. Further protection for patients will be afforded by a power enabling an NHS Board to impose conditions on the provision, or assistance with provision, of GDS in cases where a dentist wishes to be included on its dental list and he or she has had conditions relating to his or her inclusion on an equivalent list in England, Wales or Northern Ireland. The NHS Board may modify the conditions as required to suit Scottish circumstances, provided the dentist concerned has been given the opportunity to make representations about these.

Suspension by an NHS Board

27. The 2010 Regulations introduce a power for an NHS Board to suspend a dentist or dental body corporate from its dental list on certain grounds. There are, however, only a limited number of grounds on which this power may be exercised – while the NHS Board awaits the findings of a court, a professional regulatory or licensing body or the NHS Tribunal or equivalent body; while it decides whether to refer a dentist or dental body corporate to the NHS Tribunal; while it decides whether to remove a dentist or dental body corporate from its dental list or where it has decided on removal from its list but before that decision takes effect. This power does not replace the power of the NHS Tribunal to direct a suspension. It provides NHS Boards with a choice of whether to suspend from its own list or make a Tribunal referral for suspension.

28. The 2010 Regulations recognise the right of the dental contractor or assistant dentist to receive payments while suspended either by an NHS Board or by the NHS Tribunal to reflect the neutrality of the suspension. Payments should be made in accordance with the relevant suspension payment determinations attached at Appendices A and B to this Memorandum.

Dental Bodies Corporate/dentists Relationship

29. Where a dental body corporate is listed in sub-part A of the first part of the dental list the dentists who work for or in arrangement with that body corporate will be listed on the second part of the dental list, as they will be assisting the dental body corporate in the provision of GDS.

30. Those dentists who are currently on Part A of the dental list under the 1996 Regulations who work for or in arrangement with a dental body corporate will be required to move to the second part of the dental list **if** the dental body corporate that they work for or in arrangement with is listed on sub-part A of the first part of the dental list. The patients who are currently registered with such dentists will require to be transferred to the dental body corporate, as patients can only be registered with contractors, i.e. those on sub-part A of the first part of the dental list. On transfer of the patients, the dental body corporate will become responsible for the patients.

31. Where a dentist moves from Part A of the dental list under the 1996 Regulations to the second part of the dental list under the 2010 Regulations they will no longer be entitled to claim the following payments and allowances set down in the Statement of Dental Remuneration (SDR), as they will no longer be providing GDS but will be assisting in the provision of GDS:

- seniority payments (Determination III);
- vocational training allowance (Determination IV);
- maternity, paternity and adoptive leave payments (Determination V);
- long-term sickness payments (Determination VI);
- continuing professional development allowance (Determination VII);
- allowance and grants for practice improvements (Determination X);
- remote areas allowance (Determination XII);
- recruitment and retention allowance (Determination XIII).

32. Listed dental bodies corporate will be able to claim the following payments and allowances only:

- reimbursement of non-domestic rates (Determination VIII);
- commitment payments (Determination IX) - the payment is made to the dental body corporate who must pass it onto the assistant, as this is a personal payment;
- clinical audit allowances (Determination XI) - the payment is made to the dental body corporate for audit activities undertaken by assistants;
- practice allowances (Determination XIV);
- reimbursement of practice expenses (Determination XV).

Scottish Dental Access Initiative (SDAI) grants will also be available to listed dental bodies corporate. Revised SDAI guidance will issue in due course.

33. Item of service fees (Determination I) will be paid to dental bodies corporate for any care and treatment undertaken by dentists assisting the body corporate in the provision of GDS, as will any capitation and continuing care payments for registered patients. GP17s for any care and treatment undertaken by a dentist assisting a dental body corporate **must** be signed by the dentist undertaking the care and treatment (paragraph 20(2) of Schedule 1 to the 2010 Regulations refers) or where submitted electronically the personal identification number assigned to the dental body corporate for that assistant must be used. **Dental bodies corporate cannot** sign payment claim forms for any care and treatment undertaken.

Registering Patients under Capitation and Continuing Care Arrangements

34. Only contractors, i.e. those on sub-part A of the first part of the dental list, can register patients under capitation and continuing care arrangements. Those on the second part of the dental list cannot register patients on behalf of a contractor. This means that where a patient is registered and receives care and treatment on the same day from an assistant dentist, two GP17s will require to be submitted to Practitioner Services, one to register the patient which has to be signed by the contractor and the other to claim payment which has to be signed by the dentist who undertook the care and treatment.

Clinical Audit

35. It is a requirement that dentists, including assistants, undertake 15 hours of clinical audit activities every 3 years. The 3 years is a rolling programme beginning with the 1 April 2002, if the dentist was providing GDS at that time, or the date the dentist joined the dental list. Monitoring compliance with the 3 year rolling programme has been difficult for NHS Boards because of the different starting dates for dentists. A simplification of the process has therefore been agreed and further information about this will be issued shortly.

Statement of Dental Remuneration

36. An Amendment to the SDR to provide for the changes described at paragraphs 31 to 33 above and to provide for the revised clinical audit provisions at paragraph 35 above will not be issued for 2 July 2010. An Amendment to the SDR requires to be published to bring into effect the updated fee scale following the recommendations of the Doctors' and Dentists' Review Body. Consideration is being given to incorporating all of these amendments into one Amendment to the SDR. Further information about this will be issued in due course. The amendments to the SDR to provide for the changes at paragraphs 31 to 33 above will be backdated to 2 July 2010.

37. A number of allowance claim forms require to be amended as a result of the changes described at paragraphs 31 to 33 above and these will be available from your NHS Board in due course.

Enquiries

38. Any enquiries arising from this Memorandum should be taken up with your NHS Board.

SCOTTISH GOVERNMENT HEALTH DIRECTORATES
16 June 2010

The Scottish Ministers' Determination: Made under Regulation 26

THE SCOTTISH MINISTERS' DETERMINATION—PAYMENTS TO SUSPENDED CONTRACTORS

The Scottish Ministers make the following Determination in exercise of the powers conferred by regulation 26 of the National Health Service (General Dental Services) (Scotland) Regulations 2010. In accordance with paragraph (2) of that regulation, they have consulted with such organisations as appear to them to be representative of persons providing general dental services.

Interpretation

1. (1) This Determination may be cited as The Scottish Ministers' Determination - Payments to Suspended Contractors and shall come into force on 2 July 2010.

(2) This Determination applies to Scotland.

(3) In this Determination, unless the context otherwise requires:—

“CSA” means the Common Services Agency for the Scottish Health Service;

"date of suspension" means the date of the direction of the Tribunal made pursuant to section 32A(2) of the National Health Service (Scotland) Act 1978 or the date of suspension by a Health Board under regulation 11 of the National Health Service (General Dental Services) (Scotland) Regulations 2010 or the date of a suspension made under any provision in force in England, Northern Ireland or Wales corresponding to section 32A(2) or regulation 11;

"financial year" means a period beginning on 1 April in one year and ending on 31 March in the next year;

"gross earnings" means the contractor's gross earnings from the provision of general dental services under the National Health Services (Scotland) Act 1978, as amended, and does not include remuneration by way of salary, and, where the contractor's name is included in two or more dental lists during any part of the test period, shall include gross earnings on an aggregated basis;

"gross earnings for the test period" means the contractor's gross earnings over the duration of the test period;

"period of suspension" means the period beginning with the date of the suspension and ending-

(a) where no appeal is brought against the suspension, at the end of the period for bringing an appeal,

(b) where an appeal is brought against such a decision, when the appeal process has been exhausted.

"the Regulations" means the National Health Service (General Dental Services)

(Scotland) Regulations 2010;

"test period" means the period of 12 months beginning on the date which falls 12 months before the date of suspension.

(4) In this Determination, a reference to an enactment or statutory instrument is to that enactment or statutory instrument as amended or re-enacted by any subsequent enactment or statutory instrument.

(5) In this Determination, a reference to a numbered paragraph is to the paragraph bearing that number in this Determination and a reference in a paragraph to a numbered sub-paragraph is to the sub-paragraph bearing that number in that paragraph.

(6) Words and Expressions used in the Regulations and in this Determination bear the same meaning in this Determination as they do in the Regulations.

Conditions of Entitlement

2.—(1) A contractor who, at the date when the claim is made, satisfies the conditions specified in sub-paragraph (2) and who makes a claim to a Health Board in accordance with paragraph 6, shall be entitled to payments in consequence of suspension calculated in accordance with paragraph 3.

(2) subject to sub-paragraph (3), the condition referred to in sub-paragraph (1) is that the contractor's name has been included in a dental list for a period of at least 52 weeks, the last 26 weeks of which must be continuous and immediately precede the date of suspension.

(3) In the case of a contractor who is a dentist and who has undergone one year's approved vocational training immediately prior to the dentist's name being included in a dental list the 52 weeks referred to in sub-paragraph (2) shall be reduced to 26 weeks. This period must be continuous and immediately precede the date of suspension.

Calculation of the Amount of Payments to be made in Consequence of Suspension

3.—(1) Subject to sub-paragraph (3) of this paragraph and paragraph 4 of this Determination, the amount of the payment in consequence of suspension payable in respect of each week shall be calculated at the total of; the weekly rate equivalent of 80% of the contractor's gross earnings over the test period, minus any sum which the Health Board has determined to deduct under paragraph 4. .

(2) Where, for part of the test period, a contractor who is a dentist was employed as a vocational trainee, the dentist shall be treated for each financial year or part thereof in that test period as having had gross earnings calculated as follows:—

- (a) where the dentist's contracted hours of employment each week were 35 hours or more, a sum equivalent to such proportion of the figure listed below as the period of vocational training bears to the test period; or
- (b) where the dentist's contracted hours or employment each week were less than 35 hours, a sum calculated in accordance with paragraph (a)

and discounted by a percentage equivalent to the difference between the contracted hours and 35,

and, for the purpose of calculating the dentist contractor's gross earnings over the test period, that amount shall be added to the dentist's gross earnings for the remainder of the test period.

The sums referred to in sub-paragraphs (a) and (b) are

For 2007/08 £136,148
For 2008/09 £140,777
for 2009-2010 £142,889

(3) Where, prior to 1 April 2009 a contractor who is a dentist has received payments in consequence of suspension under an entitlement beginning before and continuing after that date, the payments already calculated under that entitlement falling due on or after that date shall be increased by 1.5 per cent.

(4) Where sub-paragraph (3) does not apply, and any part of the test period falls before 1 April 2008, then, for the purposes of calculation of the amount of payment in consequence of suspension only, the gross earnings earned in this part of the test period shall be increased by 5 per cent.

(5) Where sub-paragraph (3) does not apply, and any of the test period falls after 1 April 2008 and before 1 April 2009 then, for the purposes of calculation of the amount of payment in consequence of suspension only, the gross earnings earned in this part of the test period shall be increased by 1.5 per cent.

Additional Factors which a Health Board may take into account

4.—(1) In calculating the amount of payment payable in consequence of suspension, the Health Board shall take into account the matters referred to in subparagraph (2) and may then deduct such sum as it determines to be reasonable from the sum calculated in paragraph 3.

(2) For the purposes of paragraph (1) above, the matters are—

(a) any expenses that the contractor would have incurred as a contractor, had the contractor not been suspended;

(b) any income from alternative employment or work that the contractor undertakes or could reasonably be expected to undertake during the period of suspension; and

(c) any sums received by the contractor from insurance policies which the contractor has taken out in order to provide the contractor with payments if the contractor's work ceases or is reduced.

Duration and Payment of Payments in Consequence of Suspension

5.—(1) A payment in consequence of suspension calculated in accordance with paragraph 3 shall be payable in respect of each week during the period of suspension.

(2) Payments in consequence of suspension:—

- (a) shall be payable monthly in arrears and only for complete weeks; and
- (b) shall not be payable in respect of any week prior to the date of suspension nor any week falling more than 8 weeks before the date on which the contractor makes the claim unless the Health Board is satisfied that the lateness of the application is due to illness or some other reasonable cause;
- (c) shall, subject to sub-paragraph (d), cease to be payable once the Tribunal or the Health Board has disposed of the case;
- (d) Sub-paragraph (c) shall not apply:—
 - (i) where no appeal is brought against the decision of the Tribunal to make a direction, until the end of the period for bringing an appeal, or
 - (ii) where an appeal is brought against that decision, until the appeal process has been exhausted.

(3) Where a contractor who is a dentist and who is in receipt of payments in consequence of suspension dies during the period of suspension the Health Board shall

- (a) inform the CSA of the dentist's death and of the name and address of the dentist's executor or other personal representative; and
- (b) shall subject to paragraph 5(2) authorise the CSA to pay to the executor or personal representative the balance of the payments due for the period of suspension prior to the dentist's death as were not paid at the date of death.

Claims for Payments in Consequence of Suspension

6.—(1) A contractor or, where a contractor who is a dentist is incapable of applying, the person legally appointed to handle the dentist's financial affairs, shall make a claim for payments in consequence of suspension in writing to the Health Board in the first part of whose dental list the contractor's name was included immediately before the date of suspension. The claim shall contain or be supported by such information as the Health Board may reasonably require for the purpose of establishing the contractor's entitlement to payments and in particular with information relating to –

- (a) all remuneration which the contractor received by reason of –
 - (i) the provision of general dental services, or
 - (ii) assisting in the provision of general dental services,

in the 12 months ending with the contractor's suspension, or is continuing to receive while the contractor is suspended, except any remuneration paid by the CSA on behalf of that Health Board under regulation 22, or regulation 22 of the National Health Service (General Dental Services) (Scotland) Regulations 1996.

- (b) the expenses which the contractor incurred in providing general dental services or

assisting in the provision of general dental services during those 12 months;

(c) any income or alternative employment or other work that the contractor undertakes or could reasonably be expected to undertake while the contractor is suspended; and

(d) any insurance policies the contractor has taken out in order to provide the contractor with payments if his work ceases or is reduced.

(2) Where a contractor's name is included in the first part of the dental list of more than one Health Board, the contractor shall make the claim for payments in consequence of suspension to the Health Board for whom the contractor provides the greater or greatest proportion of general dental services at the date of claim.

Authorisation to the CSA

8. Where the Health Board determines that a contractor is entitled to a payment in consequence of suspension, it shall inform the CSA of the amount of that payment and authorise the Agency to make payment to the contractor.

Failure to provide information

9. If the contractor fails to provide the information specified in paragraph 6(1)(a)-(d), the Health Board may authorise the CSA to deduct from the amount it might otherwise pay to the contractor under paragraph 3, such amount as it considers appropriate in the circumstances, having regard to the desirability of leaving the contractor with the minimum amount (which may be nothing) that it might be required to authorise as payment to him under paragraph 3, if it possessed all the information that has not been provided by the contractor.

Overpayments

10. If the CSA makes a payment to a contractor pursuant to this Determination and the contractor was not entitled to receive all or part thereof, whether because-

(a) the conditions relating to or underlying entitlement to the payment are or were not met; or

(b) the payment was calculated incorrectly (including where a payment on account overestimates the amount that is to fall due),

The CSA may recover the amount of the overpayment from the contractor by deducting an equivalent amount from any other payments payable by the CSA to the contractor under this Determination.



Signed by the authority of the Scottish Ministers

The Scottish Ministers' Determination: Made under Regulation 26

THE SCOTTISH MINISTERS' DETERMINATION—PAYMENTS TO ASSISTANTS SUSPENDED FROM THE SECOND PART OF DENTAL LISTS

The Scottish Ministers, in exercise of powers conferred on them by regulation 26 of the National Health Service (General Dental Services) (Scotland) Regulations 2010, and having consulted with such organisations as appear to them to be representative of persons providing general dental services in accordance with paragraph (2) of that regulation, makes the following determination:-

1. Citation, commencement and interpretation

(1) —(a) This determination may be cited as the Determination on Payments to Assistants Suspended from the Second Part of Dental Lists and shall come into force on 2 July 2010.

(2) This determination applies in relation to Scotland.

(3) In this determination –

“assistant” has the same meaning as in regulation 2(1) of the National Health Service (General Dental Services) (Scotland) Regulations 2010

“CSA” means the Common Services Agency for the Scottish Health Service;

“GDS” means general dental services;

“HB” means a Health Board;

“the Regulations” means the National Health Service (General Dental Services) (Scotland) Regulations 2010; and

“suspendee” means a registered dental practitioner:

(a) whom a HB has suspended from the second part of its dental list under regulation 11 of the Regulations; or

(b) who has been suspended by the Tribunal pursuant to sections 32A, 32B or 32D of the National Health Service (Scotland) Act 1978 or to any provisions in force in England, Wales or Northern Ireland corresponding (whether or not exactly) to those provisions,

and words and expressions used in those Regulations and in this determination shall bear the same meaning in this determination as they do in those Regulations.

Duty to authorise payments

2. A HB shall authorise the CSA to make payments determined in accordance with this determination to a suspendee.

Calculation of payment

3. Subject to the following paragraphs of this determination, the sums which a HB authorises the CSA to pay to a suspendee:

(a) shall be calculated by reference to the remuneration which the suspendee might have received during the period that the suspendee was suspended; and

(b) may also take account of any other payment received or which might have been received by the suspendee had the suspendee not been suspended,

(2) For the purposes of deciding what remuneration a suspendee might have received during the period that the suspendee was suspended, the HB may have regard to, where possible, the average monthly remuneration paid to the suspendee in respect of the suspendee's assistance with the provision of GDS in the 12 months ending with the suspendee's suspension.

Additional factors to be taken into account

4. In deciding what remuneration a suspendee might have received during the period that the suspendee was suspended, the HB may also have regard to -

- (a) any expenses that the suspendee would have incurred as an assistant, had he or she not been suspended;
- (b) any income from alternative employment that the suspendee undertakes or could reasonably be expected undertake while he or she is suspended; and
- (c) any insurance policies which the suspendee has taken out in order to provide him or her with payment if his or her work ceases or is reduced.

Evidence of remuneration

5. Payments are payable under this determination subject to the condition that the suspendee provides the HB with such information as it may reasonably require in order to assist it in complying with the preceding paragraphs of this determination, and in particular with information relating to -

- (a) all remuneration which the suspendee received from assisting in the provision of GDS in the 12 months ending with his or her suspension;
- (b) the expenses the suspendee incurred in assisting in the provision of GDS during those 12 months;
- (c) any income from alternative employment that the suspendee undertakes or could reasonably be expected to undertake while he or she is suspended; and
- (d) any insurance policies the suspendee has taken out in order to provide him or her with payments if his or her work ceases or is reduced.

The HB may authorise payments to the suspendee on account in respect of amounts that are likely to be payable to the suspendee pursuant to this Determination once it has the information it needs in order to determine the specific sum payable.

Failure to provide information

6. If the suspendee fails to provide the information specified in paragraph 5, the HB may authorise the CSA to deduct from the amount that it might otherwise pay to the suspendee under paragraph 3, such amount as it considers appropriate in the circumstances, having regard to the desirability of leaving him or her with the minimum amount (which may be nothing) that the HB might be required to authorise as payment to the suspendee under paragraph 3, if it possessed all the information that has not been provided.

Overpayments

7. If the CSA makes a payment to a suspendee pursuant to this Determination and the suspendee was not entitled to received all or part thereof, whether because-

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

the CSA may recover the amount of the overpayment from the suspendee by deducting an equivalent amount from any other payment payable by the CSA to the suspendee under this Determination.



Signed by the authority of the Scottish Ministers