

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⁽¹⁾;

“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⁽²⁾;

“the GDS Contracts Regulations” means the National Health Service (General Dental Services Contracts) Regulations 2005⁽³⁾;

“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.

(1) 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.

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

(3) 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.

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(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⁽⁴⁾ 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

(4) [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.

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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.