

SCHEDULE 3

OTHER CONTRACTUAL TERMS

PART 8

MID-YEAR REVIEW OF ACTIVITY UNDER CONTRACTS

Mid-year reviews

58.—(1) This paragraph and paragraph 59 only apply where services are to be provided under the contract from 1 April in any financial year.

(2) In this paragraph and paragraph 59, references to requirements to provide units of dental activity or orthodontic activity are to such requirements under the terms of the contract giving effect to regulation 17 (units of dental activity) or 18 (units of orthodontic activity).

(3) The Local Health Board will, by 31 October in each financial year, determine the number of—

- (a) units of dental activity; or
- (b) units of orthodontic activity,

that the contractor has provided between 1 April and 30 September of that financial year based on the data provided to it by virtue of paragraph 38.

(4) Where the Local Health Board determines under sub-paragraph (3) that the contractor has, between 1 April and 30 September, provided less than 30 per cent of the total number of—

- (a) units of dental activity; or
- (b) units of orthodontic activity,

that it is required to provide in that financial year, sub-paragraph (5) will apply.

(5) Where this sub-paragraph applies, the Local Health Board may—

- (a) notify the contractor that it is concerned about the level of activity provided under the contract in the first half of the financial year, setting out—
 - (i) the number of units of dental activity or units of orthodontic activity (as the case may be) that it has determined that the contractor has provided, and
 - (ii) the percentage of the total number of units of dental activity or units of orthodontic activity (as the case may be) required to be provided during the financial year that the number in sub-paragraph (i) represents; and
- (b) require in that notification that the contractor participate in a mid-year review of its performance in relation to the contract with the Local Health Board.

(6) Where a mid-year review is required by the Local Health Board pursuant to sub-paragraph (5), the Local Health Board and the contractor will discuss at that review—

- (a) any written evidence the contractor puts forward to demonstrate that it has performed a greater number of units of dental activity or units of orthodontic activity during the first half of the financial year than those notified to it pursuant to sub-paragraph (5)(a)(i); and
- (b) any reasons that the contractor puts forward for the level of activity in the first half of the financial year.

(7) The Local Health Board will prepare a draft record of the mid-year review for comment by the contractor and, having regard to such comments, will produce a final written record of the review.

(8) A copy of the final record of the mid-year review will be sent to the contractor.

Action the Local Health Board can take following a mid-year review

59.—(1) Where, following the mid-year review and the sending of the final record of that review to the contractor, the Local Health Board, having taken account of any evidence or reasons put forward by the contractor at that review, nevertheless has serious concerns that the contractor is unlikely to provide the number of—

- (a) units of dental activity; or
- (b) units of orthodontic activity,

that it is required to provide by the end of the financial year, the Local Health Board will be entitled to take either or both of the steps specified in sub-paragraph (2).

(2) The Local Health Board may—

- (a) require the contractor to comply with a written plan drawn up by the Local Health Board to ensure that the level of activity during the remainder of the financial year is such that the contractor will provide the number of units of dental activity or units of orthodontic activity it is required to provide; or
- (b) withhold monies payable under the contract.

(3) The maximum amount that may be withheld pursuant to sub-paragraph (2)(b) is—

- (a) the amount that is payable under the contract in respect of the number of units of dental activity or units of orthodontic activity required to be provided in a financial year, less
- (b) the amount that would be payable under the contract as a relevant proportion of that amount if the contractor provided in the whole of the financial year only twice the number of units of dental activity or orthodontic activity that he or she provided between 1 April and 30 September.

(4) Nothing in this paragraph will prevent the Local Health Board and the contractor agreeing to vary the contract in accordance with paragraph 61 to adjust—

- (a) the level of activity to be provided under the contract; or
- (b) the monies to be paid by the Local Health Board to the contractor under the contract.

(5) Where the Local Health Board withholds monies under paragraph (2), it will ensure that it pays the withheld monies to the contractor as soon as possible following the end of the financial year where the contractor has—

- (a) provided the number of units of dental activity or units of orthodontic activity required to be provided; or
- (b) failed to provide that number of units of dental activity or units of orthodontic activity, but that failure amounts to 5 per cent or less of the total number of units of dental activity or units of orthodontic activity that ought to have been provided during that financial year (and therefore regulation 19 applies).