

# NATIONAL HEALTH SERVICE, ENGLAND

## The National Health Service (Conditions Relating to Payments by Local Authorities to NHS Bodies) Directions 2013

The Secretary of State for Health gives the following Directions in exercise of powers conferred by sections 76(3) and (4), 272(7) and (8) and 273(1) and (4) of the National Health Service Act 2006(a).

### Citation, commencement and interpretation

1.—(1) These Directions may be cited as the National Health Service (Conditions Relating to Payments by Local Authorities to NHS Bodies) Directions 2013 and come into force on 20 May 2013.

(2) In these Directions—

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

“capital costs” means expenditure of a capital nature incurred by a recipient;

“disposal” includes a disposal by way of a sale, an assignment, the creation of any lease or tenancy, a surrender or a merger, and “disposes” shall be construed accordingly;

“paying authority” means the local authority which makes a payment to the Board, a clinical commissioning group or a Local Health Board under section 76;

“recipient” means the Board, a clinical commissioning group or a Local Health Board, which has received, or is to receive, payments under section 76; and

“section 76” means section 76 of the Act.

### Conditions relating to section 76 payments

2.—(1) This direction applies to any payment made by a local authority under section 76, and any such payment must be made subject to and in accordance with the conditions specified in the following paragraphs.

(2) Before making a payment under section 76, a local authority must be satisfied that the payment is likely to secure a more effective use of public funds than the deployment of an equivalent amount on the provision of local authority services.

(3) Where a payment is made under section 76 to meet part or all of the capital costs of any project, the amount of the payment must be determined before the project begins.

(4) Before making any payment to which this paragraph applies in respect of any project, the local authority must be satisfied that the recipient intends to meet the cost of the project—

(a) to the extent that it is not funded by payments under section 76; and

(b) for so long as the project is considered by the local authority and the recipient to be necessary or desirable.

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(a) 2006 c.41 (“2006 Act”); section 76 was amended by paragraph 12 of Schedule 4 to the Health and Social Care Act 2012 (c.7). The powers exercised by the Secretary of State in giving these Directions are exercisable only in relation to England, by virtue of section 271(1) of the 2006 Act.

(5) This paragraph applies where a recipient which has received a payment made under section 76 in respect of a project has reduced the level of services provided in connection with the project below the level of services which it undertook to provide at the time the payment was agreed.

(6) Where paragraph (5) applies, the local authority must reduce accordingly the amount of any further payments made under section 76 in respect of the project.

### **Duties of a local authority in relation to section 76 payments**

**3.** In the case of any payment made under section 76, the local authority making the payment must—

- (a) so far as is practicable, ensure that the payment is used by the recipient in such a way as will secure the most efficient and effective use of the amount paid; and
- (b) with the agreement of the recipient, prepare a memorandum of agreement in writing in the form set out in Annex 1 of these Directions.

### **Duties of recipients in relation to section 76 payments**

**4.**—(1) Subject to paragraph (6), where—

- (a) a payment has been made under section 76 towards the cost of acquiring, or of executing works to, land or other property for the purposes of any functions specified in regulations made under that section(a); and
- (b) the recipient—
  - (i) disposes of the whole or part of the land or other property, or
  - (ii) uses it or any part of it for any purpose other than that for which the payment was made,

the recipient must repay to the local authority an amount equal to the proportion of the open market value of the land or other property (or the relevant parts) as is attributable to the expenditure of the payment.

(2) For the purpose of paragraph (1), the open market value of the land or property in question must be assessed by a suitably qualified valuer, who may be a District Valuer, and the apportionment of the part of such value attributable to the expenditure of payment must be made by that valuer.

(3) Where an assessment, or an apportionment, falls to be made in accordance with paragraph (2), it must be made as respects the date at which the disposal is completed or, as the case may be, the alternative use commences.

(4) It is a condition of any payment under section 76 that the recipient agrees to enter into a legal charge in favour of the local authority making the payment, at the request of the local authority, upon the happening of any default.

(5) In this direction, “default” means the circumstances as described in paragraph (1).

(6) This direction does not apply in the case of a payment which has been made towards the cost of acquiring premises for the purpose of rental, where a tenant subsequently exercises a right to buy those premises.

### **Requirements following the making of a section 76 payment**

**5.**—(1) Where a payment is made under section 76, the local authority must require the recipient to provide an annual voucher in the form set out in Annex 2 to these Directions.

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(a) See regulation 13 of S.I. 2012/3094.

(2) Recipients must send completed vouchers to their external auditor by no later than 30th September following the end of the financial year in question and arrange for these to be certified and submitted to the paying authority by no later than 31st December of that year.

(3) A voucher provided for the purposes of paragraph (1) above must be certified by the Director of Finance of the recipient.

### **Revocation and saving and transitional provision**

**6.**—(1) The Directions by the Secretary of State as to the conditions governing payments by local authorities to Health Authorities and other bodies under section 28BB of the National Health Service Act 1977(a), which came into force on 1st April 2000, are revoked.

(2) The Directions mentioned in paragraph (1) shall continue to have effect in relation to any payment made under section 76 before 20 May 2013, subject to the modification specified in paragraph (3).

(3) The modification referred to in paragraph (2) is that references to “recipient” are, in relation to a payment made to a Strategic Health Authority or a Primary Care Trust, to be read as references to the Board or the clinical commissioning group which from 1st April 2013 is responsible for arranging the provision of the services in respect of which the payment is made.

Signed by authority of the Secretary of State



Sebastian Habibi  
Deputy Director  
Social Care Strategic Policy and Finance  
Department of Health

16 May 2013

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(a) 1977 c.49. Section 28BB was inserted into the National Health Service Act 1977 (“the 1977 Act”) by section 30 of the Health Act 1999 (c.8). Following consolidation of the enabling authority, the Directions now have effect as if made under the 2006 Act, section 76, by virtue of the National Health Service (Consequential Provisions Act) 2006 (c.43) section 4, Schedule 2, paragraph 1.

## **ANNEX 1 - Memorandum of agreement**

*The following memorandum of agreement must be used as required by direction 3(b).*

### **Memorandum of agreement**

#### **Section 76 transfer**

Reference number: .....

Title of Scheme: .....

(the reference number and title of the scheme should give a unique identification of the scheme)

1. How will the section 76 transfer secure more health gain than an equivalent expenditure of money on local government services?
2. Description of scheme (in the case of revenue transfers, please specify the services for which money is being transferred).

#### **Financial details (and timescales)**

3. Total amount of money to be transferred and amount in each year (if this subsequently changes, the memorandum must be amended and re-signed).

Year(s)	Amount	Capital	Revenue
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In the case of the capital payments, should a change of use outlined in direction 4(1)(b) of the National Health Service (Conditions Relating to Payments by Local Authorities to NHS bodies) Directions 2013 occur, both parties agree that the original sum shall be recoverable by way of a legal charge on the Land Register as outlined in direction 4(4) of those Directions.

4. Please state the evidence you will use to indicate that the purposes described at questions 1 and 2 have been secured.

Signed : ..... for the Board/clinical  
commissioning group/Local Health Board

..... Position

..... Date

Signed : ..... For local  
authority

..... Position

..... Date

**ANNEX 2 – Annual voucher and certificate for auditors**

*The following annual voucher must be used as required by direction 5(1).*

Section 76 Annual Voucher

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The Board/clinical commissioning group/Local Health Board

**PART 1 STATEMENT OF EXPENDITURE FOR THE YEAR TO  
31 MARCH 20.. (YEAR)**

(if the conditions of the payment have been varied, please explain what the changes are and why they have been made)

Scheme Reference Number Revenue Expenditure Capital Total and  
Title of Expenditure

Project £££

**PART 2 STATEMENT OF COMPLIANCE WITH CONDITIONS  
OF TRANSFER**

I certify that the above expenditure has been incurred in accordance with the conditions, including any cost variations, for each scheme approved by the ..... Council in accordance with these Directions.

Signed: .....

Date: .....

The Board/clinical commissioning group/Local Health Board  
Director of Finance

## Certificate of independent auditor

I/We have:

- examined the entries in this form (which replaces or amends the original submitted to me/us by the authority dated)\* and the related accounts and records of the .....: and
- carried out such tests and obtained such evidence and explanations as I/we consider necessary.

(Except for the matters raised in the attached qualification letter dated)\*  
I/we have concluded that

- the entries are fairly stated: and
- the expenditure has been properly incurred in accordance with the relevant terms and conditions.

Signature .....

Name (block capitals) .....

Company/Firm .....

Date .....

\* Delete as necessary