



Conditions relating to payments between NHS bodies and local authorities

– Explanatory note

1. This note explains two sets of Directions which place conditions on any payments made under section 76 and 256/257 of the NHS Act 2006. These are entitled “The National Health Service (Conditions Relating to Payments by Local Authorities to NHS Bodies) Directions 2013” and “The National Health Service (Conditions Relating to Payments by NHS Bodies to Local Authorities) Directions 2013”
2. The conditions apply primarily to payments made between the NHS and local authorities. The conditions set by these Directions concern the financial management of any such payments.

Background

3. The NHS Act 2006 makes provision for payments to be made between local authorities and NHS bodies. It also makes provision for payments to be made to other specified bodies, including voluntary organisations and Local Health Boards. These Directions ensure that any such payments are subject to common conditions concerning financial management.
4. These conditions apply to any payments made using section 76 and 256/257 of the NHS Act 2006. This includes the money to be transferred by NHS England, as specified in the Directions entitled “The National Health Service Commissioning Board (Payments to Local Authorities) Directions 2013” as well as any further payments which have been agreed at a local level.
5. Section 76 payments may be made by local authorities to the NHS Commissioning Board (also known as NHS England), CCGs or Local Health Boards, and section 256/257 payments may be made by NHS England or CCGs to local authorities, voluntary organisations and other bodies specified in the NHS Act 2006¹.
6. These replace Directions which came into force on 28 March 2000 and 1 April 2000. No new conditions have been created by these Directions, but some clarifications have been made. In addition, changes have been made to reflect the new NHS bodies established by the Health and Social Care Act 2012.

Conditions

7. Before making a payment, the paying body must be satisfied that the payment is likely to secure a more effective use of funds than if an equivalent amount was spent by the paying body (see 2(2) of the Directions). This condition will not affect the minimum amounts to be transferred to each local authority by NHS England, as set out in the Directions to the Commissioning Board (see 2(3) of the section 256/257 Directions).
8. The Directions make it a condition that, when payments are made towards the capital costs of a project, the amount of the payment must be determined before the project begins (see 2(3) of the section 76 Directions, and 2(4) of the section 256/257 Directions). The paying body must

¹ <http://www.legislation.gov.uk/ukpga/2006/41/section/256>

also be satisfied that the recipient will meet any costs not covered by the payment and for so long as the project is considered necessary or desirable (see 2(4) of the section 76 Directions, and 2(5) of the section 256/257 Directions).

9. If the recipient does not provide the agreed level of services, the body making the payment must reduce accordingly any further payments (see 2(5) & (6) of the section 76 Directions, and 2(6) & (7) of the section 256/257 Directions).
10. The paying body must, so far as is practicable, ensure that the payment is used in the most efficient and effective way possible and must prepare a memorandum of agreement in the form set out in Annex 1 of the Directions (see 3 of the Directions).
11. Where the recipient of a payment uses it to purchase land or property, and subsequently disposes of, or uses that property for an unintended purpose, it must make repayments (see 4 of the Directions).
12. Following the end of the financial year, all bodies receiving a payment must provide an annual voucher to their external auditor by 30 September, and arrange for these to be certified and submitted to the paying body no later than 31 December (see 5 of the Directions). Annual vouchers are attached at Annex 2 of these Directions.

Further information

13. For further information please contact:

*Tim Muir and Adam Pickford, Social Care Finance (SCFinance-Enquiries@dh.gsi.gov.uk),
Social Care, Local Government and Care Partnerships Directorate, Department of Health,
Richmond House, 79 Whitehall, London, SW1A 2NS*