

# NATIONAL HEALTH SERVICE, ENGLAND

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

The Secretary of State for Health gives the following Directions in exercise of powers conferred by sections 256(6) and (7), 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 NHS Bodies to Local Authorities) 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 Board or clinical commissioning group which makes a payment to the local authority under section 256 or 257;

“recipient” means—

(a) in the case of a payment under section 256 of the Act, a body specified in section 256(1), (2) or (3), which has received, or is to receive, a payment under section 256,

(b) in the case of a payment under section 257 of the Act, a voluntary organisation which has received, or is to receive, a payment under that section;

“responsible officer” means an officer of the recipient who for the time being is responsible for discharging the function of authenticating and certifying the voucher in accordance with direction 5(3) of these Directions; and

“section 256 or 257” means section 256 or 257 of the Act.

### Conditions relating to section 256 or 257 payments

2.—(1) This direction applies to any payment made by a paying authority under section 256 or 257, and any such payment must be made subject to and in accordance with the conditions specified in the following paragraphs(b).

(2) Before making a payment under section 256 or 257, the Board or a clinical commissioning group 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 services under arrangements made under sections 3(1), 3A or 3B of the Act(c).

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(a) 2006 c.41 (“2006 Act”); section 256 was amended by paragraph 129 of Schedule 4 to the Health and Social Care Act 2012 (c.7) (“the 2012 Act”). 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.

(b) The conditions specified in Directions 2 and 3 of these Directions in so far as they relate to section 256 or 257 payments made by the Board are to be read together with conditions relating to payments by the Board set out in the National Health Service Commissioning Board (Payments to Local Authorities) Directions 2013.

(c) Section 3(1) of the Act was amended by section 13(1) and (2) of the 2012 Act; sections 3A and 3B of the 2006 Act were inserted by sections 14 and 15, respectively, of the 2012 Act.

(3) Direction 2(2) is subject to the requirements under Direction 2 of the National Health Service Commissioning Board (Payments to Local Authorities) Directions 2013 (minimum amounts of section 256 payments)(a).

(4) Where a payment is made under section 256 or 257 to meet part or all of the capital costs of any project, the amount of the payment must be determined before the project begins.

(5) Before making any payment to which this paragraph applies in respect of any project, the Board or a clinical commissioning group 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 256 or 257; and
- (b) for so long as the project is considered by the paying authority and the recipient to be necessary or desirable.

(6) This paragraph applies where a recipient which has received a payment made under section 256 or 257 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.

(7) Where paragraph (6) applies, the paying authority must reduce accordingly the amount of any further payments made under section 256 or 257 in respect of the project.

### **Duties of the paying authority in relation to section 256 or 257 payments**

3. In the case of any payment made under section 256 or 257, the paying 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 256 or 257 payments**

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

- (a) a payment has been made under section 256 or 257 towards the cost of acquiring, or of executing works to, land or other property for the purposes of any functions specified in section 256(1) or (3) of the Act; 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 paying 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.

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(a) There are no relevant amendments to Direction 2 of the National Health Service Commissioning Board (Payments to Local Authorities) Directions 2013.

(4) It is a condition of any payment under section 256 or 257 that the recipient agrees to enter into a legal charge in favour of the paying authority making the payment, at the request of that paying 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 256 or 257 payment**

5.—(1) Where a payment is made under section 256 or 257, the paying authority must require the recipient to provide an annual voucher in the form set out in Annex 2 to these Directions.

(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 authenticated and certified by the Director of Finance or responsible officer of the recipient

#### **Revocation and savings and transitional provision**

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

(2) The Directions mentioned in paragraph (1) shall continue to have effect in relation to any payment made under section 256 or 257 before 20 May 2013, subject to the modification specified in paragraph (3).

(3) The modification referred to in paragraph (2) is that references to “NHS body” are to be read as references to—

- (a) in the case where the rights and liabilities of a Primary Care Trust or Strategic Health Authority under the agreement with a recipient in connection with a payment under section 256 or 257 have been transferred to the Board or a clinical commissioning group by a property transfer scheme made under section 300 of the Health and Social Care Act 2012, that Board or group;
- (b) in any other case, the Board or clinical commissioning group responsible from 1st April 2013 for exercising the function under the Act in relation to which, or in connection with which, the payment was 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 28A 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 256, 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 256 or 257 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 256 or 257 transfer secure more health gain than an equivalent expenditure of money on the National Health Service?

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 NHS bodies to Local Authorities) 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

..... Position

..... Date

Signed : ..... For local authority / other recipient body

..... Position

..... Date

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

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

Section 256 or 257 Annual Voucher

.....Council

**PART 1 STATEMENT OF EXPENDITURE FOR THE YEAR 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 ..... Board/clinical commissioning group in accordance with these Directions.

Signed: .....

Date: .....

Director of finance or responsible officer of the recipient (see paragraph 5(3) of the Directions).

## 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