

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Conditions Relating to Payments in connection with property by NHS Bodies to Local Authorities and other bodies) Directions 2016

The Secretary of State for Health makes the following Directions in exercise of the 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, application and interpretation

1.—(1) These Directions may be cited as the National Health Service (Conditions Relating to Payments in connection with property by NHS Bodies to Local Authorities and other bodies) Directions 2016 and come into force on 8 January 2016.

(2) These Directions apply to any payment made by a paying authority under section 256 or 257 towards the cost of acquiring, or of executing works to (or both), land or other property, and any such payment must be made subject to, and in accordance with, the conditions specified in these Directions.

(3) In these Directions—

“the 2000 Directions” means Directions by the Secretary of State as to the conditions governing payments by health authorities and other bodies under section 28A of the National Health Service Act 1977, which came into force on 1st April 2000(b);

“the 2013 Directions” means the National Health Service (Conditions Relating to Payments by NHS Bodies to Local Authorities) Directions 2013, which came into force on 20th May 2013(c);

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

“assured shorthold tenancy” has the same meaning as in section 19A or 20 of the Housing Act 1988(d);

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

“paying authority” means the Board(e) or a clinical commissioning group which makes a payment to the local authority or other body under section 256 or 257; and

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- (a) 2006 c. 41 (“the Act”). Section 256 was amended by sections 195(1) and 222 of, and paragraphs 43 and 44 of Schedule 19 to, and paragraph 57 of Schedule 22 to, the Localism Act 2011 (c.20); section 55(1) of, and paragraph 129 of Schedule 4 to, the Health and Social Care Act 2012 (c.7) (“the 2012 Act”); and S.I.2008/3002, 2010/866, 2010/1158 and 2013/2341. Section 257 was amended by section 55(1) of, and paragraph 130 of Schedule 4 to, the 2012 Act. Section 273(4) was amended by sections 21(6), 47(7) and 55(1) of, and paragraph 137 of Schedule 4 to, the 2012 Act; and S.I. 2010/22. 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 Act.
- (b) Following consolidation of the enabling authority, the Directions now have effect as if made under section 256 of the Act by virtue of section 4 of, and paragraph 1 of Schedule 2 to, the National Health Service (Consequential Provisions) Act 2006 (c. 43). The 2000 Directions are available from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS or at: <http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/assetRoot/04/06/52/54/04065254.PDF>. The 2000 Directions were revoked, with savings, by the 2013 Directions.
- (c) The 2013 Directions are available from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS or at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200460/s256_257_conditions_-_Payments_by_NHS_bodies_to_LAs.pdf.
- (d) 1988 c. 50. Section 19A was inserted by section 96(1) of the Housing Act 1996 (c. 52). Section 20 was amended by sections 104 and 227 of, and paragraph 2 of Schedule 8 and Part IV of Schedule 19 to, the Housing Act 1996.
- (e) For the definition of “the Board” see section 275(1) of the Act. The Board uses the name “NHS England” for operational purposes.

“recipient” means—

- (a) in the case of a payment under section 256, a body specified in section 256(1), (2) or (3), which has received, or is to receive, a payment under section 256; and
 - (b) in the case of a payment under section 257, a voluntary organisation which has received, or is to receive, a payment under section 257.
- (4) Except where the context otherwise requires—
- (a) any reference in these Directions to a numbered section is a reference to the section so numbered in the Act;
 - (b) any references in these Directions to payments made under section 256 or 257 are to be construed in accordance with paragraph (2) .

Conditions relating to section 256 or 257 payments

2.—(1) Before making a payment under section 256 or 257, the paying 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 services under arrangements made under sections 3(1), 3A or 83 or pursuant to regulations made under section 3B(a).

(2) Where a payment is made under section 256 or 257 to meet part or all of the expenditure of a capital nature incurred by a recipient in respect of any project, the amount of the payment must be determined before the project begins.

(3) Before making a payment under section 256 or 257 in respect of any project, the paying 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 256 or 257; and
- (b) for so long as the project is considered by the paying authority to be desirable.

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) prepare appropriate written documentation, which must include a statement about the purpose for which the payment is made, to be entered into by the paying authority and recipient in accordance with direction 4(5)(a);
- (b) enter the details of the payment and the project to which it relates on a central register of loans and charges;
- (c) put in place and follow suitable assurance procedures to monitor whether—
 - (i) the purpose for which the payment was made, as stated in the documentation referred to in sub-paragraph (a), is being achieved, and
 - (ii) the recipient is keeping the property in relation to which the payment was made in good repair at all times,and provide such information from this monitoring to the Secretary of State as the Secretary of State may request from time to time; and
- (d) 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.

Duties of recipients in relation to section 256 or 257 payments

4.—(1) Subject to paragraph (2) below, where—

(a) Section 3(1) was amended by section 13 of the Health and Social Care Act 2012. Section 3A was inserted by section 14 of that Act. Section 3B was inserted by section 15 of that Act. Section 83 was amended by section 55(1), and paragraphs 30(1) to (4) of Schedule 4 to, that Act.

- (a) a payment has been made under section 256 or 257 towards the cost of acquiring, or of executing the works to (or both), land or other property for the purposes of any functions specified in section 256(1) or (3); and
- (b) the whole or any part of that land or other property—
 - (i) is disposed of (other than in circumstances referred to in paragraph (2)), or
 - (ii) ceases to be used for the purpose for which the payment was made,

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

(2) If the disposal referred to in paragraph (1)(b)(i) is the grant to an individual of an assured shorthold tenancy and the paying authority is satisfied in advance of the disposal that—

- (a) the purpose for which the payment was originally made (as stated in the documentation referred to in direction 3(a)) will be continued after the disposal; and
- (b) the payment will continue to be used in such a way as to secure the most efficient and effective use of the amount paid,

the paying authority may agree in advance of the disposal with the recipient that no repayment need be made under paragraph (1) when the disposal occurs.

(3) For the purpose of paragraph (1) the market value of the land or property in question must be assessed by a suitably qualified valuer, who may be a valuer from the Valuation Office Agency^(a), and the apportionment of the part of such value attributable to the expenditure of the payment must be made by that valuer.

(4) Where an assessment, or an apportionment (or both), falls to be made in accordance with paragraph (3), it must be made as at the date at which the disposal will be or was completed or, as the case may be, the date on which the whole or any part of the land or other property ceased or will cease to be used for the purpose for which the payment was made.

(5) Before a paying authority makes a payment under section 256 or 257 towards the cost of acquiring, or of executing works to (or both), land or other property the recipient must—

- (a) enter into such documentation prepared by the paying authority under direction 3(a) as the paying authority reasonably requires;
- (b) if the recipient is a local authority which owns or has any other proprietary interest in that land or other property, enter a restriction on its registered title in favour of the paying authority; and
- (c) subject to paragraph (6), if the recipient is not a local authority, enter into a fixed charge in favour of the paying authority which must be registered with the Land Registry^(b) and must have priority over all other charges registered in respect of that land or other property.

(6) The paying authority may prior to making the payment, at the paying authority's discretion, agree with the recipient that the charge referred to in paragraph (5)(c) can be granted with lesser priority if the paying authority is satisfied that this would allow the recipient to use the payment in such a way as to secure the most efficient and effective use of the amount paid, and the paying authority may impose such conditions on the granting of the charge with lesser priority as it considers appropriate.

Revocation and savings

5.—(1) Subject to paragraphs (2) to (4), the 2013 Directions are revoked.

(a) The Valuation Office Agency is an Executive Agency of Her Majesty's Revenue and Customs.

(b) Her Majesty's Land Registry (known as the Land Registry) is continued in existence by section 99(1) of the Land Registration Act 2002 (c.9).

(2) The 2013 Directions shall continue to have effect in relation to any payment made under section 256 or 257 before the date on which these Directions come into force, subject to the modifications specified in the following paragraphs.

(3) Where—

- (a) a payment has been made under section 256 or 257 before the date on which these Directions come into force towards the cost of acquiring, or executing works to (or both), land or other property; and
- (b) there is a disposal of the whole or part of that land or property on or after the date on which these Directions come into force such that the obligation to repay arises under direction 4(1) of the 2000 Directions or direction 4(1) of the 2013 Directions,

the paying authority may agree that the recipient need make no repayment in respect of that disposal where the disposal is the grant to an individual of an assured shorthold tenancy and the paying authority is satisfied, in advance of the disposal, as to the matters specified in direction 4(2)(a) and (b).

(4) Where—

- (a) a payment has been made under section 256 or 257 before the date on which these Directions come into force towards the cost of acquiring, or executing works to (or both), land or other property; and
- (b) there is a disposal of the whole or part of that land or property before the date on which these Directions come into force such that the obligation to repay arises under direction 4(1) of the 2000 Directions or direction 4(1) of the 2013 Directions, but no repayment has been made before the date these Directions come into force,

the paying authority may agree to waive the recipient's repayment obligation so that the recipient need make no repayment in respect of that disposal where the disposal is the grant to an individual of an assured shorthold tenancy and the paying authority is satisfied, at the time it comes to consider the recipient's repayment obligation, as to the matters specified in direction 4(2)(a) and (b).

Signed by authority of the Secretary of State



Ben Masterson
Deputy Director
Property and Commercial Policy
Department of Health

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