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## DIRECTIONS

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# NATIONAL HEALTH SERVICE, ENGLAND

## The National Health Service (General Medical Services- Premises Costs) Directions 2024

The Secretary of State for Health and Social Care makes the following Directions in exercise of the powers conferred by sections 98A, 272(7) and (8) and 273(1) of the National Health Service Act 2006 (a).

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(a) 2006 c.41. Section 98A was inserted by section 49(1) of the Health and Social Care Act 2012 (c.7). By virtue of section 271(1) of the National Health Service Act 2006, the powers conferred by these sections are exercisable by the Secretary of State only in relation to England.

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PART 1  
GENERAL

**Citation, commencement and scope**

1.—(1) These Directions may be cited as the National Health Service (General Medical Services-Premises Costs) Directions 2024 and come into force on 10th May 2024.

(2) These Directions—

- (a) are given to NHS England<sup>(a)</sup>; and
  - (b) relate to payments to be made by NHS England to a contractor under a GMS contract.
- (3) They replace the National Health Service (General Medical Services – Premises Costs) Directions 2013<sup>(b)</sup> as amended.

## Interpretation

### 2. In these Directions—

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

“appointed valuer” means a suitably qualified professional who is registered with the Royal Institution of Chartered Surveyors who is appointed by NHS England in the circumstances of a particular case to perform any property valuation or related specialist services for the purposes of these Directions;

“contractor” means—

- (a) a person entering into, or who has entered into, a GMS contract with NHS England; or
- (b) a person who is party to a GMS contract with NHS England as a consequence of a property transfer scheme made under section 300 of the Health and Social Care Act 2012<sup>(c)</sup> (transfer schemes);

“district valuer” means the District Valuer Services of the Valuation Office Agency;

“estates strategy for investment prioritisation” means the strategy by which NHS England determines how it will prioritise its programme of investment in practice premises, having regard to—

- (a) its general duties under Part 2 of the 2006 Act (health service bodies); and
- (b) its duty to secure the provision of primary medical services under Part 4 of the 2006 Act (medical services);

the “family member” of a person (P) means—

- (a) a person married to, or in a civil partnership with, P;
- (b) a person who, not being married to P or P’s civil partner, has a relationship with P which shares the characteristics of marriage or civil partnership;
- (c) a person who, in relation to P, formerly fell within paragraph (a) or (b);
- (d) P’s grandparent, parent, step-parent, child, step-child, or grandchild;
- (e) P’s brother, step-brother, sister, step-sister, aunt, uncle, nephew, niece or first cousin; or
- (f) a person married to, or in a civil partnership with, any family member falling within paragraph (d) or (e);

“fit-out works” means works needed to render interior spaces suitable for occupation and use including those works needed to enable the internal layout and servicing of the building to meet the specific needs of a prospective occupier;

“guaranteed period of use” means, where the amount of the premises improvement grant or other grant provided under direction 7 is—

- (a) less than £144,000, at least 6 years;
- (b) £144,000 or more but less than £360,000, at least 9 years;

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(a) NHS England (formerly known as the National Health Service Commissioning Board) was established by section 1H of the National Health Service Act 2006. Section 1H was inserted into the Act by section 9(1) of the 2012 Act. The National Health Service Commissioning Board was renamed “NHS England” by section 1 of the Health and Care Act 2022.

(b) Those Directions were signed on 28th March 2013. They were amended by the National Health Service (General Medical Services – Premises Costs) (Amendment) Directions 2013 signed on 19th November 2013 and are available to download from the Department of Health and Social Care website at <https://www.gov.uk/government/publications/nhs-primary-medical-services-directions-2013>. They are revoked by direction 59 of these Directions.

(c) 2012 c.7.

- (c) £360,000 or more but less than £660,000, at least 12 years;
- (d) £660,000 or more but less than £1,200,000, at least 15 years; and
- (e) £1,200,000 or more, at least 18 years;

“GMS contract” means a general medical services contract under section 84 of the 2006 Act<sup>(a)</sup> (general medical services contracts: introductory);

“Local Medical Committee” means a committee recognised under section 97 of the 2006 Act<sup>(b)</sup> (local medical committees);

“minimum standards” means the minimum standards relating to the practice premises prescribed in Schedule 1 to these Directions;

“practice premises” means the premises specified in a GMS contract as the premises at which services are to be provided under the contract;

“premises improvement grant” means a grant made pursuant to an application in relation to a proposal for premises improvements under direction 7;

“registered provider of social housing” has the meaning given by section 80(2) and (3) of the Housing and Regeneration Act 2008<sup>(c)</sup> (provider of social housing) and includes a private registered provider of social housing.

### **Payments in relation to which these Directions apply**

**3.** These Directions apply in relation to the payments which NHS England makes to contractors after these Directions come into force—

- (a) in respect of premises developments or improvements;
- (b) in respect of professional fees and related costs incurred in—
  - (i) occupying new or significantly refurbished premises;
  - (ii) taking a lease; or
  - (iii) entering into an agreement to take a lease;
- (c) relating to the relocation of, or re-mortgaging by, the contractor; or
- (d) in respect of recurring premises costs.

### **Payments in relation to which these Directions do not apply**

**4.** These Directions do not apply in relation to payments made to contractors under a GMS contract in respect of a plan drawn up in accordance with regulation 20(5) of the National Health Service (General Medical Services Contracts) Regulations 2015<sup>(d)</sup> (services: general).

### **General duties of NHS England under these Directions**

**5.—(1)** Before NHS England makes a payment to a contractor under these Directions, it must enquire of the contractor whether—

- (a) it is registered for Value Added Tax (“VAT”) purposes and if so obtain the contractor’s VAT registration number; and
- (b) it intends to claim a tax refund or allowance in respect of any element of the costs to which an application for financial assistance relates.

**(2)** Where NHS England makes a payment to a contractor under these Directions, it must—

- (a) only make the payment in the circumstances specified in these Directions;

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<sup>(a)</sup> Section 84 of the 2006 Act was amended by paragraph 31 of Schedule 4 to the 2012 Act.

<sup>(b)</sup> Section 97 of the 2006 Act was amended by paragraph 41 of Schedule 4 to the 2012 Act.

<sup>(c)</sup> 2008 c.17. Section 80 was amended by S.I. 2010/844.

<sup>(d)</sup> S.I. 2015/1862.

- (b) ensure that the payment is made under the terms of the contractor's GMS contract; and
  - (c) ensure that any conditions to which the payment is subject are included as terms of the GMS contract.
- (3) Where NHS England makes a payment to a contractor under these Directions, it must—
- (a) consider with the contractor, in a case where NHS England considers it appropriate, whether any opportunities exist for additional, multi-functional use of the premises, or any part or parts thereof, in respect of which the payment is made; and
  - (b) require the contractor to ensure that services are provided at the premises in a clean, safe, secure and suitable environment that is fit for purpose.
- (4) In exercising any of its functions under these Directions, NHS England must have regard to any relevant standards or guidance, including guidance as to best practice, issued by or on behalf of the Secretary of State.

### **Financial assistance in circumstances not contemplated in these Directions**

6. These Directions do not prevent NHS England from providing such financial assistance as it thinks fit in order to pay, or contribute towards, the premises costs of a contractor in circumstances that are not contemplated by any payment arrangements set out in these Directions, such as where—

- (a) the contractor is providing services under a temporary GMS contract;
- (b) an emergency need for financial assistance in respect of premises costs arises in circumstances that could not reasonably have been foreseen;
- (c) the contractor needs temporary accommodation (whether in the form of portable premises or an existing building) while new practice premises are being built or existing practice premises refurbished; or
- (d) the financial assistance relates to contractual arrangements for the provision of primary medical services under section 84 of the 2006 Act<sup>(a)</sup>.

## **PART 2**

### **PREMISES DEVELOPMENT AND IMPROVEMENT**

#### **Premises development and improvement proposals**

- 7.—(1) Where a contractor has a proposal for—
- (a) the building of new premises to be used for providing primary medical services;
  - (b) the purchase of land or premises or both to be used for providing primary medical services;
  - (c) the development of premises which are used or are to be used for providing primary medical services (or for significant changes to existing development proposals);
  - (d) the sale and lease back of premises used for providing primary medical services;
  - (e) the increase of the existing floor area of premises used for providing primary medical services which would lead to an increase of a payment made to the contractor under these Directions; or
  - (f) premises improvements, which are to be the subject of a premises improvement grant application,

and it puts that proposal to NHS England as part of an application for financial assistance in respect of the proposal, NHS England must consider that application.

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<sup>(a)</sup> Section 84 was amended by paragraph 31 of Schedule 4 to the 2012 Act.

(2) NHS England must not agree to fund any proposal under paragraph (1) where the contractor has—

- (a) entered into a contract; or
- (b) commenced work,

and that contract or work has not been subject to prior agreement with NHS England.

(3) NHS England may only consider an application referred to in paragraph (1) where the contractor has provided, in accordance with the relevant Standard Operating Procedures issued by NHS England, a Project Initiation Document.

(4) Where NHS England agrees to fund a proposal under paragraph (1)—

- (a) it may provide such funding, either in the form of a capital grant or in the form of reimbursement of recurring premises costs (see Part 5); and
- (b) where funding is provided in the form of a capital grant, NHS England may require the contractor to enter into a grant agreement which includes, as conditions, the specified requirements set out in direction 12 to these Directions and any other conditions NHS England considers necessary to ensure value for money.

### **Projects that may be funded with premises improvement grants**

**8.**—(1) Subject to paragraph (2), the types of premises improvement projects that may be the subject of a premises improvement grant include—

- (a) improvements to practice premises in the form of building an extension to the premises (including the acquisition of any land necessary to build that extension), bringing into use rooms not previously used to support delivery of primary medical services or the enlargement of existing rooms;
- (b) improvement of physical access to and within practice premises;
- (c) improvement of practice premises lighting, ventilation and heating installations (including the replacement of other forms of heating by central heating);
- (d) the reasonable extension of telephone facilities within practice premises (but not the initial purchase or replacement of telephone systems);
- (e) the provision of car parking required for patient and staff use, subject to the number of parking spaces being agreed by NHS England having regard to local circumstances, with access to and egress from each parking space without the need to move other vehicles except where NHS England considers that this restriction is inappropriate, taking into account local circumstances;
- (f) fabric improvements to practice premises (such as security systems or work in respect of fire precaution) which are required to be carried out in order to comply with statutory requirements imposed immediately before the time when those improvements or, as relevant, that work is to be commenced;
- (g) refurbishment of a building not previously used for the provision of primary medical services but which is to be used as practice premises on a temporary basis;
- (h) improvements which are necessary in connection with emergency planning, such as the provision of electronic storage facilities at a location remote from the practice premises or the installation of a connection for an emergency generator;
- (i) improvements to infection control or decontamination requirements at the practice premises, including the installation of specialist floor covering in areas used for the treatment of patients;
- (j) the installation of a water meter;
- (k) in the case of premises of which the contractor is a tenant or is party to an agreement to become a tenant, fit-out works to those premises during or immediately after their construction; and

- (1) improvements which are necessary due to regulatory changes in respect of the provision of primary medical services.
- (2) Assistance may not be provided in respect of the projects referred to in sub-paragraphs (c), (i) and (l) of paragraph (1) to the extent that that assistance in respect of the expenditure referred to in those sub-paragraphs is excluded by direction 9(i).

**Projects that must not be funded with premises improvement grants**

**9.** NHS England must not agree to fund the following expenditure with a premises improvement grant—

- (a) any cost elements in respect of which a tax allowance is being claimed;
- (b) the cost of acquiring land, existing buildings or constructing new buildings (other than for the purpose of the improvements referred to in direction 8(1)(a) or the purpose of fit-out works referred to in direction 8(1)(k));
- (c) the repair or maintenance of premises, or the purchase, repair or maintenance of furniture, furnishings, floor covering (with the exception of the specialist floor covering referred to in direction 8(1)(i)) and equipment;
- (d) restoration work in respect of structural damage or deterioration;
- (e) any work in connection with the domestic quarters or the residential accommodation of practitioners, caretakers or practice staff, whether or not it is a direct consequence of work on surgery accommodation;
- (f) any extension not attached to the main building by at least a covered passage way;
- (g) improvements designed solely to reduce the environmental impact of premises, such as the installation of solar energy systems or replacement windows, doors or facades, unless the contractor can satisfy NHS England, acting reasonably, that those improvements provide a net financial benefit to the health service;
- (h) any work made necessary as a result of fair wear and tear; and
- (i) any costs associated with compliance with the minimum standards (excluding any costs to which direction 8(1)(d) applies and any costs which are in respect of improvements which are to be carried out in order to comply with statutory requirements imposed immediately before the time when those improvements and that work is to be commenced).

**Initial consideration of premises development or improvement proposals**

**10.**—(1) Before determining whether a proposal from a contractor for premises development or improvement of a type mentioned in direction 7 should be included in NHS England’s estates strategy for investment prioritisation, NHS England must—

- (a) where a proposal is for development within direction 7(1)(a) or (c) or a proposal impacts on the way in which primary medical services are delivered, share details of the proposal with the Local Medical Committee (if any), for the area in which the development or improvement is to take place before NHS England gives final approval for the proposal and invite the Local Medical Committee to make written representations about the proposal to NHS England within a time-frame specified by NHS England, which must be no shorter than two weeks;
- (b) satisfy itself that the proposal—
  - (i) is required to support, and will support, the delivery of the services that the contractor has agreed to provide under its GMS contract, and
  - (ii) will provide a safe and secure environment for the delivery of those services;
- (c) satisfy itself, where appropriate in consultation with the district valuer or appointed valuer, that the proposal represents value for money;
- (d) if the premises are held on a lease or a licence or if there is an agreement to hold those premises on a lease, satisfy itself that the contractor—

- (i) has or will have, adequate security of tenure;
  - (ii) where appropriate, holds, or is to hold, a lease (except where paragraph (2) applies) with an unexpired period of at least as long as the guaranteed period of use; and
  - (iii) intends to occupy the premises for a period at least as long as the guaranteed period of use; and
- (e) have regard to any relevant standards issued by or on behalf of the Secretary of State and, where a contractor is proposing to depart from those standards, satisfy itself that—
- (i) the departure is reasonable in the circumstances; and
  - (ii) following satisfactory completion of the improvement or development, the premises will meet the minimum standards.
- (2) This paragraph applies in a case where—
- (a) the lease is to expire before the end of the guaranteed period of use;
  - (b) there is a right, either under the lease or under statute, for the contractor to renew the lease before the expiry of the lease; and
  - (c) NHS England nevertheless considers it appropriate to include the proposal in NHS England’s estates strategy for investment prioritisation.
- (3) In the case of a proposal within direction 8(1)(k), NHS England must satisfy itself that—
- (a) the contractor and developer of the premises have entered into, or propose to enter into, a lease or an agreement for a lease of the premises and such lease or agreement for a lease does not, or will not, prohibit assignment to NHS England or its nominee; and
  - (b) the contractor, the developer and the professional team for the development have entered into, or will be required, where appropriate, to enter into, collateral warranties in relation to the landlord’s development works in favour of the contractor including rights to assign the benefits of those warranties to NHS England or its nominee.

**Documentation and information required in respect of premises developments or improvements**

**11.** NHS England must refuse an application for financial assistance in respect of a premises development or improvement proposal from a contractor unless—

- (a) where the nature of the work is such that, in the opinion of NHS England, it requires architect’s plans for the development or improvement to be drawn up, the contractor supplies NHS England with such plans;
- (b) where the nature of the work requires building work, the contractor—
  - (i) carries out a tendering process for a building contractor to undertake the work, resulting in at least three written quotes, and
  - (ii) agrees with NHS England which of those written quotes represents best value for money;
- (c) the contractor supplies to NHS England copies of any necessary planning and building regulations consents; and
- (d) where the premises development or improvement is to premises that are held on a lease, the contractor supplies NHS England with a copy of the written consent to the development or improvement of the landlord.

**Priority funding projects and conditions attached to payments**

**12.—(1)** Where NHS England determines that a proposal from a contractor for premises development or improvement of a type mentioned in direction 7 is to be included in NHS England’s estates strategy for investment prioritisation, and is to be one of its priority funding projects, NHS England must seek to finalise a project plan with the contractor.

(2) NHS England must only agree to a finalised project plan with the contractor where the requirements specified in paragraph (3) are met.

(3) The specified requirements are that the project plan includes—

- (a) a payment schedule (“the project payment schedule”) setting out the financial assistance to which NHS England has committed itself in respect of the project and that project payment schedule is included in any payment schedule in the contractor’s GMS contract;
- (b) a condition which has the effect of making payments to the contractor under the project payment schedule subject to a requirement that the contractor adheres both to the specifications for the project which are set out in the finalised project plan and to any standards to be met during the development and improvement work which are set out in the finalised project plan (which may be varied with the consent of both parties);
- (c) a condition which has the effect of making payments to the contractor under that payment schedule subject to a requirement that the contractor, when carrying out the development and improvement work, does not depart significantly, in NHS England’s view, from the version of the project in the finalised project plan (which may be varied with the consent of both parties);
- (d) a condition (unless such a condition is unreasonable in the circumstances) which has the effect of making the payments to the contractor under that payment schedule subject to a requirement that the contractor guarantees that the premises will, once the development and improvement work has been completed, remain in use for the delivery of primary medical services for the guaranteed period of use;
- (e) a condition (unless such a condition is unreasonable in the circumstances) which has the effect of committing the contractor, subject to direction 13, to repaying a proportion of the grant (“the repayable amount”) should the premises cease to be used to provide primary medical services before the relevant guaranteed period of use has expired;
- (f) where the work is work to which direction 8(1)(k) applies, a condition (unless such a condition is unreasonable in the circumstances) which has the effect of committing the contractor to repaying the full grant attributable to that work should the contractor fail to occupy the premises in breach of the terms of the lease or of the agreement for a lease;
- (g) a condition, to apply where the premises are leasehold premises, which has the effect of committing the contractor to documenting that the development or improvements for which the grant is paid will be documented as tenant’s improvements and that those improvements will be disregarded on any subsequent review of the rent under the lease until the expiry of the guaranteed period of use or of the lease, whichever is the longer; and
- (h) a condition, to apply only if the contractor is an owner-occupier, which has the effect that if the contractor sells the premises and subsequently leases them back from the purchaser, the contractor must—
  - (i) ensure that the lease is for a term at least as long as the remainder of the guaranteed period of use;
  - (ii) if required by NHS England, enter into such additional conditions relating to the grant for the remainder of the guaranteed period of use as would have been required if the contractor had not been an owner-occupier when the grant was made; and
  - (iii) ensure that the development or improvements for which the grant was paid will be disregarded for the purposes of calculating the initial rent payable by the contractor and on any subsequent review of the rent under the lease until the expiry of the guaranteed period of use or of the lease, whichever is the longer;

(4) In paragraph (3)(e) and direction 13 (except in the circumstances in direction 13(5)), the repayable amount is to be calculated by multiplying the amount NHS England has paid by the fraction produced by dividing the period remaining (expressed in whole and part years) before the expiry of the relevant guaranteed period of use by the number of years in that period.

### **Repayability of premises development or improvement grants**

13.—(1) Paragraphs (2) to (12) apply where—

- (a) a premises improvement grant or other grant under direction 7 has been paid to a contractor (C);
- (b) C terminates its GMS contract; and
- (c) the date on which the GMS contract terminates (“the termination date”) is before the expiry of the guaranteed period of use.

(2) Except where paragraph (3) applies, NHS England may demand payment of the repayable amount from C at any time after it becomes payable.

(3) Where C—

- (a) is an owner-occupier;
- (b) notifies NHS England that the repayable amount is to be paid out of the proceeds of sale of the practice premises; and
- (c) satisfies NHS England that it is actively pursuing the sale,

NHS England may only demand payment of the repayable amount from C on or after the date of completion of the sale or on or after the day which is two years after the termination date, whichever is the earlier.

(4) NHS England must waive compliance with the condition in direction 12(3)(e) in relation to C where—

- (a) C is an owner-occupier;
- (b) another contractor or person providing primary medical services whose services are commissioned by NHS England (D) leases the practice premises from C; and
- (c) D has—
  - (i) agreed with NHS England to comply with the conditions relating to the grant for the remainder of the guaranteed period of use previously applicable to C; and
  - (ii) ensured that the development or improvements for which the grant was paid will be disregarded for the purposes of calculating the initial rent payable by D and on any subsequent review of the rent until the expiry of the guaranteed period of use previously applicable to C or of the lease, whichever is the longer.

(5) Paragraph (6) applies where—

- (a) C is an owner-occupier;
- (b) C sells the practice premises;
- (c) there is no lease of the practice premises back to C and no possibility of such a lease; and
- (d) the repayable amount would, apart from paragraph (6), exceed the higher of —
  - (i) the sale price of the practice premises; or
  - (ii) the best sale price for the practice premises reasonably obtainable on the open market as determined by the district valuer or the appointed valuer.

(6) Where this paragraph applies, the repayable amount is instead the higher of the amount in paragraph (5)(d)(i) or (ii).

(7) NHS England must waive compliance with the condition in direction 12(3)(e) in relation to C where—

- (a) the practice premises to which the payment of the grant relates are leasehold premises;
- (b) C has assigned the lease to D; and
- (c) D has agreed with NHS England to comply with the conditions relating to the grant for the remainder of the guaranteed period of use previously applicable to C.

(8) Where a contractor has agreed to comply with the conditions relating to a grant in accordance with paragraph (4)(c) or (7)(c), that contractor is subsequently to be treated for the purposes of paragraph (1) as if they were the contractor to whom the grant was paid.

(9) NHS England may, if it considers it appropriate in all the circumstances, waive compliance with the condition in direction 12(3)(e) where the practice premises to which the payment of the grant relates are leasehold premises and paragraphs (10) and (11) apply.

(10) This paragraph applies where C has prior to the termination date, used all reasonable endeavours—

(a) to secure another contractor, person providing primary medical services or any other tenant, for the premises to whom the lease may be assigned; or

(b) to agree, on terms supported by NHS England, the surrender of its lease with the landlord, but has been unable to do so.

(11) This paragraph applies where NHS England has been unable to procure another contractor or other person to provide primary medical services to take assignment of the lease or has chosen not to.

(12) In exercising its discretion under paragraph (9), NHS England must have regard to—

(a) the full circumstances relating to C's decision to terminate the GMS contract;

(b) the length of the remainder of the guaranteed period of use applicable to C;

(c) any commitments given by C when the grant was awarded;

(d) (where relevant) any steps taken by C in relation to succession planning; and

(e) any guidance issued and published by it.

(13) NHS England must waive compliance with the condition in direction 12(3)(e) where a contractor relocates to another practice premises at the request of, or with the agreement of, NHS England.

## PART 3

### PROFESSIONAL FEES AND RELATED COSTS INCURRED IN OCCUPYING NEW OR SIGNIFICANTLY REFURBISHED PREMISES

#### **Reimbursement of legal and other professional costs incurred in occupying new or significantly refurbished premises**

**14.**—(1) Where paragraph (2) or (3) applies, NHS England must consider that application for financial assistance and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

(2) This paragraph applies where—

(a) a contractor has procured newly built practice premises or refurbished existing practice premises;

(b) actual or notional rent payments are to be paid to the contractor in respect of those premises by NHS England pursuant to these Directions on completion of the building or refurbishment work; and

(c) the contractor makes an application to NHS England for reimbursement in respect of the professional expenses referred to in direction 15.

(3) This paragraph applies where—

(a) NHS England and the contractor agree under direction 5(3)(a) that there is an opportunity for another body to share occupation of part or all of the practice premises and a written agreement is required to evidence that occupation; and

(b) the contractor makes an application to NHS England for reimbursement in respect of the professional expenses referred to in direction 15.

### **Types of professional expenses that may be reimbursed**

**15.**—(1) The professional expenses which may be reimbursed to the contractor are to be determined in accordance with the following paragraphs.

(2) In a case where notional rent payments are to be paid in respect of newly built or refurbished practice premises, the reimbursable professional expenses are—

- (a) the reasonable costs of engaging a project manager to oversee the interests of and give advice to the contractor, up to the maximum reimbursable amount, which is 1% of the total reasonable contract sum relating to the construction or refurbishment work;
- (b) the reasonable surveyors', architects' and engineers' fees, taken together, up to the maximum reimbursable amount which is 12% of the total reasonable contract sum relating to the construction or refurbishment work or such greater amount as NHS England may agree in the circumstances; and
- (c) the reasonable legal costs incurred by the contractor in connection with the purchase of a site (where applicable) and the construction or refurbishment work.

(3) In a case where the practice premises are, or are to be, leasehold premises, the reimbursable professional expenses are—

- (a) the reasonable costs of engaging a project manager to oversee the interests of and give advice to the contractor, up to the maximum reimbursable amount, which is 1% of the total reasonable contract sum relating to the construction or refurbishment work; and
- (b) the reasonable legal costs incurred by the contractor in connection with agreeing the lease or agreement for lease.

(4) In a case where direction 14(3) applies, the reimbursable professional expenses are the reasonable legal costs incurred by the contractor in connection with agreeing the lease or other legal agreement.

### **Value Added Tax on professional expenses**

**16.** Where—

- (a) NHS England decides to grant an application for reimbursement in respect of the professional expenses mentioned in direction 15; and
- (b) Value Added Tax has been properly charged in respect of the amount that NHS England has decided to reimburse,

NHS England must provide the contractor with financial assistance, under its GMS contract, to cover the cost to the contractor of that Value Added Tax (but excluding any Value Added Tax for which a refund can be claimed by the contractor).

## **PART 4**

### **GRANTS RELATING TO RELOCATION OF OR RE-MORTGAGING BY A CONTRACTOR**

#### **Repayment mortgage redemption or deficit grants**

**17.**—(1) Where a contractor—

- (a) agrees to relocate to leasehold premises approved by NHS England in its estates strategy for investment prioritisation;
- (b) makes an application in writing to NHS England for a mortgage redemption or deficit grant in respect of a repayment mortgage to cover all or a proportion of the following—
  - (i) a mortgage deficit which arises, after owner-occupied practice premises are sold, because the actual sale price of the premises was not sufficient to clear the outstanding mortgage on the property, or

- (ii) mortgage redemption fees that the contractor may incur as a result of the sale or re-mortgage of such premises; and
- (c) includes in that application all reasonable information required of it by NHS England to determine the application, including details of the amount of the outstanding mortgage that was used to build or improve the property,

NHS England must consider that application for financial assistance and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set itself), grant that application.

(2) Where a contractor re-mortgages practice premises and—

- (a) the contractor is in receipt of financial assistance under direction 37 in respect of those premises;
- (b) the existing mortgage is a repayment mortgage at a fixed rate of interest;
- (c) the new mortgage is a repayment mortgage at a lower rate of interest than the existing mortgage, and for no more than the amount outstanding under the existing mortgage;
- (d) the contractor makes an application in writing to NHS England for a mortgage redemption grant to cover all or a proportion of mortgage redemption fees that the contractor may incur as a result of the re-mortgage; and
- (e) the contractor includes in that application all reasonable information required of it by NHS England to determine the application, including details of the existing mortgage and the new mortgage,

NHS England must consider that application for financial assistance and in appropriate cases, (having regard, amongst other matters, to the budgetary targets it has set itself, and to the likely savings to be made in the level of financial assistance given under direction 37 as a result of the re-mortgage), grant that application.

### **Costs that may not be funded with mortgage redemption or deficit grants**

**18.** NHS England must not agree to cover the following costs or liabilities of a contractor with a mortgage redemption or deficit grant—

- (a) any proportion of a mortgage deficit that has arisen through—
  - (i) arrangements entered into by the contractor which result in mortgage repayments not being made for any period, including periods of interest free payments or any periods during which the mortgage is not paid or demanded, or
  - (ii) reduced loan repayments not reflected in the amount NHS England pays in respect of borrowing costs under direction 37;
- (b) any borrowings or redemption charges not connected with the original purchase of land, building works or subsequent improvements to the premises (for example furnishings, fittings and equipment, including IT and telephone systems).

### **Matters that must be considered before determining mortgage redemption or deficit grant applications**

**19.** Before determining an application for a mortgage redemption or deficit grant from a contractor, NHS England must obtain professional advice and be satisfied that—

- (a) negotiations with the lender have limited the extent of any deficit or redemption charges;
- (b) options for change of use for the property have been considered and where appropriate, outline planning permission sought or obtained;
- (c) a proper process has been undertaken to identify a suitable third party developer and a site for the new leasehold premises;
- (d) the timing of the grant is appropriate to maximising the opportunity for a sale which will coincide with completion and occupation of the new leasehold premises; and

- (e) the sale of the premises is adequately advertised and the best price reasonably obtainable in the open market will be obtained,

and NHS England must deduct from any amount that it would otherwise be prepared to pay by way of a mortgage redemption or deficit grant the surrender value of any endowment policy cover linked to the mortgage on the premises.

#### **Conditions attached to mortgage redemption or deficit grants**

**20.** Although, for accounting purposes, a mortgage redemption or deficit grant is to be treated as a payment to the contractor, NHS England must ensure that payment of the grant is made subject to the following conditions—

- (a) the contractor must consent to NHS England sending the grant directly to the lender;
- (b) the contractor must provide NHS England with sufficient details to enable it to do so;
- (c) the contractor must provide NHS England with the information it needs from the lender to determine whether any endowment policy cover is linked to the mortgage on the premises, and if so, its surrender value; and
- (d) the contractor must not be in receipt of financial assistance under direction 21 in respect of the same mortgage.

#### **Borrowing costs relating to mortgage redemption or deficit costs**

**21.—(1)** Where a contractor which is not in receipt of a mortgage redemption or deficit grant—

- (a) agrees to relocate to leasehold premises approved by NHS England in its estates strategy for investment prioritisation;
- (b) takes out a loan to cover—
  - (i) a mortgage deficit which arises, after owner-occupied practice premises are sold, because the actual sale price of the premises was not sufficient to clear the outstanding mortgage on the property, or
  - (ii) mortgage redemption fees that the contractor may incur as a result of the sale or re-mortgage of such premises, or a third party takes out a loan to cover those costs or fees on its behalf and the contractor is obliged to meet the third party's liabilities in respect of the repayment of that loan;
- (c) makes an application in writing to NHS England for financial assistance towards meeting its, or the third party's, regular payments to repay the loan; and
- (d) includes in that application all reasonable information required of it by NHS England to determine the application, including details of the amount of the outstanding mortgage that was used to build or improve the property,

NHS England must consider that application for financial assistance and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set itself), grant that application.

**(2)** Where a contractor re-mortgages practice premises and—

- (a) the contractor is in receipt of financial assistance under direction 37 in respect of those premises;
- (b) the existing mortgage is a repayment mortgage at a fixed rate of interest;
- (c) the new mortgage is a repayment mortgage at a lower rate of interest than the existing mortgage, and for no more than the amount outstanding under the existing mortgage;
- (d) the contractor takes out a loan to cover mortgage redemption fees that the contractor may incur as a result of the re-mortgage of the premises, or a third party takes out a loan to cover those fees on its behalf and the contractor is obliged to meet the third party's liabilities in respect of the repayment of that loan;

- (e) the contractor makes an application in writing to NHS England for financial assistance towards meeting its, or the third party's, regular payments to repay the loan; and
- (f) the contractor includes in that application all reasonable information required of it by NHS England to determine the application, including details of the existing mortgage and the new mortgage,

NHS England must consider that application for financial assistance and in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set itself, and to the likely savings to be made in the level of financial assistance given under direction 37 as a result of the re-mortgage), grant that application.

### **Costs that must not be funded under direction 21**

**22.** NHS England must refuse an application of a type mentioned in direction 21 if the loan covers—

- (a) any proportion of a mortgage deficit that has arisen through—
  - (i) arrangements entered into by the contractor which result in mortgage repayments not being made for any period, including periods of interest free payments or any periods during which the mortgage is not paid or demanded, or
  - (ii) reduced loan repayments not reflected in the cost rent reimbursement;
- (b) any borrowings or redemption charges not connected with the original purchase of land, building works or subsequent improvements to the premises (for example furnishings, fittings and equipment, including IT or telephone systems).

### **Matters that must be considered before determining applications under direction 21**

**23.** Before determining an application of the type mentioned in direction 21, NHS England must obtain professional advice and be satisfied that—

- (a) negotiations with the lender have limited the extent of any deficit or redemption charges;
- (b) options for change of use for the property have been considered and where appropriate, outline planning permission sought or obtained;
- (c) a proper process has been undertaken to identify a suitable third party developer and a site for the new leasehold premises;
- (d) the timing of the loan is appropriate to maximising the opportunity for a sale which will coincide with completion and occupation of the new leasehold premises; and
- (e) the sale of the premises is adequately advertised and the best price reasonably obtainable in the open market has been or will be obtained,

and NHS England must deduct from any regular payments that it would otherwise be prepared to pay in granting the application, a regular and appropriate proportion of the surrender value of any endowment policy cover linked to the mortgage on the premises.

### **Conditions attached to payments under direction 21**

**24.** Although, for accounting purposes, regular payments that NHS England makes on granting an application of the type mentioned in direction 21 are to be treated as a payment to the contractor, NHS England must ensure that the payments are made subject to the following conditions—

- (a) the contractor must consent to NHS England sending the payments directly to the lender;
- (b) the contractor must provide NHS England with sufficient details to enable it to do so;
- (c) the contractor must provide NHS England with the information it needs from the lender to determine whether any endowment policy cover is linked to the mortgage on the premises, and if so, its surrender value; and

- (d) the contractor must not be in receipt of a mortgage redemption or deficit grant from NHS England in respect of the same mortgage.

### **Guaranteed minimum sale price payments**

**25.**—(1) Paragraph (2) applies where—

- (a) a contractor agrees with NHS England to relocate to leasehold premises approved by NHS England in its estates strategy for investment prioritisation;
- (b) the relocation will, in the opinion of NHS England, result in an improvement in the range and quality of services to be provided to patients by the contractor;
- (c) NHS England and the contractor have agreed a guaranteed minimum sale price for owner-occupied practice premises that are being sold (“the previous premises”);
- (d) NHS England is satisfied that the previous premises were placed on the open market with active marketing to sell them at the maximum price achievable on a date to coincide with the contractor’s move to new premises;
- (e) NHS England is satisfied, having taken the advice of the district valuer or appointed valuer, that an increased offer (being an offer which was better than the offer which was accepted for the previous premises) could not reasonably have been achieved; and
- (f) NHS England is satisfied that the previous premises have not been sold to—
  - (i) the contractor or, where the contractor is an individual, a family member of the contractor,
  - (ii) a present or former partner in, shareholder in or employee of the contractor,
  - (iii) a family member of a present or former partner in, shareholder in or employee of the contractor, or
  - (iv) the employer of a family member of a present or former partner in or shareholder in or employee of the contractor,

and the sale price for the previous premises is less than the agreed guaranteed minimum sale price for the premises.

(2) Where this paragraph applies, NHS England must, subject to paragraph (3), provide to the contractor under its GMS contract, financial assistance in the form of a payment equal to the difference between the sale price for the previous premises and the agreed guaranteed minimum sale price.

(3) It is a condition for making the payment in paragraph (2) that the contractor agrees that if the contractor receives any further sum or sums of money in relation to the sale from any successor in title of the previous premises (or from any person on that person’s behalf) in addition to the sale price in respect of the previous premises (“additional sum”), then the contractor will pay NHS England the lower of the amount of the payment made under paragraph (2) or the additional sum.

### **Agreement of a guaranteed minimum sale price**

**26.** If NHS England is considering agreeing a guaranteed minimum sale price with a contractor, it must—

- (a) seek the advice of the district valuer or appointed valuer on the actual sale price of the premises to be sold; and
- (b) only agree a guaranteed minimum sale price with the contractor—
  - (i) on the basis of the advice about the actual sale price of the property that it has received, and
  - (ii) having taken into account the options for change of use of the premises.

### **Grants relating to the cost of reconvert former residential property**

27. Where a contractor has a proposal for reconvert practice premises which were previously the contractor's (or a partner in or shareholder of the contractor's) owner occupied residential property back to residential use and—

- (a) the property is no longer suitable for the delivery of primary medical services; and
- (b) the contractor has agreed to—
  - (i) move to premises suitable for the delivery of primary medical services;
  - (ii) rent out the reconverted premises through arrangements made by the contractor directly or through a registered provider of social housing for a minimum period of time which is to be set by NHS England and which NHS England must set for a period that is commensurate to the level of grant awarded pursuant to an application of the type mentioned in this direction; and
  - (iii) the contractor makes an application to NHS England for a residential property re-conversion grant towards the cost of the re-conversion,

NHS England must consider that application for financial assistance and in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself) grant that application.

### **Circumstances where residential property re-conversion grants are not payable**

28. NHS England must ensure that payment of a residential property re-conversion grant is made subject to the following conditions to the following effect—

- (a) for the minimum period of time set by NHS England in accordance with direction 27(b)(ii), any registered provider of social housing through which the premises are or will be rented out, and any tenant to whom all or part of the premises are or will be rented out, must not be—
  - (i) the contractor or, where the contractor is an individual, a family member of the contractor;
  - (ii) a present or former partner in, shareholder in or employee of the contractor;
  - (iii) a family member of a present or former partner in, shareholder in or employee of the contractor; or
  - (iv) the employer of a present or former partner in, shareholder in or employee of the contractor; and
- (b) the contractor must not occupy all or part of the premises during the minimum period of time that has been set by NHS England in accordance with direction 27(b)(ii).

### **Grants towards the cost of surrendering or assigning leases or to meet vacated leasehold premises costs and conditions to be attached**

29.—(1) Where a contractor which is moving or has moved to premises that are suitable for the delivery of primary medical services makes an application to NHS England for a grant towards—

- (a) the costs reasonably incurred (including reasonable legal costs) that relate to—
  - (i) surrendering a lease with no more than five years of its term left to run, or
  - (ii) assigning a lease,of leasehold premises that are or were practice premises but are not suitable for the delivery of primary medical services; or
- (b) vacated leasehold premises costs, for the 12 month period immediately following the contractor's vacation of the premises, that relate to the contractor's ongoing liabilities (or a partner in or shareholder in the contractor's ongoing liabilities) in respect of practice premises that are being or have been vacated because they are not suitable for the delivery of primary medical services,

NHS England must consider that application for financial assistance and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set itself) grant that application.

(2) In the case of vacated leasehold premises costs, NHS England must ensure that any financial assistance given is subject to a condition to the effect that the contractor must continue to take all reasonable steps to surrender or assign the lease to a third party on reasonable terms.

### **Circumstances where an application of the type mentioned in direction 29 must be refused**

**30.**—(1) NHS England must refuse an application of the type mentioned in direction 29 where paragraph (2), (3) or (4) applies.

(2) This paragraph applies where the costs to which the application relates were incurred without the prior approval of NHS England.

(3) This paragraph applies where the costs to which the application relates relate to leasehold premises which are wholly or partly owned by, or are leased from—

- (a) the contractor or, where the contractor is an individual, a family member of the contractor;
- (b) a present partner in, shareholder in or employee of the contractor (“P”), except where an arm’s length relationship exists between P and the contractor and the proposed terms of the surrender or assignment of the lease (as the case may be) are not considered by NHS England to be unreasonable in the circumstances;
- (c) a family member of a present partner in, shareholder in or employee of the contractor;
- (d) the employer of a family member of a present partner in, shareholder in or employee of the contractor; or
- (e) a former partner in the contractor, except where an arm’s length relationship exists between the former partner and the contractor and the proposed terms of the surrender or assignment of the lease (as the case may be) are not considered by NHS England to be unreasonable in the circumstances.

(4) This paragraph applies where—

- (a) NHS England considers the proposed terms of the surrender or assignment to be unreasonable in the circumstances;
- (b) no professional advice has been obtained about surrender or assignment of the lease, or such professional advice has been obtained and the conclusion of that advice is that surrender or assignment is not cost-effective; or
- (c) the costs relating to liabilities in respect of the vacated leasehold premises have not been agreed with the landlord.

### **Stamp Duty Land Tax payable on acquiring land or premises**

**31.**—(1) Where paragraph (2) applies, NHS England must consider that application for financial assistance and, in appropriate circumstances (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

(2) This paragraph applies where—

- (a) the contractor agrees with NHS England to acquire land, or to relocate to or additionally occupy leasehold practice premises approved by NHS England in NHS England’s estates strategy for investment prioritisation;
- (b) the acquisition, relocation or additional occupation of premises will, in the opinion of NHS England, result in an improvement in the range and quality of services to be provided to patients by the contractor; and
- (c) the contractor makes an application to NHS England for financial assistance to cover the cost of any Stamp Duty Land Tax incurred by the contractor as a consequence of acquiring land or of signing a lease to occupy those premises.

## PART 5

### RECURRING PREMISES COSTS

#### **Leasehold premises rental costs**

**32.**—(1) Subject to the following provisions of this Part, where—

- (a) a contractor which rents its practice premises makes an application to NHS England for financial assistance towards its rental costs; and
- (b) NHS England is satisfied (before the lease is agreed or varied), where appropriate in consultation with the district valuer or appointed valuer, that the terms on which the new or varied lease is to take effect represent value for money,

NHS England must consider that application and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

(2) Where—

- (a) a contractor takes or is proposing to take a lease of new practice premises or significantly refurbished practice premises;
- (b) the agreement for lease or lease includes payment of a premium by the contractor to the developer during development or on completion of the premises; and
- (c) the premium has the effect of reducing the rent payable for the premises below the current market rent,

the application made to NHS England under paragraph (1)(a) may include an application for a grant in respect of that premium.

(3) For the avoidance of doubt, a rent review under a lease is not, for the purposes of this Part, to be treated as a variation of the terms of that lease.

#### **Amount of leasehold premises rental costs payable**

**33.**—(1) Subject to the following provisions of this Part, where NHS England grants an application, the amount that it must pay in respect of a contractor's rental costs for its practice premises is to be determined as provided for in the following paragraphs of this direction.

(2) Except in a case to which paragraph (3), (4) or (8) applies, the amount referred to in paragraph (1) is whichever is the lower of—

- (a) the amount of the current market rent for the premises, plus any Value Added Tax payable by the contractor if this is properly charged to the contractor by the landlord (but excluding any Value Added Tax in respect of which the contractor can claim a refund); or
- (b) the amount of the actual lease rent for the premises, plus any Value Added Tax payable by the contractor if this is properly charged to the contractor by the landlord (but excluding any Value Added Tax in respect of which the contractor can claim a refund).

(3) In a case where—

- (a) the landlord of the practice premises is NHS Property Services Limited<sup>(a)</sup> or Community Health Partnerships Limited<sup>(b)</sup>; and
- (b) the lease of the premises includes a provision preventing the amount of the rent from being less than the amount of rent payable by the contractor at the beginning of the lease (“the initial rent”),

the amount referred to in paragraph (1) is to be no less than the initial rent.

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(a) A company formed by the Secretary of State under section 223 of the National Health Service Act 2006, company number 07888110.

(b) A company formed by the Secretary of State under section 223 of the National Health Service Act 2006, company number 04220587.

(4) Where the premises are PFI premises or LIFT premises, the amount referred to in paragraph (1) is to be such amount as NHS England considers reasonable having regard to the terms on which the premises are occupied and any advice obtained from the district valuer or appointed valuer.

(5) Where paragraph (6) or (7) applies, the contractor shall use reasonable endeavours to secure agreement with the landlord that the terms of the lease include a provision that no Value Added Tax will be chargeable during the term of the lease.

(6) This paragraph applies where a contractor intends to sell and lease back the premises and has put that proposal to NHS England under direction 7(1) (premises development and improvement proposals).

(7) This paragraph applies where a contractor—

- (a) is in occupation of, and paying rent for, practice premises at the date on which these Directions come into force;
- (b) has not completed a lease of those premises at that date; and
- (c) is seeking to do so.

(8) Where paragraph (6) applies and the lease does not include a provision mentioned in paragraph (5), NHS England shall have discretion as to whether or not to reimburse the contractor in respect of such rent or Value Added Tax payments as have been agreed.

(9) Where paragraph (7) applies and the lease does not include a provision mentioned in paragraph (5), NHS England shall, subject to its approval of the remaining terms of the lease, reimburse the contractor any properly charged Value Added Tax payments in respect of the rent.

(10) Paragraph (11) applies where a contractor—

- (a) is a partnership;
- (b) is in receipt of notional rent under direction 42 (notional rent payments); and
- (c) all of the partners who own the practice premises have retired and have ceased to be partners in the contractor so that the contractor is no longer entitled to receive notional rent under direction 42 (notional rent payments).

(11) Where this paragraph applies, NHS England must—

- (a) assess the amount to be paid towards the contractor's future rental costs as if the contractor had made an application under direction 32 (leasehold premises rental costs); and
- (b) from the date on which that assessment is finalised, cease making payments to the contractor in respect of the notional rent and instead pay the current market rent assessed under direction 34.

(12) Notwithstanding paragraph (11)(b), NHS England may, if it considers it appropriate to do so, continue making payments to the contractor in respect of the notional rent for a period agreed with the contractor.

(13) In this direction—

“LIFT premises” means premises developed and operated through a Local Improvement Finance Trust (an arrangement approved by the Secretary of State for the purposes of improving primary care facilities and services in a particular area);

“PFI premises” means premises developed and operated through a government private finance initiative scheme contract.

### **Current market rents**

**34.**—(1) NHS England must determine the amount of the current market rent of leasehold premises in accordance with this direction.

(2) For the purposes of NHS England's determination under paragraph (1), NHS England must—

- (a) refer the matter to the district valuer or appointed valuer for consideration and calculation in accordance with Parts 1 and 2 of Schedule 2;
- (b) before the district valuer or appointed valuer has considered the matter, invite both the landlord of the premises concerned and the contractor, to make representations, or to submit other professional evidence, to the district valuer or appointed valuer regarding what the current market rent of the premises should be; and
- (c) have regard to the assessment of the current market rent as calculated by the district valuer or appointed valuer in accordance with Parts 1 and 2 of Schedule 2.

(3) NHS England must not reimburse the current market rent determined under paragraph (1) to the contractor unless the contractor has notified NHS England in writing that it accepts or does not accept that determination—

- (a) within the period of 12 weeks beginning with the day on which NHS England gives notice to the contractor, inviting the contractor to accept, or not to accept, the amount determined under paragraph (1) as the current market rent; or
- (b) within such longer period beginning with that day as may be agreed between NHS England and the contractor.

(4) Having regard to the fact that current market rent levels may be too low to provide—

- (a) sufficient returns to support new capital investment in practice premises; or
- (b) sufficient support for existing premises that meet the minimum standards,

NHS England may in such circumstances, having taken advice from the district valuer or appointed valuer, add an appropriate supplement to the amount it would otherwise pay as the current market rent of practice premises in order to provide sufficient returns or support.

(5) NHS England must reduce payments of the supplement in paragraph (4) in line with any increases in the current market rent until such time as the supplement is extinguished.

(6) In determining the amount of the current market rent under paragraph (1), any element of that rent attributable to the fit-out works to the premises during or immediately after their construction financed by a premises improvement grant or other public funds is to be disregarded.

(7) Where NHS England has provided financial assistance to the contractor pursuant to an application made under direction 32(2) or the contractor has otherwise received payment of public funds towards the cost of the lease premium, that financial assistance shall be taken into account for the purpose of determining the current market rent under the preceding provisions of this direction and the rent reimbursed to the contractor shall be reduced accordingly.

#### **Premiums affecting the lower rent rate**

35.—(1) Subject to direction 34(7), where the actual lease rent for practice premises, plus any properly chargeable Value Added Tax, is only lower than the current market rent for those premises because, in the calculation of the current market rent for the premises, NHS England includes the value of a premium paid by the contractor, the amount to be paid by NHS England pursuant to direction 32 is the current market rent for the premises rather than the actual lease rent.

(2) In considering the actual lease rent in paragraph (1), NHS England must disregard any element of that rent which would not be included in an assessment of current market rent, and must, when adding any properly chargeable Value Added Tax, disregard any part of that Value Added Tax for which the contractor can claim a refund.

#### **Equipment lease costs for leasehold practice premises**

36. Where—

- (a) a contractor has entered into an agreement (whether as part of an agreement to lease practice premises or otherwise) to lease equipment, furniture or furnishings; and
- (b) the nature and level of the costs of leasing the equipment, furniture or furnishings (including any arrangements for increasing the amounts payable), together with the period

of time for which these costs are payable, were agreed by the contractor and NHS England before the agreement was made, and—

- (i) the period of time does not exceed the remaining term of the lease of the practice premises,
- (ii) NHS England obtained professional advice before reaching agreement with the contractor; and
- (iii) the contractor makes an application to NHS England for financial assistance towards those costs,

NHS England must consider that application for financial assistance and, in appropriate circumstances (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

### **Borrowing costs**

**37.** Subject to the following provisions of this Part, where a contractor—

- (a) incurs borrowing costs as a result of purchasing, building or significantly refurbishing its practice premises; and
- (b) makes an application to NHS England for financial assistance towards meeting those costs,

NHS England must consider that application and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

### **Conditions to be met if applications for financial assistance in respect of borrowing costs are to be granted**

**38.—**(1) Where the contractor's borrowing costs relate to new practice premises or the significant refurbishment of an existing building, NHS England must only grant an application of the type mentioned in direction 37 if the conditions in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are—

- (a) in respect of the building work, the contractor—
  - (i) carries out or carried out a tendering process for a firm to undertake the work, resulting in at least three written quotes,
  - (ii) tenders for a loan from at least three financial lenders who are regulated by the Financial Conduct Authority in order to obtain the best rate of interest for that loan reasonably obtainable in the market, and
  - (iii) agrees or agreed with NHS England which of those written quotes and loan offers represents or represented best value for money;
- (b) the maximum amount of financial assistance applied for is no more than the lower of—
  - (i) the actual loan interest repayments payable, and
  - (ii) a sum calculated by applying the prescribed percentage to the necessary level of loan incurred and agreed with NHS England, to meet the aggregated cost elements to build, fit-out and equip the premises; and
- (c) the loan (being any loan actually taken out by the contractor) is secured by the contractor and is for a term of no more than 25 years.

### **Prescribed percentage and aggregated cost elements which may be reflected under direction 38**

**39.—**(1) For the purposes of directions 38(2)(b)(ii) and 40(2), the prescribed percentage is the rate set by NHS England from time to time (but in any event set at least once in each financial

year) with reference to market conditions and subject to the budget of NHS England and published by NHS England(a).

- (2) For the purposes of direction 38(2)(b)(ii), the cost elements that may be aggregated include—
- (a) site purchase;
  - (b) building works;
  - (c) reasonable surveyors', architects' and engineers' fees, and reasonable legal fees arising out of the purchase of the site (where applicable) and the building or refurbishment, taken together, up to the maximum reimbursable amount which is 12% of the total reasonable contract sum relating to the construction or refurbishment work or such greater amount as NHS England may agree in the circumstances;
  - (d) the reasonable costs of engaging a project manager to oversee the interests of and give advice to the contractor, up to the maximum reimbursable amount, which is 1% of the total reasonable contract sum relating to the construction or refurbishment work;
  - (e) the reasonable costs of any ground rent charged to a contractor up to such level as NHS England, having taken the advice of the district valuer or appointed valuer, considers appropriate;
  - (f) any rolled-up interest incurred on loans taken out to procure the premises;
  - (g) local authority and planning application fees necessarily incurred;
  - (h) purchase or lease costs of adequately fitting out and equipping the new premises; and
  - (i) Value Added Tax and Stamp Duty Land Tax, where properly charged in relation to the above, but excluding any part of the Value Added Tax for which the contractor can claim a refund.

#### **Amounts payable in respect of borrowing costs**

**40.**—(1) Where NHS England has decided to grant an application from a contractor for financial assistance in respect of borrowing costs pursuant to direction 37, and NHS England has calculated the amount of financial assistance in accordance with direction 38(2)(b) (“the annual amount”) in respect of the contractor’s borrowing costs, NHS England must each month provide financial assistance to the contractor in respect of those borrowing costs, based on one twelfth of that annual amount, until—

- (a) the loan is paid off;
- (b) the contractor has applied to NHS England for notional rent payments under direction 42 and has been granted those payments;
- (c) the end of the original loan term, unless NHS England agrees to an extension;
- (d) the amount is varied under paragraph (2) or (3); or
- (e) the contractor elects not to receive any further payments under these arrangements,

whichever is the earlier, and the monthly amount is to be paid on the last day of the month, unless alternative payment arrangements are agreed between NHS England and the contractor.

(2) In the case of a loan for which the interest rate is fixed for a period of time, the monthly payment under paragraph (1) need not be recalculated if the prescribed percentage falls below the fixed rate during that period.

(3) In the case of a loan for which the interest rate is variable, the monthly payment must be recalculated under paragraph (1) whenever NHS England publishes new prescribed percentages under direction 39(1) and the new rate will apply from the next payment.

- (4) NHS England must ensure that the contractor has agreed to notify NHS England—
- (a) immediately if the loan has been paid off;

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(a) See <https://www.england.nhs.uk/gp/gpfv/investment/gp-contract/>.

- (b) immediately if it has been able to negotiate a lower rate for that loan;
- (c) as soon as reasonably practicable if there has been any other change in any of the conditions applying to the loan which affect the amount of borrowing costs to be reimbursed by NHS England under this direction or the rate at which those costs are to be reimbursed.

(5) Where NHS England receives a notification on the ground set out in paragraph (4)(b), it must recalculate the amount payable under paragraph (1).

### **Condition attached to payments in respect of borrowing costs based on a fixed interest rate loan**

41. Where a contractor is to receive payments in respect of borrowing costs under this Part, and those borrowing costs arise as a result of a fixed interest rate loan, NHS England must ensure that the making of the payment is subject to a condition to the effect that the contractor must advise NHS England of any change of lender or any reduction in the level of interest charged to its loan.

### **Notional rent payments**

42.—(1) Subject to the following provisions of this Part, where a contractor that is an owner-occupier of its practice premises makes an application to NHS England for notional rent payments, NHS England must consider that application and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

(2) NHS England must not, subject to paragraph (3), provide notional rent payments to a contractor if the contractor is in receipt of borrowing costs pursuant to direction 40.

(3) If a contractor has been in receipt of payments in respect of its borrowing costs pursuant to direction 40 but elects not to receive further payments pursuant to that direction and makes an application in accordance with this direction, NHS England must grant that application and make instead notional rent payments to the contractor under its GMS contract at an appropriate level and frequency.

(4) Where an application is granted and payment made in accordance with paragraph (1) in a case where the contractor has received a grant from NHS England under these Directions, or received other public funds substantially towards the cost of purchasing, building or significantly refurbishing practice premises, the notional rent payment must be abated in accordance with direction 44.

### **Amount of notional rent payments**

43.—(1) Where NHS England grants an application of the type mentioned in direction 42, subject to the following provisions of this Part, the amount that it must pay to a contractor in respect of notional rent is the current market rental value of its practice premises, as determined in accordance with Parts 1 and 3 of Schedule 2.

(2) NHS England must review the amount in paragraph (1) as part of a three yearly review of the contractor's notional rent, although this review may be brought forward if—

- (a) there is a change to the purposes for which the premises are used; or
- (b) there is further capital investment in the premises, which has been agreed by NHS England, and payments are to be made by NHS England to the contractor in respect of that investment under its GMS contract.

(3) Subject to paragraph (4), NHS England must not make any payment in respect of notional rent under direction 42(1) unless the contractor has notified NHS England in writing that it accepts or does not accept the determination of the current market rental value of its practice premises—

- (a) within the period of 12 weeks beginning with the day on which NHS England gives notice to the contractor, inviting the contractor to accept, or not to accept, that determination; or

- (b) within such longer period beginning with that day as may be agreed between NHS England and the contractor.

(4) Where the notional rent determined under paragraph (2) is lower than is being paid, NHS England may make payment on that basis after the period referred to in paragraph (3)(a) or (b) pending conclusion of the review and any associated reconciliation of payments due.

### **Abatement of notional rent payments**

**44.**—(1) This direction applies only where the contractor is an owner-occupier of its practice premises and is in receipt of notional rent payments in accordance with direction 43.

(2) Where—

- (a) capital has contributed to the cost of building or refurbishment work done in respect of the practice premises of a contractor, and
- (b) that capital was not borrowed or otherwise provided by the contractor,

on completion of the building or refurbishment work, the amount of the notional rent payable by NHS England must be the abated notional rent for those premises, calculated in accordance with Part 1 of Schedule 3, rather than the full notional rent, determined in accordance with direction 43, but after the abatement period the full notional rent again becomes payable.

(3) The abatement period in paragraph (2) is, where the amount of the premises improvement grant (or the amount of capital contributed that was not borrowed or otherwise provided by the contractor) is—

- (a) less than £144,000, 6 years;
- (b) £144,000 or more but less than £360,000, 9 years;
- (c) £360,000 or more but less than £660,000, 12 years;
- (d) £660,000 or more but less than £1,200,000, 15 years;
- (e) £1,200,000 or more, 18 years.

### **Notional rent supplements**

**45.** If a contractor—

- (a) is an owner-occupier of its practice premises and is in receipt of payments in respect of its borrowing costs which are paid by NHS England pursuant to direction 40, and—
  - (i) the contractor makes further capital investment in the practice premises and that investment (including the details of the finalised project plan) had the prior approval of NHS England, but
  - (ii) the current market rent (and so the notional rent) for the practice premises remains lower than the repayments in respect of borrowing costs being made; or
- (b) rents its practice premises and is in receipt of payments in respect of its lease rent which are paid by NHS England pursuant to direction 33, and
  - (i) the contractor makes further capital investment in its practice premises, and
  - (ii) that investment (including the details of the finalised project plan) had the prior approval of NHS England,

and the contractor makes an application to NHS England for a notional rent supplement, NHS England must grant that application and make notional rent supplement payments to the contractor under its GMS contract at an appropriate level and frequency.

### **Amount of notional rent supplements**

**46.** Where NHS England grants an application of the type mentioned in direction 45, the amount that it must pay to the contractor as a notional rent supplement is the value of the enhancement of

the current market rent for the premises arising from the further capital investment, which is to be determined in accordance with Part 2 of Schedule 3.

### **Payments in respect of running costs**

**47.**—(1) Where—

- (a) a contractor is in receipt of payments pursuant to this Part in respect of leasehold rental costs or borrowing costs, or by way of notional rent payments;
- (b) the contractor actually and properly incurs costs which are or relate to—
  - (i) business rates,
  - (ii) BID levies under the Local Government Act 2003<sup>(a)</sup>,
  - (iii) water and sewage charges,
  - (iv) charges in respect of the collection and disposal of clinical waste, or
  - (v) a utilities and services charge which covers the matters in paragraph (2);
- (c) those costs are not covered in the other payments that the contractor is receiving pursuant to these Directions; and
- (d) the contractor makes an application to NHS England for financial assistance towards meeting any or all of those costs,

subject to direction 48, NHS England must consider that application and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

(2) The utilities and services charge in paragraph (1)(b)(v)—

- (a) may include a service charge under a lease or a charge levied under separate arrangements made by a contractor which is an owner-occupier; and
- (b) may include all or part of the service charge, depending on NHS England's approval of both the costs included in the service charge and the basis on which the costs are apportioned to the contractor.

(3) Where—

- (a) NHS England grants an application made under paragraph (1) and makes a payment to the contractor in respect of that application; and
- (b) the contractor subsequently receives a refund in respect of all or part of the costs referred to in paragraph (1)(b) from the body to whom the costs were paid,

the amount of the refund is payable to NHS England no later than the day ending three months after the date of the contractor receiving the refund.

(4) Where—

- (a) NHS England grants an application made under paragraph (1) and makes advance payments to the contractor in respect of that application based on the estimated service charge costs;
- (b) the contractor is subsequently required to pay additional service charge costs following a service charge reconciliation to reflect actual service charge costs; and
- (c) the contractor notifies NHS England, within the period of 6 months beginning with the date on which the contractor paid the costs referred to in sub-paragraph (b), that it has made those payments,

NHS England must reimburse the contractor with an amount equal to the difference between the amount paid by NHS England and the actual amount paid by the contractor for those costs.

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(a) 2003 c.26. Provision in respect of BID levies is at Part 4 of the Local Government Act 2003 and BID levy is defined in section 41 of that Act.

### **Financial assistance towards certain elements of service charges**

**48.**—(1) In this direction, the “relevant charges” are those parts of a service charge payable in respect of—

- (a) fuel and electricity;
- (b) insurance costs;
- (c) costs of internal or external repairs; and
- (d) plant, building and grounds maintenance costs.

(2) NHS England must deduct from any amount that it would otherwise be required to pay in respect of an application of the type mentioned in direction 47 an amount calculated in accordance with paragraph (3) by reference to the same time period as the period in respect of which the service charge is payable.

(3) That amount is—

- (a) where the amount of the relevant charges can be accurately determined, the amount paid in respect of those charges;
- (b) where the lease has been in existence for less than 12 months and the amount of the relevant charges cannot be accurately determined, the estimated amount of those charges for the first year of the lease; or
- (c) where NHS England has no information as to the amount of those charges, 40% of the amount which NHS England estimates as being the total yearly service charge.

(4) Where an application of the type mentioned in direction 47 has been made and the service charge is payable in advance, NHS England must reimburse the contractor with the amounts paid by the contractor in respect of the charges referred to in paragraph (1)(b) of that direction after deducting any element of those charges relating to relevant charges.

(5) For the purposes of paragraph (4), the relevant charges are to be calculated in accordance with paragraph (3).

### **Abatements in respect of contributions towards recurring premises costs from third parties**

**49.**—(1) Unless paragraph (2) or (3) applies, where a contractor’s practice premises, or any part thereof, are or form part of premises that are owned or rented by any person other than the contractor, and that person—

- (a) is required by any agreement (which includes a licence or a lease) to make, or makes, any contribution towards any recurring premises costs in respect of which NHS England is providing financial assistance to the contractor in accordance with this Part; or
- (b) is required by any agreement (which includes a licence or a lease) to pay, or pays, to the contractor any amount—
  - (i) by way of rent in respect of the practice premises or any part thereof, or
  - (ii) in respect of the running costs of the practice premises,

and that contribution or that amount has been paid to the contractor or direct to the party to whom the costs are owed, NHS England must set off that contribution or that amount, equitably, against the payments made to the contractor pursuant to this Part.

(2) Where, during any period, any part of the practice premises is being occupied and used exclusively by a third party, NHS England must in respect of that period, exclude that part of those premises from its calculation of any payments to be made to the contractor under this Part except where, in its discretion, it opts not to do so.

(3) Where, during any period, any part of the practice premises (such as a common reception or waiting area) is shared by that contractor and a third party, NHS England must, in respect of that period, reduce the level of any payments it makes to a contractor under this Part by such an amount as it considers proportionate having regard to the degree of shared use except where, in its discretion, it opts not to do so.

(4) Paragraph (5) applies where—

- (a) a third party occupying a part of the practice premises as mentioned in paragraph (2) or (3) vacates those premises;
- (b) payments made by the third party to the contractor in respect of that occupation cease;
- (c) the contractor subsequently uses that part of the premises for providing services under its GMS contract; and
- (d) the contractor notifies NHS England of the use of the premises under sub-paragraph (c).

(5) Where this paragraph applies, NHS England must—

- (a) for the purposes of paragraph (2), cease to exclude that part of the premises from its calculation of any payments to be made to the contractor under this Part;
- (b) for the purposes of paragraph (3), cease to reduce the level of any payments it makes to a contractor under this Part by such an amount as it considers proportionate having regard to the former degree of shared use.

(6) Where paragraph (1), (2) or (3) applies, any payments made to the contractor by the third party may be retained by the contractor.

(7) NHS England's discretion in paragraph (2) not to exclude part of the premises and in paragraph (3) not to reduce the level of payments may be exercised—

- (a) in connection with the provision of services linked to services provided by the contractor;
- (b) in order to facilitate alignment with local commissioning plans,

but is not limited to those matters.

### **Payments in kind**

**50.**—(1) Where a payment that is to be made pursuant to this Part would be abated, or abated by a greater amount, if instead of receiving money or obtaining a pecuniary advantage a contractor, or a member or employee of a contractor, receives a payment in kind, NHS England must take into account the value of the payment in kind in determining the amount of the payment to be made pursuant to this Part.

(2) NHS England must take all reasonable steps to agree with the contractor the value of the payment in kind and must justify the value it does determine.

## **PART 6**

### **MISCELLANEOUS PROVISIONS**

#### **Minimum standards condition attached to all payments under these Directions**

**51.**—(1) If a payment is to be made by NHS England pursuant to these Directions, NHS England must make the payment subject to a condition to the effect that the practice premises in respect of which the payment is made must meet the minimum standards.

(2) For the purposes of paragraph (1), in respect of any premises for which a payment is made under these Directions, NHS England may, with reasonable notice, arrange a survey visit to the practice premises where—

- (a) NHS England is satisfied that there is a risk that the minimum standards are not being met at the premises; or
- (b) information about compliance with the minimum standards at the premises is not available to NHS England or is inadequate.

(3) If the condition in paragraph (1) is breached but the breach is capable of remedy by refurbishment of the premises—

- (a) a remedial notice should not be served in respect of the breach if, pursuant to a plan drawn up in accordance with regulation 20(5) of the National Health Service (General Medical Services Contracts) Regulations 2015<sup>(a)</sup> (services generally), action is already due to be taken which will remedy that breach and the timescale for taking that action under that plan has not yet elapsed;
- (b) before serving a remedial notice in respect of the breach, NHS England must consult the Local Medical Committee (if any) for the area concerned; and
- (c) if a remedial notice is served, the notice period must be no more than 3 months unless in NHS England's opinion the breach will require a longer period to rectify.

### **Accurate information condition attached to all payments under these Directions**

**52.** Where NHS England grants an application for financial assistance or provides financial assistance under these Directions, it must ensure that the assistance is provided subject to conditions to the following effect—

- (a) the contractor must make available to NHS England any reasonable information which NHS England does not have but reasonably needs, and the contractor either has, or could reasonably be expected to obtain, in order for NHS England to calculate the appropriate amount of financial assistance to be provided; and
- (b) all information supplied by a contractor to NHS England pursuant to or in accordance with the condition set out in paragraph (a) must be accurate.

### **Notification in respect of VAT status**

**53.** NHS England may only consider an application for financial assistance, or provide financial assistance, under these Directions where it has been notified of—

- (a) the contractor's VAT status and, where appropriate, its VAT number; and
- (b) any changes to the contractor's VAT status.

### **Termination of GMS contract**

**54.**—(1) Paragraph (2) applies where a contractor—

- (a) holds practice premises as a leaseholder and is receiving rent reimbursement from NHS England in accordance with direction 32;
- (b) terminates its GMS contract before the expiry of the term of the lease because the contractor wishes to retire; and
- (c) is unable to secure either a successor to hold its GMS contract or another contractor or person to provide primary medical services from the premises to whom the lease may be assigned.

(2) NHS England must produce a protocol setting out the criteria for determining whether or not to recommend that the lease should be assigned to any nominee of NHS England.

(3) The protocol referred to in paragraph (2) must, before it is issued and published, be agreed as between NHS England and any body appearing to NHS England to be representative of contractors.

### **Direct payments to third parties**

**55.**—(1) Where a contractor and NHS England agree, NHS England must pay any amount that is due to the contractor as financial assistance under these Directions to a third party instead of the contractor, subject to a condition that the contractor ensures that it treats the payment for accounting purposes as a payment to it.

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(a) S.I. 2015/1862.

(2) If—

- (a) the payment from NHS England to the third party is less than the amount that is due from the contractor to the third party; and
- (b) the contractor is due other payments from NHS England as financial assistance under these Directions which are greater than or equal to the amount of the shortfall,

where the contractor and NHS England agree, NHS England must pay all or part of those other payments to the third party instead of to the contractor, subject to a condition that the contractor ensures that it treats the payment for accounting purposes as a payment to it.

### **Recovery of overpayments**

**56.**—(1) The amount of any overpayment made to a contractor is recoverable by NHS England but NHS England has the right to waive (in whole or part) the repayment of any part of the overpayment where it is reasonable to do so in the circumstances.

(2) It is a condition of any payment made pursuant to these Directions that—

- (a) the contractor must pay to NHS England the amount of any overpayment;
- (b) the contractor must notify NHS England immediately of any payment it receives which would result in any overpayment;
- (c) where the contractor agrees the amount of the overpayment which is owed to NHS England, the contractor must make reasonable efforts to communicate and cooperate with NHS England with a view to agreeing a reasonable payment plan for the overpayment; and
- (d) NHS England may recover such overpayment by withholding or set off.

(3) Where the contractor agrees the amount of the overpayment which is owed to NHS England, NHS England must make reasonable efforts to communicate and cooperate with the contractor with a view to agreeing a reasonable payment plan for the overpayment and where reasonable to do so NHS England will use reasonable endeavours to agree a repayment plan with the contractor to ensure that the repayments do not materially prejudice the financial viability and stability of the contractor.

(4) “Overpayment” means any payment —

- (a) which is purported to be made under these Directions but is in fact made in error;
- (b) which the contractor was not entitled to receive all or part thereof, whether because it did not meet the entitlement conditions for the payment or because the payment was calculated incorrectly (including where a payment on account overestimates the amount that is to fall due); or
- (c) made under these Directions in respect of a charge paid by the contractor which is later refunded in whole or in part to the contractor.

## **PART 6**

### **TRANSITIONAL, REVOCATION AND SAVINGS PROVISIONS**

#### **Interpretation**

**57.** In this Part—

“the 2004 Directions” means the National Health Service (General Medical Services – Premises Costs) (England) Directions 2004(a);

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(a) The 2004 Directions were signed on 16th March 2004 and are available at [www.gov.uk/government/publications/the-national-health-service-general-medical-services-premises-costs-england-directions-2004](http://www.gov.uk/government/publications/the-national-health-service-general-medical-services-premises-costs-england-directions-2004)

“the 2013 Directions” means the National Health Service (General Medical Services – Premises Costs) Directions 2013.

### **Transitional provision in respect of payments**

**58.**—(1) Where, immediately before 10th May 2024, NHS England was making payments to a contractor under the 2004 Directions or the 2013 Directions, NHS England shall instead make those payments under the corresponding provisions of these Directions.

(2) Where a contractor made an application for financial assistance under the 2013 Directions before 10th May 2024 but that application had not been determined by NHS England—

- (a) where any part of the costs to which the application relates were incurred before 10th May 2024, NHS England must in respect of those costs determine the application and make any payments as if the 2013 Directions, as in force immediately before 10th May 2024, continued to apply;
- (b) where any part of the costs to which the application relates are to be incurred on or after 10th May 2024, NHS England must in respect of those costs determine that application and make any payments in accordance with these Directions.

### **Revocation, saving and consequential provision**

**59.**—(1) In so far as they remain in force, the 2004 Directions are revoked.

(2) The 2013 Directions are revoked.

(3) Notwithstanding the revocation of the 2013 Directions by paragraph (2), directions 37 and 38 of those Directions continue to apply in respect of the amount of financial assistance for borrowing costs paid pursuant to applications made before these Directions come into force.

(4) Subject to paragraph (3), a reference in any statutory instrument to the 2013 Directions is to be construed as a reference to these Directions.

Signed by authority of the Secretary of State for Health and Social Care



*Lucy Witter*

A member of the Senior Civil Service  
Department of Health and Social Care

9th May 2024

## MINIMUM STANDARDS RELATING TO PRACTICE PREMISES

## PART 1

## STATUTORY STANDARDS

**Health and Safety at Work Act 1974**

1. The contractor must comply with any obligations it has under the Health and Safety at Work Act 1974(a) (and legislation under that Act) including any applicable requirements regarding adequate standards of ventilation.

**Equality Act 2010**

2. The contractor must comply with any obligations it has under the Equality Act 2010(b) and should carry out any audits as to accessibility of the premises that may be necessary in order to enable it to comply with those obligations. The requirements of the Equality Act 2010 include taking such steps as are reasonable to—

- (a) provide for ease of access to the premises and ease of movement within the premises for all users of the premises (including wheelchair users);
- (b) provide adequate sound and visual systems for the hearing and visually impaired; and
- (c) remove barriers to the employment of disabled people.

**Fire precautions**

3. There should be adequate fire precautions, including provision for safe exit from the premises, designed in accordance with any requirements of the Regulatory Reform (Fire Safety) Order 2005(c) and of the Building Regulations 2010(d) and agreed, where necessary, with the local fire authority.

**LOLER and COSHH Regulations**

4. The contractor must comply with any applicable standards in the Lifting Operations and Lifting Equipment Regulations 1998(e) (“the LOLER Regulations”) or the Control of Substances Hazardous to Health Regulations 2002(f) (“the COSHH Regulations”) which apply to the premises.

**Miscellaneous standards**

5. The contractor must comply with any applicable statutory standards relating to—
- (a) the carrying out of a risk assessment and preparation of a management plan with regards to any risk of Legionella;
  - (b) the carrying out of a risk assessment and preparation of a management plan with regards to any risk connected with or attributable to the presence of asbestos;
  - (c) the testing of electrical equipment or appliances; and

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(a) 1974 c.37.

(b) 2010 c.15.

(c) S.I. 2005/1541.

(d) S.I. 2010/2214.

(e) S.I. 1998/2307.

(f) S.I. 2002/2677.

- (d) the testing of gas appliances or pressure systems (including systems for medical gas).

## PART 2

### CONTRACTUAL STANDARDS

#### **General standards**

6. In ensuring that premises used for the provision of services under the contract meet the requirements in paragraph 1 of Schedule 3 to the National Health Service (General Medical Services Contracts) Regulations 2015(a), the contractor must, in particular, have regard to the need to maintain—

- (a) adequate heating and lighting;
- (b) adequate facilities for older people and young children, including nappy-changing and feeding facilities;
- (c) internal waiting areas, with sufficient and appropriate seating to meet normal requirements;
- (d) adequate facilities for patients to communicate confidentially with staff including in person and by telephone;
- (e) fixtures and fittings in good repair;
- (f) adequate secure storage of drugs, records, prescriptions and statement pads;
- (g) adequate security arrangements, including arrangements for the security of the premises and security of the person;
- (h) adequate arrangements in consultation or treatment rooms (including rooms for the carrying out of minor surgery or the treatment of minor injuries) to support safe and secure provision of primary medical services, including privacy for consultations and the personal privacy of patients when dressing or undressing; and
- (i) adequate procedures for ensuring the continuing safety of practice premises, and the suitability of those premises for delivering primary medical services, including, where necessary, the carrying out of risk assessments of the safety and security of practice premises, and the development of business continuity plans to address any significant disruption to the delivery of primary medical services at the practice premises.

#### **Standards as regards decontamination and infection control**

7. In complying with any standards regarding decontamination or infection control, the contractor should have regard to the Health and Social Care Act 2008, Code of Practice on the prevention and control of infections and related guidance(b), and to the following—

- (a) clinical wash hand basins should be connected to running hot and cold water (ideally distributed through elbow, knee or sensor-operated taps);
- (b) the premises, fixtures and fittings should be maintained in a clean and hygienic condition;
- (c) there should be adequate lavatory and hand hygiene facilities; and
- (d) arrangements for the disposal of clinical waste should comply with applicable requirements and take into account applicable guidance.

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(a) S.I. 2015/1862. See also regulation 94 of those Regulations which requires a contractor to comply with all relevant legislation and have regard to all relevant guidance issued by the Board, the Secretary of State or Local Authorities in respect of the exercise of their functions under the 2006 Act.

(b) Issued by the Secretary of State under section 21 of the Health and Social Care Act 2008 (c.14). The code is available to download from the Department of Health and Social Care's website at gov.uk.

## CURRENT MARKET RENTS AND NOTIONAL RENT ABATEMENTS

### PART 1

#### FACTORS COMMON TO ALL CURRENT MARKET RENT CALCULATIONS

1. Current market rent calculations for notional rent purposes pursuant to direction 43 differ from current market rent calculations for actual leasehold premises pursuant to direction 34.

2. However, in both cases, the district valuer or appointed valuer must consider what might reasonably be expected to be paid by a tenant for the premises at the valuation date. The aim will be to arrive at a rent which can be agreed between the contractor (or his or her representative) and a third party in willing negotiation. For these purposes, it must be assumed that neither party is seeking to take advantage of the fact that—

- (a) the contractor's remuneration is so arranged that this rent and any VAT payable is reimbursed separately; and
- (b) at any one time only one contractor is permitted to be in the market to use the premises for practice purposes.

3. In determining a figure for any current market rent, the following will also apply—

- (a) where the practice accommodation forms part of an owner-occupied residence but does not include areas which are used regularly but not exclusively for practice purposes, the current market rent will be assessed for the practice accommodation only, but as part of the whole premises and not increased or reduced to reflect any advantage or disadvantage there may be in the fact that the practice accommodation is not in separate premises;
- (b) where the practice accommodation forms part of a residence owned or rented by a person not connected with the contractor, the current market rent will be assessed in respect of the practice accommodation only and is to reflect any advantage or disadvantage there may be in the fact that it is not in separate premises;
- (c) where the practice accommodation forms part of an owner-occupied residence and includes areas which are used regularly but not exclusively for practice purposes, the current market rent will be assessed as at sub-paragraph (a) above but with an agreed percentage added of the current market rental value of any area used regularly but not exclusively for practice purposes having regard to the extent and frequency of such use and any modifications made to facilitate that use;
- (d) subject to paragraph 4(g), where car parking spaces are provided at the practice accommodation for patient and staff use, the number of car parking spaces to be included for the purposes of assessing the current market rent must be limited to the number of spaces agreed by NHS England having regard to local circumstances, with access to and egress from each parking space without the need to move other vehicles except where NHS England consider that this restriction is inappropriate, taking into account local circumstances. Once NHS England has made that determination, unless there is a relevant material change of circumstances, at least that number of car parking spaces must be taken into account at each rent review;
- (e) where improvements have been made to the practice accommodation and those improvements are designed solely to reduce the environmental impact of the premises, such as the installation of solar energy systems or replacement windows, doors or facades, those improvements must be disregarded for the purposes of assessing the current market rent unless the contractor can satisfy NHS England, acting reasonably, that those improvements provide a net financial benefit to the health service.

## PART 2

### FACTORS WHICH ONLY APPLY IN RELATION TO LEASEHOLD PREMISES

4. The district valuer or appointed valuer must first have regard to the actual terms of the lease. In the case of the payment provisions—

- (a) the amounts payable must be adjusted to take account of appropriate deductions in respect of the following—
  - (i) any amount referable to residential accommodation, except where this is to be taken into account in accordance with paragraph 3,
  - (ii) other non-practice accommodation (unless NHS England has specifically agreed that no deduction is to be made in respect of it),
  - (iii) furniture or moveable equipment included in the rent costs,
  - (iv) services or other facilities included in the rent costs,
  - (v) the value of any responsibility of the landlord in respect of internal repairs or decoration, and
  - (vi) any amount referable to water rates, where the tenant is responsible for paying the landlord's share and recovers that share from the landlord;
- (b) the amounts payable must be adjusted to take account of appropriate additions in respect of the following—
  - (i) the value of any responsibility of the tenant in respect of external repairs and maintenance, or for insurance of the building,
  - (ii) any premium paid by the tenant,
  - (iii) any Value Added Tax paid by the tenant where properly charged to the tenant by the landlord (but excluding any part of that Value Added Tax for which the contractor can claim a refund) and approved by NHS England prior to payment by the tenant,
- (c) prior to determining the amounts payable in respect of the rent on first setting of the amount of rent, NHS England must invite the landlord of the premises and the contractor, before the amount of rent is determined, to make representations to NHS England regarding the level of the current market rent, such representations to be forwarded to the district valuer or, where appropriate, the appointed valuer;
- (d) relating to reviewing rental payments, NHS England must—
  - (i) review its assessment of the current market rent for the property when the landlord undertakes a rent review provided for in the lease, unless the landlord's review does not result in a change to the level of rent charged (an assessment on the basis of vacant possession will not be appropriate on a rent review, unless the terms of the lease so provide or the property market can be shown not to distinguish between vacant and tenanted premises),
  - (ii) review its assessment of the current market rent for the property when the terms and conditions of the lease are varied, even if this variation does not result in any change to the level of rent charged,
  - (iii) if the rent review is linked to an index, such as the Retail Price Index, adjust the amount it pays in accordance with that index, provided it received a copy of the lease on offer before it was agreed and it agreed to the indexing arrangement, having taken advice from the district valuer or appointed valuer as to its appropriateness;
- (e) when reviewing NHS England's assessment of the current market rent under subparagraph (d)(i), the following process must be followed—
  - (i) first, the contractor must agree with the landlord a proposed revised market rent,
  - (ii) second, the contractor must provide information to NHS England as to this proposed rent, along with evidence of the negotiation between the contractor and the landlord (which may or may not include a formal valuation),

- (iii) third, NHS England must consider the proposed rent, taking advice from the district valuer or appointed valuer,
  - (iv) fourth, NHS England must confirm to the contractor whether NHS England will provide reimbursement at the level of the proposed rent or at a lower level, and
  - (v) fifth, the contractor must either enter into a rent review memorandum, signed by the landlord and the contractor, recording the change in the level of rent charged, or re-negotiate the revised rent with the landlord (for example, if NHS England agrees to reimbursement at a lower level than the proposed rent),
- and neither NHS England nor the ICB may negotiate directly with landlords or those acting on behalf of landlords during this process;
- (f) if the lease rent is inclusive of rates (including water rates), the current market rent must also be inclusive of the rates so included; and
  - (g) where, in the case of existing leasehold premises, a rental value for car parking spaces has been included in the rent charged by the landlord, this rental value will continue to be included in the assessment of the current market rent until the term of the lease expires or the lease is varied to exclude that rental value from the rent charged.

### PART 3

#### FACTORS WHICH ONLY APPLY IN RELATION TO NOTIONAL RENT CASES

**5.** If the premises are owner-occupied premises, the following assumptions are to be made by the district valuer or appointed valuer about the nature of the notional lease upon which the notional rent payments are to be based. This notional lease—

- (a) is to be for a term of 15 years;
- (b) is to include provision for rent reviews every three years (but subject to the assumption that if the rent falls as a result of such a review it does not fall below the initial level of notional rent payment made to the contractor);
- (c) is to include a covenant that the tenant undertakes to bear the cost of internal repairs and decoration and the landlord undertakes to bear the cost of insuring the building and of carrying out external repairs and maintenance;
- (d) does not include a service charge, or like payment for such items as upkeep, maintenance (including lift maintenance where appropriate), cleaning and heating of common parts;
- (e) is for vacant possession (for the purposes of the initial assessment but not for the purposes of the notional rent review, unless the terms of the lease so provide or the property market can be shown not to distinguish between vacant and tenanted premises);
- (f) is exclusive of rates;
- (g) includes a right for the tenant to assign or sublet the whole premises, subject to the landlord's consent which is not to be unreasonably withheld;
- (h) allows the premises to be used for practice purposes only.

## NOTIONAL RENT ABATEMENTS AND NOTIONAL RENT SUPPLEMENTS

### PART 1

#### NOTIONAL RENT ABATEMENTS

1. Where capital has contributed to the cost of building or refurbishment work done in respect of existing practice premises, and the capital was not borrowed by or provided by the contractor, the notional rent payable in respect of those payments is to be abated (in proportion to the level of the capital contribution) as follows—

- (a) determine the current market rent for the premises prior to improvement (*Pu*);
- (b) determine the current market rent for the whole of the improved premises (*Pi*);
- (c) subtract one from the other (*Pi - Pu*), which will produce the current market rent value of the enhancement (*I*);
- (d) determine the amount of the capital provided by the contractor as a proportion of the whole cost of the improvement, expressed as a percentage (*A*);
- (e) (*A*) is then to be enhanced by adding 10% to cover notional landlord expenses, which is then applied to (*I*) and the resultant is added to (*Pu*).

2. Accordingly, in the case of improvement or refurbishment works, expressed as a formula, the post-improvement notional rent is—

$$I(A + 10)\% + Pu$$

### PART 2

#### NOTIONAL RENT SUPPLEMENTS

3. Where a notional rent supplement is to be calculated, the amount of that supplement, expressed as a formula, is—

$$I(A + 10)\%$$