

# Health Service Circular

## Local Authority Circular

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*The Secretary of State has powers under a number of provisions in the primary legislation relating to the NHS to give directions to Health Authorities, Special Health Authorities and NHS Trusts. These are legally binding and must be complied with by the recipient. They may be addressed to only one body, or a number of bodies, or all bodies falling within a particular category (such as all Health Authorities).*

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## Commencement of sections 29 and 30 of the Health Act, 1999

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To:

- Health Authorities (England)- Chairman
- Health Authorities (England) - Chief Executive
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- Local Authorities - County Councils Chief Executives
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- Directors of Leisure Services, Local Authorities
- Directors of Housing, Local Authorities
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# Commencement of sections 29 and 30 of the Health Act, 1999

## Summary

This circular advises on the new powers of money transfer between the NHS and local councils introduced by the Health Act 1999. Please visit [www.doh.gov.uk/jointunit/28a28bb.htm](http://www.doh.gov.uk/jointunit/28a28bb.htm) to access this guidance, Directions and a hot link to regulations at [www.legislation.hmso.gov.uk](http://www.legislation.hmso.gov.uk).

## Direction

Primary Care Trust (PCT) Chief Executives or Health Authority Chief Executives should discuss and agree section 28A transfers with local council colleagues and then make payments according to Directions.

Local council Chief Executives should discuss and agree section 28BB transfers with PCT or Health Authority Chief Executives and then make payments according to Directions.

## Background

### Section 29

1. Section 29 of the Health Act 1999 extends the existing limited powers to transfer money between the NHS and Local Government under section 28A of the NHS Act 1977, by amending the 1977 Act and inserting a new clause 28A(2A).
2. The new powers under section 28A(2A) allow money to be transferred from the NHS to *any* health related function of local councils (and, where the voluntary sector is the recipient, the voluntary sector) where the PCT or Health Authority is satisfied that: the purpose of the transfer is related to NHS functions or the health of individuals; and such a transfer is to fund services to improve the health of the local population more effectively than equivalent expenditure in the NHS.
3. It is at the discretion of PCTs or Health Authorities to decide: which of their functions they consider a section 28A(2A) transfer can best support; and to agree the amount and duration of any section 28A(2A) transfers with local councils. Local councils have the discretion to ask the voluntary sector to provide or commission services on their behalf.

### Section 30

4. Section 30 of the Health Act 1999 inserted a new power at section 28BB of the NHS Act 1977 to transfer money from a local council to either a PCT or Health Authority towards expenditure to be incurred in relation to certain functions of a PCT or Health Authority. **Only** the prescribed NHS functions listed in regulations (S.I. 2000/618) may be funded via a section 28BB transfer.

### Establishing partnership arrangements to agree section 28A or 28BB transfers

5. All PCTs or Health Authorities & local councils, working with the voluntary sector, should ensure that any section 28A transfers: address local health needs; clearly support objectives set out in the local health improvement programme (HImP); and consider the total financial resources of the PCT/Health Authority. A partnership board, HAZ or HImP steering group might be the best forum to formally agree these transfers. PCGs should be involved in all discussions of 28A transfers, with the Health Authority making final formal approval. However, it is important that *all* staff of the PCT or Health Authority consider how use of section 28A can support local health improvement and contribute ideas to the HImP.
6. Local councils should discuss use of 28BB powers with PCTs or Health Authorities and notify the relevant Social Care Region using the memorandum of agreement for 28BB transfers before

formally agreeing a money transfer. PCTs or Health Authorities should carefully consider NICE guidelines before agreeing 28BB transfers to fund the provision of certain drugs.

**Audit and probity of section 28A and 28BB transfers**

7. To ensure financial probity and a clear audit trail, Directions require a memorandum of agreement and annual voucher to be completed to record section 28A and 28BB transfers. PCTs or Health Authorities should confirm with their auditors the evidence required in the memorandum to support the expenditure before agreeing any 28A transfer.
8. The annual voucher will record how transfers have been expended by the receiving body. For section 28A transfers, the voucher will be signed by the local council and audited by the local council's auditor. For section 28BB, the voucher will be signed by the PCT or Health Authority and audited by the PCT or Health Authority's auditor. Vouchers will be audited in accordance with the Grant Instruction issued by the Audit Commission. Failure to follow these procedures may lead to qualification of one or both parties' final accounts.

*This Circular has been issued by:*

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