

**Directions by the Secretary of State as to the conditions governing payments by health authorities to local authorities and other bodies under Section 28BB of the National Health Service Act 1977**

The Secretary of State for Health, in exercise of the powers conferred by section 28BB(4), (5) and (6) of the National Health Service Act 1977<sup>(a)</sup>, hereby gives the following Directions:

**1.**

(1) These Directions shall come into force on 1st April 2000 and shall have effect in relation to any payment made, or proposed to be made, under section 28BB of the National Health Service Act 1977 by a local authority in England on or after that date.

(2) In these Directions -

"the Act" means the National Health Act 1977;

"capital costs" means expenditure of a capital nature incurred by a recipient;

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

"recipient" means a Health Authority or a Primary Care Trust which has received, or is to receive, a payment under section 28BB; and

"section 28BB" means section 28BB of the Act.

**2.**

(1) This paragraph applies to any payment made by a local authority under section 28BB<sup>(b)</sup>; and such payment shall be made subject to and in accordance with the conditions specified in the following sub-paragraphs.

(2) Before making a payment under section 28BB, the local authority shall be satisfied that the payment is likely to secure a more effective use of public funds than the deployment of an equivalent amount on the provision of local authority services.

(3) Where payment is made under section 28BB to meet part or all of the capital costs of any project, the amount of the payment shall be determined before the project begins.

(4) Before making any payment to which this paragraph applies in respect of any project, the local authority shall be satisfied that the recipient intends to meet the cost of the project-

(a) to the extent that it is not funded by payments under section 28BB; and

(b) for so long as the project is considered by the local authority and the recipient to be necessary or desirable.

(5) Where the recipient which has received a payment which has been made under section 28BB in respect of a project reduces the level of services it provides in connection with the project below the level of services which it undertook to provide at the time the payment was agreed, the local authority shall reduce accordingly the amount of any further payments made under section 28BB in respect of that project.

**3.**

(1) In the case of any payment made under section 28BB -

(a) the local authority making the payment shall, so far as is practicable, ensure that the payment is used by the recipient in such a way as will secure the most efficient and effective use of the amount paid; and

(b) the local authority making the payment shall, with the agreement of the recipient, prepare a memorandum of agreement in writing in the form set out in the Annex to these Directions.

**4.**

(1) Subject to paragraph 5 below, where-

(a) a payment has been made under section 28BB towards the cost of acquiring, or of executing works to, land or other property for the purposes of any functions specified in regulations made under the section; and

(b) the recipient-

- i. disposes of the whole or part of the land or other property, or
- ii. uses it or any of it for any purpose other than that for which the payment was made,

the recipient shall repay to the local authority an amount equal to the proportion of the open market value of that land or other property (or the relevant parts thereof) as is attributable to the expenditure of the payment.

(2) For the purposes of sub-paragraph (1) the open market value of the land or property in question shall be assessed by a suitably qualified valuer, who may be the District Valuer, and the apportionment of the part of such value attributable to the expenditure of the payment shall be made by that valuer.

(3) Where an assessment, or an apportionment, falls to be made in accordance with sub-paragraph (2) above, it shall be made as respects the date at which the disposal is completed or, as the case may be, the alternative use commences.

(4) It is a condition of any payment under section 28BB that the recipient agrees to enter into a legal charge in favour of the local authority making the payment, at the request of that local authority, upon the happening of any default.

(5) In this paragraph "default" means in circumstances as described in sub-paragraph (1).

**5.**

Paragraph 4 above shall not apply in the case of a payment which has been made towards the cost of acquiring premises for the purposes of rental, and a tenant subsequently exercises a right to buy those premises.

**6.**

(1) Where a payment is made under section 28BB, the local authority shall require the recipient to provide an annual voucher in the form set out in the Annex to these Directions. Receiving organisations must pass completed vouchers to their external auditor by no later than 30th September following the end of the financial year in question and arrange for these to be certified and submitted to the paying authority by no later than 31st December.

(2) A voucher provided for the purposes of sub-paragraph (1) above shall be certified by the Director of Finance of that recipient.

Signed by authority of the Secretary of State for Health

28 March 2000

*Giles Denham*

Member of the Senior Civil Service

<sup>(a)</sup> 1977 c.49. Section 28BB was inserted by section 30 of the Health Act 1999 (c.8).

<sup>(b)</sup> See also the National Health Service (Payments by Local Authorities to NHS Bodies)(Prescribed Functions) Regulations 2000 (S.I. 2000/618) made under section 28BB.

## **ANNEX**

### **Money transfers under section 28BB of the NHS Act 1977**

1. The following memorandum of agreement and annual voucher should be used to satisfy the requirements of the new directions governing section 28BB transfers.
2. HSC 2000/11, LAC 2000/10 and the accompanying regulations (SI 2000/618) and directions explain the scope of transfers under section 28BB of the NHS Act 1977. Reference is made at paragraph 3 (1)(b) of the 28BB directions to the requirement for a memorandum of agreement, which is to set out the purpose of the proposed money transfer.
3. Paragraph 6 of the 28BB directions stipulates the completion of a voucher by the party to whom the money is transferred.
4. The use of the model memorandum and voucher has been attached to directions to make their use mandatory. The importance of a clear audit trail when arranging section 28BB transfers cannot be overstated.

**Memorandum of agreement**  
Section 28BB transfer

Reference number.....

Title of scheme.....  
(the reference number and title of the scheme should give a unique identification of the scheme)

1. How will the section 28BB transfer secure more health gain than an equivalent expenditure of money on local government services?

2. Description of scheme (In the case of revenue transfers, please specify the services for which money is being transferred).

**3. Financial details (and timescales):**

Total amount of money to be transferred and amount in each year (if this subsequently changes, the memorandum must be amended and re-signed)

Year(s)	Amount	Capital	Revenue
.....	.....		
.....	.....		
.....	.....		
.....	.....		

In the case of the capital payments, should a change of use as outlined in directions at paragraph 4(1)(b) occur, both parties agree that the original sum shall be recoverable by way of a legal charge on the Land Register as outlined in directions at paragraph 4(4).

4. Please state the evidence you will use to indicate that the purposes described at questions 1 & 2 have been secured.

Signed	.....	for HA/PCT
	.....	Position
	.....	Date
	.....	for LA
	.....	Position
	.....	Date

## SECTION 28BB ANNUAL VOUCHER

..... HEALTH  
AUTHORITY/PCT

### PART 1 STATEMENT OF EXPENDITURE FOR THE YEAR 31 MARCH 20..

(if the conditions of the payment have been varied, please explain what the changes are and why they have been made)

<u>Scheme Ref. No</u> <u>and Title of</u> <u>Project</u>	<u>Revenue Expenditure</u>  £	<u>Capital</u> <u>Expenditure</u>  £	<u>Total</u> <u>Expenditure</u>
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### PART 2 STATEMENT OF COMPLIANCE WITH CONDITIONS OF TRANSFER

I certify that the above expenditure has been incurred in accordance with the conditions, including any cost variations, for each scheme approved by the .....  
Local Council in accordance with directions made by the Secretary of State under Section 28BB of the NHS Act 1977 as inserted by Section 30 of the Health Act 1999 .

Signed.....

Date.....

Health Authority/PCT Director of Finance

## Certificate of auditor appointed by the Audit Commission

The Statement of Responsibilities of grant-paying bodies, authorities, the Audit Commission and appointed auditors in relation to grant claims and returns, issued by the Audit Commission, sets out the respective responsibilities of these parties, and the limitations of our responsibilities as appointed auditors. I/We have:

- examined the entries in this form (which replaces or amends the original submitted to me/us by the authority dated \_\_\_\_\_)\* and the related accounts and records of the authority in accordance with Certification Instruction A1 prepared by the Audit Commission for its appointed auditors; and
- carried out the tests specified in Certification Instruction **HLG03** prepared by the Audit Commission for its appointed auditors, and I/we have obtained such evidence and explanations as I/we consider necessary.

(Except for the matters raised in the attached qualification letter dated \_\_\_\_\_)\* I/we have concluded that the entries are

- fairly stated; and
- in accordance with the relevant terms and conditions.

Signature \_\_\_\_\_ Name (block capitals) \_\_\_\_\_

Date \_\_\_\_\_

*\*Delete as necessary*

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## Certificate of independent auditor

I/We have:

- examined the entries in this form (which replaces or amends the original submitted to me/us by the authority dated \_\_\_\_\_)\* and the related accounts and records of the; and
- carried out such tests and obtained such evidence and explanations as I/we consider necessary.

(Except for the matters raised in the attached qualification letter dated \_\_\_\_\_)\* I/we have concluded that

- the entries are fairly stated; and
- the expenditure has been properly incurred in accordance with the relevant terms and conditions.

Signature \_\_\_\_\_ Name (block capitals) \_\_\_\_\_

Company/Firm \_\_\_\_\_ Date \_\_\_\_\_

*\*Delete as necessary*