

**NATIONAL HEALTH SERVICE,
ENGLAND AND WALES**

**Income Generation Powers of Special Health Authorities Directions
2005**

The Secretary of State for Health in relation to England and the National Assembly for Wales in relation to Wales, in exercise of the powers conferred by sections 16D(1), 17, 18(1) and (3) and 126(4) of the National Health Service Act 1977(a), and section 7(3), (4) and (5) of the Health and Medicines Act 1988(b), make the following Directions—

Application, commencement and interpretation

1.—(1) These Directions may be cited as the Income Generation Powers of Special Health Authorities Directions 2005 and shall come into force on 1 April 2005.

(2) These Directions apply in relation to England in respect of English Special Health Authorities and in relation to England and Wales in respect of cross-border Special Health Authorities.

(3) In these Directions—

“the 1988 Act” means the Health and Medicines Act 1988;

“Assembly” means the National Assembly for Wales;

“cross-border Special Health Authority” means a Special Health Authority which performs functions in relation to both England and Wales;

“English Special Health Authority” means a Special Health Authority which performs functions only in relation to England; and

“income generation powers” means the powers contained in section 7 of the 1988 Act (extension of powers for financing the health service).

Special Health Authorities’ powers of income generation

2. Subject to paragraphs 3 to 7, English Special Health Authorities and cross-border Special Health Authorities may exercise income generation powers.

(a) 1977 c.49; section 16D was inserted by and section 17 was substituted by section 12 of the Health Act 1999 (c.8). Section 17 was amended by the Health and Social Care Act 2001 (c.15), Schedule 5, Part 1, paragraph 5(1) and (3) and by the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 1, Part 1, paragraphs 1 and 7. Section 18(1) was substituted by the Health Act 1999 (c. 8) (“the 1999 Act”), section 12(3); section 18(3) was amended by the Health Authorities Act 1995 (), Schedule 1, paragraph 9(b) and by the 1999 Act, section 12(4). There are other amendments of section 18 not relevant to these directions. The functions of the Secretary of State under section 16D, section 17 (except in some cases not relevant to these directions) and section 18 are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672 (“the 1999 Order”).

(b) 1988 c. 49. The functions of the Secretary of State under section 7 are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of the 1999 Order.

Approval for formation of or investment or participation in companies

3.—(1) An English Special Health Authority must not exercise its income generation powers under section 7(7A) of the 1988 Act **(a)** (formation of or investment or participation in companies) unless—

- (a) it has submitted a written proposal to the Secretary of State; and
- (b) the Secretary of State has approved the proposal in writing.

(2) A cross-border Special Health Authority must not exercise its income generation powers under section 7(7A) of the 1988 Act (formation of or investment or participation in companies) unless—

- (a) it has submitted a written proposal to the Secretary of State and to the Assembly; and
- (b) the Secretary of State has approved the proposal in writing insofar as it relates to England and the Assembly has approved the proposal in writing insofar as it relates to Wales.

Proposal and business case

4.—(1) A proposal mentioned in paragraph 3 must contain a full business case for the proposed income generation activity which includes the information and documents specified in the Schedule or any other relevant information that the Secretary of State, the Assembly or, as the case may be, the Secretary of State and the Assembly, may require.

(2) A proposal made by the National Patient Safety Agency must also include an analysis of any potential risks and benefits to the safety of patients.

Conditions

5.—(1) Where the Secretary of State or the Assembly or, as the case may be, both the Secretary of State and the Assembly, have approved a proposal, the Special Health Authority must exercise the powers under section 7(7A) of the 1988 Act in accordance with and subject to any conditions or restrictions attached to that approval or subsequently notified to it.

(2) The conditions mentioned in paragraph (1) may relate to—

- (a) the amount of money or other property which may be provided in connection with the income generation activity,
- (b) the amount of money which may be provided to or in respect of the company by way of loans, guarantees or other financial provision, or
- (c) any other matter.

Guidance

6. In exercising their income generation powers English Special Health Authorities must have regard to any guidance issued by the Department of Health and cross-border Special Health Authorities must have regard to any guidance issued by the Department of Health in relation to England and by the Assembly in relation to Wales**(b)**.

(a) Section 7(7A) was inserted by the Health and Social Care Act 2001, section 5.

(b) See in relation to England the section of the NHS Finance Manual called “Revised Guidance on Income Generation in the NHS” and the Guidance on the use of Companies in Income Generation by the NHS (2005) available on the Department of Health website at, respectively, www.info.doh.gov.uk/doh/finman_nsf and www.innovations.nhs.uk/nhs_ip_guidance/use-of-companies.htm.

Reports

7.—(1) Subject to paragraphs (2) and (3), English Special Health Authorities must make a report to the Secretary of State, and cross-border Special Health Authorities must make reports to the Secretary of State and the Assembly, containing an account of their exercise of the income generation powers for each financial year by 30 September following the end of that financial year.

(2) The report mentioned in paragraph (1) must in particular contain a summary of the exercise of any of the powers contained in section 7(7A) of the 1988 Act and must include any changes to the Memorandum or Articles of Association of any company which the Special Health Authority has used for the purposes of income generation and any statutory returns made to the Registrar of Companies during the financial year in question.

(3) Where an English or a cross-border Special Health Authority is required, under or by virtue of any other directions given to it, to prepare an annual report on its activities in a financial year and to send a copy of it to the Secretary of State or to the Secretary of State and the Assembly, the report referred to in sub-paragraph (1) may be included in that report.

Revocations

8. The following provisions are revoked—

- (a) in the Directions to the Counter Fraud and Security Management Service given on 10 February 2004, paragraph 2;
- (b) the Directions to the Health Development Agency relating to Powers of Income Generation given on 22 December 2000;
- (c) in the Directions to NHS Direct given on 29 March 2004, paragraph 3;
- (d) in the Directions to NHS Professionals Special Health Authority given on 22 December 2003, paragraph 4;
- (e) in the Directions to the NHSU given on 26 November 2003, paragraph 4;
- (f) in the Directions to the National Blood Authority given by the Secretary of State on 29 March 1993, paragraphs 4(1)(a) and 4(2); and
- (g) in the Directions to the NHS Pensions Agency (Asiantaeth Pensiynau'r GIG) given by the Secretary of State on 29 March 2004, paragraph 5.

Signed by authority of the Secretary of State for Health

2005

A Member of the Senior Civil Service
Department of Health

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998

2005
Assembly

The Presiding Officer of the National

SCHEDULE

Information and documents to be submitted with a proposal to exercise the income generation powers in section 7(7A) of the 1988 Act (use of companies)

1. The following information about the company —
 - (a) the name of the company, where applicable any proposed new name and a description of its business;
 - (b) a draft of the proposed Memorandum and Articles of Association;
 - (c) in the case of a new company, a copy of any documents which it is intended to accompany the application for registration;
 - (d) in the case of an existing company, a copy of its annual accounts for the past three financial years or, if less, for the financial years since the creation of the company;
 - (e) the names of the shareholders and the extent of their shareholdings, and in any case where it is proposed to transfer shares in the company, the names of the shareholders and the extent of their shareholdings in the company both before and after the proposed transfer;
 - (f) in the case of a company limited by guarantee, the names of the members of the company and where there is a proposed change in the membership of the company, the names of the members of the company both before and after the proposed change in membership; and
 - (g) the names of the directors of the company and its company secretary.
2. A copy of any actual or proposed agreement between—
 - (a) the Special Health Authority and the company,
 - (b) the shareholders or members of the company (including any proposed shareholders or members),
 - (c) the shareholders or members and any other person or persons,

in connection with the proposed management of the company or the activities of the company including any agreement with respect to the fees or other benefits to which the parties to such agreements may be entitled or may receive.

3. The details of the type (and, where appropriate, the amount) of any investment or of any loan, guarantee or other financial provision which the Special Health Authority or any other person or body proposes that it will make to or in respect of the company, including the number of shares in the company which it is proposed will be acquired as a result.

4. Any proposed arrangements for the appointment of officers or members of the Special Health Authority as directors of the company or other form of involvement in the management of the company.

5. The Special Health Authority's proposal for how it intends to reward individuals it employs, or contracts with, in connection with any fees or other benefits accruing to it from the exercise of the powers in section 7(7A).

6. A summary of how in the view of the Special Health Authority the exercise of the powers in section 7(7A) will facilitate or be conducive to the exercise of its income generation powers and the rationale for exercising those powers as opposed to taking other measures.

7. The projected income and expenditure for the proposed company over a period of three years (starting from the date on which the investment is intended to take effect) or such lesser period as it is proposed that the investment should last with reference in particular to the income which it is anticipated will be made available for the improvement of the health service.

8. The commercial assumptions and operational plans in relation to the company's business including a summary of any financial risks to the Special Health Authority which arise out of the proposal and how it is proposed to manage such risks.

9. Where the proposal relates to the power in section 7(2)(f) of the 1988 Act (development and exploitation of ideas and intellectual property), any conditions on which the ideas or intellectual property may be made available for the purposes of the health service or to bodies established in countries outside England and Wales which are concerned with the delivery of health care in those countries.