

HEALTH ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I - the National Health Service

Section 3: Primary Care Trusts: finance

81. *Section 3* inserts two new sections into the 1977 Act (sections 97C and 97D) which provide for the funding and financial duties of Primary Care Trusts. The sections are similar to sections 97 and 97A of the 1977 Act which provide for the funding and financial duties of Health Authorities.
82. Health Authorities receive both cash-limited funding (under section 97(3)) and non-cash-limited funding (under section 97(1)) as follows:
- payments under section 97(1) to meet the Health Authority's "general Part II expenditure", i.e. expenditure attributable to the remuneration of persons providing Part II services, subject to certain exceptions (see section 97(1) to (3A) of the 1977 Act, as substituted by section 36 of the Primary Care Act). (It should be noted, however, that section 4 of the Act replaces section 97(2), (3A) and (3B) of the 1977 Act.) This funding is not "cash-limited"; in other words the Secretary of State may not impose a ceiling on general Part II expenditure; and
 - sums paid under section 97(3) towards the Health Authority's "main expenditure", i.e. expenditure attributable to the performance of its functions and certain payments of remuneration to persons providing Part II services which the Secretary of State has designated as falling within "main expenditure" (e.g. certain expenses and the remuneration of persons providing additional pharmaceutical services under section 41A of the 1977 Act). This funding is cash-limited. The Secretary of State has a duty to pay sums to the Health Authority only up to the limit he sets for the Authority for the financial year (the "allotted sum"). The initial limit may subsequently be adjusted during the year.
83. The allotted sum covers the provision of hospital and community health services, the payment of certain expenses incurred by Part II practitioners (in particular the costs of GP practice staff, premises improvements and information technology), and the costs of the drugs and appliances prescribed by GPs (and by some community nurses), although section 4 of the Act alters the way in which drug costs are chargeable to a particular Health Authority. In the absence of directions under section 97(6)(a) (see below), the various elements of the allotted sum are not ring-fenced.
84. *New section 97C* provides for the funding of Primary Care Trusts by Health Authorities to mirror as closely as possible the provisions for funding Health Authorities. It provides for the funding of a Primary Care Trust's main (i.e. cash-limited) expenditure and of any non cash-limited general Part II expenditure it incurs. The Health Authority will pay sums to Primary Care Trusts in their area up to a limit set by the Health Authority for the financial year (the "allotted sum"). This limit can however be altered during the year (subsection (3)).

85. The Secretary of State sometimes gives Health Authorities allocations earmarked for particular purposes, under section 97(6)(a) of the 1977 Act. In future these sums will often be passed to Primary Care Trusts. The new section 97C(5) obliges the Health Authority to earmark such sums in the same way, when allocating them to Primary Care Trusts. This will enable the Secretary of State to direct Primary Care Trusts to apply some of their allocation for a particular purpose. The power may be applied to all Health Authorities and Primary Care Trusts or to individual bodies.
86. In the past this power has been used to protect, for example, funding for HIV and AIDS treatment and care. The current power of direction is used only sparingly and exceptionally (for example, to ring-fence the Out of Hours Development Fund for GPs) and when extended to Primary Care Trusts the Government intends to continue to use it in such a way.
87. Subsection (4) of new section 97C regulates the payment of capital charges on Primary Care Trust assets. It is modelled on the existing provision for Health Authorities (section 97(6)(b) of the 1977 Act) and enables Primary Care Trusts to be brought within the capital charging system, placing them in the same position as other NHS bodies. The system ensures that capital costs are included as an overhead when a Primary Care Trust is calculating the cost of any services it provides.
88. *New section 97D* places a financial duty on Primary Care Trusts not to spend more than the sum of the amount allotted to them by their Health Authority (the cash limit) and any other receipts. It also enables the Secretary of State to give directions to Primary Care Trusts to ensure they comply with their financial duty. These provisions mirror those in respect of Health Authorities in section 97A.
89. The rest of the new section 97D is concerned with what is or is not to be covered by the provisions of this section, and with defining expenditure or receipts (mirroring the provisions in section 97A(6) to (9)). In particular subsection (4) ensures that funds held by Primary Care Trusts as charitable trustees or obtained by their fund raising activities are outside the scope of the financial duty. Subsections (7) and (8) enable the Secretary of State to give directions defining the categories of expenditure and receipts which are to be counted when considering whether or not a Primary Care Trust has met its financial duty.