

HEALTH AND SOCIAL CARE ACT 2008

EXPLANATORY NOTES

TERRITORIAL EXTENT

Financial assistance related to provision of health or social care services

Sections 149 and 150: Power of Secretary of State to give financial assistance; Qualifying bodies

513. **Section 149(1)** allows the Secretary of State to provide financial support to qualifying bodies who are delivering health and social care services. It also allows the Secretary of State to fund qualifying bodies delivering related services to providers of health and social care services. **Section 149(2)** allows the Secretary of State to give financial support to people to set up such bodies.
514. **Section 150** sets out the conditions for being a qualifying body. The first of these is that the body must pass the community benefit test. This is satisfied if a reasonable person might consider that the activities of a body are carried on for the benefit of a section of the community in England. The regulation-making power in **section 150(2)** will allow provision to be made about the sort of activities that can be treated as meeting this condition and the activities that can be treated as not meeting it, in cases where there may be some doubt. For example, it is intended to make regulations setting out that political activities are not to be treated as activities that are carried on for the benefit of the community.
515. The second condition is that the body satisfies any conditions relating to the distribution of profits as are set out in regulations. The Department proposes to make regulations which ensure that the profits of a qualifying body are principally invested for social objectives; either in the body itself or in the community. **Section 150(1)(b)** allows for prescribed bodies to be excepted from the requirement to meet such conditions.
516. The third condition under **section 150(1)(c)** is that the body must be carrying on a business. The intention is to distinguish these bodies from purely public sector organisations and those carrying on activities on a purely voluntary basis. Voluntary bodies who are “carrying on a business” and meet the other conditions would qualify.
517. **Section 150(1)(d)** allows regulations to be made setting out other conditions that a body must meet in order to be a qualifying body. If a person is given financial support to set up a qualifying body, additional conditions that such a qualifying body must satisfy may be prescribed in regulations under **section 149(2)**. Under **section 150(2)**, regulations may provide that only certain kinds of body can be a qualifying body.

Sections 151 and 152: Forms of assistance under s.149; Terms on which assistance under s.149 is given

518. **Sections 151 and 152** concern the forms of financial assistance (e.g. grants, loans, guarantees, share capital) the Secretary of State can give to social enterprises and allow the Secretary of State to specify the terms on which it is provided. The sections allow some flexibility, so that:

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- the Secretary of State can provide finance packages tailored for the particular needs of social enterprises;
 - the Secretary of State can set appropriate terms and conditions which will protect these investments.
519. **Section 151** allows the financial support that the Secretary of State can provide to take any form (with one exception), as well as setting out examples of the types of financial support that may be given. *Subsection (3)* ensures that the Secretary of State cannot give financial support to a company to set up a qualifying body by purchasing share capital in that company. This is because a longer term investment, such as purchasing share capital, would not be appropriate if the company itself is not a qualifying body.
520. **Section 152** enables the Secretary of State to impose terms and conditions on the financial support given to qualifying bodies and people setting up qualifying bodies. This includes terms as to when the financial assistance must be repaid. *Subsection (3)* requires the people or bodies receiving this kind of financial support from the Secretary of State to comply with the terms on which the support is provided.

Section 153: Directions to certain NHS bodies

521. *Subsection (1)* enables the Secretary of State to direct certain NHS bodies in England to exercise his power to give financial support under section 149. This will mean that, to the extent permitted by the Secretary of State's directions, NHS trusts, PCTs and Strategic Health Authorities in England and Special Health Authorities performing functions only or mainly in relation to England would be able to give financial support to qualifying bodies; or people who want to set up such bodies.

Section 154: Arrangements with other third parties

522. **Section 154** allows the Secretary of State to make arrangements for a third party, other than those NHS bodies set out in section 153(1) or an English local authority, to give financial support to a qualifying body or a person wanting to set up such a body, or to carry on functions relating to such support. These functions can be completely carried out by a qualifying third party, or to the extent set out in the arrangements, and can be carried out generally, or in specific cases. These arrangements made between the Secretary of State and the third party may set out the terms on which the third party can give financial support, including the types of support that can be given. The section also provides for the Secretary of State to provide the necessary funding to the third party and for provision to be made as to repayment (for example if the arrangements came to an end.)
523. The reason for excluding local authorities is because they have sufficient powers to fund social enterprises and have their own legislative structure. The reason for excluding NHS bodies set out in section 153(1) is that separate arrangements for these bodies are already set out in that section. The provisions in the Act are designed to give the Secretary of State and NHS bodies the necessary wider powers to fund social enterprises.

Section 155: Power to form a company

524. **Section 155** allows the Secretary of State to set up a company to fund qualifying bodies and people wanting to set up such bodies. Under section 154 the Secretary of State could make arrangements with such a company to exercise the Secretary of State's powers to fund such qualifying bodies and people wanting to set up such qualifying bodies. Under the arrangements with such a company, it is envisaged that the Secretary of State would transfer money to the company to enable the company to provide such financial support.

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Section 156: Interpretation of group of sections

525. **Section 156** sets out the meaning of various terms used in sections 149 to 156.