

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – The Health Service in England

Arrangements for provision of health services

Section 24 - Financial arrangements for the Board

242. This section inserts new sections 223B (funding of the Board), 223C (financial duties of the Board: expenditure), 223D (financial duties of the Board: controls on total resource use), 223E (financial duties of the Board: additional controls on resource use), and 223F (power to establish contingency fund) into the NHS Act. Broadly, this section sets out how the Secretary of State would fund the NHS Commissioning Board. It also sets out the general financial duties of the NHS Commissioning Board, including restrictions on the use of resources. The Secretary of State would specify annually in the mandate to the NHS Commissioning Board limits on the total amounts of capital and revenue resources the NHS Commissioning Board and CCGs could make use of in that financial year. The Secretary of State would then make payments to the NHS Commissioning Board up to an amount allotted for that year, which would be calculated by reference to the NHS Commissioning Board's spending plans against the resource limits specified in the mandate.
243. *Funding of the Board.* New section 223B provides that the Secretary of State must pay sums not exceeding the amount allotted to the NHS Commissioning Board for that year to enable it to perform its functions. The NHS Commissioning Board will be notified in writing of the amount it has been allotted for that year (the allotment). Payment of the allotment would be subject to the NHS Commissioning Board keeping such records, pertaining to the funds, as the Secretary of State requires (new section 223B(5)).
244. The Secretary of State would only be able to make a new allotment in any given financial year, either increasing or reducing the previous allotment, under certain circumstances. Either the NHS Commissioning Board must agree to the change, a parliamentary general election must have taken place, or there must be exceptional circumstances, which the Secretary of State judges to necessitate a new allotment. Such exceptional circumstances might include a severe disease outbreak or unpredictable and substantial damage to infrastructure. The allotment would in practice be calculated by reference to the controls on resource use specified in the mandate to the NHS Commissioning Board.
245. *Financial duties of the Board: expenditure.* Under new section 223C, the NHS Commissioning Board will have an obligation to ensure that total expenditure by both the NHS Commissioning Board and CCGs (total health expenditure) does not exceed the aggregate of the amount allotted to the NHS Commissioning Board by the Secretary of State for that year, which includes the money paid to CCGs, and any income derived from other sources. This is in effect an annual "cash limit" on the total amount of cash expenditure which may be incurred by NHS commissioners.

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246. The income which counts for the purposes of this limit would include, for instance, funds received as a result of the power of the NHS Commissioning Board to generate its own income (see new section 13W) or any money received by NHS Commissioning Board in order to comply with its freedom of information obligations. It would also include sums paid to the NHS Commissioning Board or to CCGs for carrying out the Secretary of State's public health functions under arrangements made between the NHS Commissioning Board and the Secretary of State under new section 7A of the NHS Act, as inserted by the previous section.
247. The Secretary of State has the power to determine by directions what will and what will not count when calculating whether total health expenditure has remained within the aggregate of the sums received and the amount allotted to it for that year. New section 223C(4) also gives the Secretary of State a power to determine in directions the extent to which, and the circumstances in which, sums received by the NHS Commissioning Board under new section 223B, or by a CCG under new section 223G, but not yet spent must be treated for the purposes of this section as part of total health expenditure, and to which financial year's expenditure they must be attributed.
248. *Financial duties of the Board: controls on total resource use.* New section 223D is concerned with the NHS Commissioning Board's annual resource allocation. Under this section, the total use of capital resources and the total use of revenue resources by the NHS Commissioning Board and CCGs in a financial year must not exceed amounts specified by the Secretary of State. The NHS Commissioning Board is placed under a duty to ensure that these total limits are not exceeded. These are known as resource allocations and the amounts would be specified by the Secretary of State in the mandate for that year.
249. The resource allocations include not only the NHS Commissioning Board's expenditure in the form of cash spending (that is, the cash spending that should be accounted for in that financial year, in line with resource accounting standards), but also consumption of other resources and the reduction in value of assets belonging to the NHS Commissioning Board (new section 223D(8)). For example, the reduction in value of a photocopier across the year, or the distribution of leaflets previously kept in storage, would be counted as part of the NHS Commissioning Board's resource allocation. This system of setting not only a cash limit on the NHS Commissioning Board expenditure but also a limit on use of resources reflects the system for controlling government resources under the Government Resources and Accounts Act 2000.
250. Subsections (4) to (6) give the Secretary of State a power to give directions that specify what descriptions of resources must be treated as capital or revenue resources, and the uses of resources that must, or must not, be taken into account, when determining whether the NHS Commissioning Board and CCGs have remained within the resource allocations for a financial year. Where the Secretary of State specifies that a particular description of resources must or must not be treated as a capital or revenue resource, or that a particular use of resources must be excluded, that applies to the other financial duties on the NHS Commissioning Board and CCGs in Chapter 3 (section 223E and new sections 223G to 223K of the NHS Act).
251. As with the allotment, the Secretary of State may only vary the resource allocations within a financial year if the NHS Commissioning Board agrees that the change is necessary, if there is a parliamentary general election, or if the Secretary of State believes there to be exceptional circumstances which demand a variation of the allocation. This is set out in subsection (7). As both the revenue and capital resource allocations will be set out in the Secretary of State's mandate to the NHS Commissioning Board, any change to them will therefore require the Secretary of State to revise the mandate and lay it before Parliament along with an explanation for the change (see new section 13B).
252. *Financial duties of the Board: additional controls on resource use.* New section 223E(3) enables the Secretary of State to specify additional limits within the

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total revenue resource limit on both the maximum use of resources attributable to administrative matters by both the NHS Commissioning Board and CCGs (223E(3)(a)), and the maximum use of resources by the NHS Commissioning Board on these matters (223E(3)(b)). It will be for the NHS Commissioning Board to then set an equivalent limit for each CCG under new section 223J. The matters relating to administration which count for the purposes of these limits will be set out in regulations.

253. Under new section 223E(1) and (2), the Secretary of State will also be able to set additional limits on total revenue or total capital resource use attributable to particular matters specified in directions. Subsection (5) requires that the Secretary of State may only impose such limits for the purpose of complying with limits imposed by HM Treasury. These limits relate to specific budgetary limits applied across all Government Departments on certain elements of spending. For example within the revenue Departmental Expenditure Limit (RDEL), HM Treasury applies a ring-fence to spending on depreciation. HM Treasury applies controls on Annually Managed Expenditure (AME) under which there are limits on the creation of new provisions (charges for spending that is likely to happen in future years eg clinical negligence or redundancy costs). The Department would also apply a limit on the balance of spending not covered by the specific limits, again to provide consistency with the controls applied by HM Treasury. These types of spending will fall within the total resource limits but need to be separately controlled within them.
254. The Secretary of State will be able to specify in directions certain uses of capital or revenue resources which must, or must not, count for the purposes of these limits (subsection (4)). In addition, the Secretary of State directions on what resources are to be treated as capital or revenue resources, and the uses of resources which are not to be taken into account, made under section 223D(4) and (5) apply to the limits under this section.
255. *Power to establish contingency fund.* New section 223F gives the NHS Commissioning Board a power to set up a contingency fund, using a proportion of the funds allotted to it by the Secretary of State, from which it can make payments to the NHS Commissioning Board or to CCGs to enable them to discharge their commissioning functions or to enable a CCG to discharge its other functions exercisable by virtue of regulations under section 75 of the NHS Act.