

## **Local authority commissioning public health services from primary care.**

### **General**

1. From April 2013 local authorities will have a duty to improve the health of the people in their area and will have responsibility for commissioning appropriate public health services. Many of these services are currently commissioned by PCTs and accordingly local authorities will take ownership of relevant public health service contracts that have an expiry date beyond 1 April 2013 or will be responsible for commissioning public health services to commence from 1 April 2013
2. Following transfer of these contracts, local authorities will be able to manage the arrangements within the terms set out in the agreements.
3. Once the transferred contracts expire, local authorities should commission services from providers in a manner which ensures delivery of high quality public health services and which supports continuity, integration and easy access to, services.
4. Primary care contractors and other providers do not have preferred provider status for any newly commissioned public health services by local authorities and appropriate procurement approaches will need to be used.
5. The transfer of pre-existing arrangements for public health services will be made through a 'transfer scheme' as set out in the Health and Social Care Act 2012.

### **Contracts with an expiry date beyond 1 April 2013.**

6. Where the contract duration extends beyond 1 April 2013 it will be transferred, under a transfer scheme, and local authorities will take on the responsibility of managing the contracts.
7. The transfer scheme will transfer the contract obligations and liabilities from the current commissioning arrangements to the local authorities.
8. The transition powers of the Health and Social Care Act 2012 are intended to be used to transfer all contracts to local authorities on 1 April 2013
9. On taking ownership of pre-existing arrangements through a transfer of the relevant contracts, local authorities and primary care providers and the other providers are free to agree changes, subject to the terms of the contract

### **Contracts with an expiry date prior to 1 April 2013**

10. Where the current public health services contract expires prior to 1<sup>st</sup> April 2013 the PCT and local authority should decide jointly whether they wish to continue to commission the service that will transfer to the local authority. A decision will need to be taken on the most appropriate approach. This could include:

- a. PCTs with local authority agreement working with the current provider to agree to continue to run the current services for a short period (e.g. 6, 9, 12 months). This would ensure continuity of service for service users and would allow local authorities time to implement their procurement decisions, where this is possible within the terms of the contract. In this instance, local authorities would be requesting the existing parties to the contract to amend the existing contract duration beyond 1 April 2013. Any request for an extension to duration of the existing contract would be made by the PCT to their SHA/Regional Director. An extended contract would be transferred to the relevant local authority under the statutory transfer scheme arrangements.

For this approach, local authorities will need to be able to make a case to support the decision to extend the contract. This is especially the case where the service could be delivered by other providers. Reasonable defence for such decisions may include wanting to manage the impact of transition on the provision of services locally, with actions planned to engage on alternate plans for commissioning services in the future after the transition arrangement expires.

- b. Local authorities commissioning a new service through available procurement routes

11. Local authorities may not be able to contract for clinical services under the current statutory arrangements unless there is a joint commissioning arrangement in place.

12. Where pre-existing public health services delivered in primary care are set to end on or before 1 April 2013 and local authorities have decided not to re-commission these on a like-for-like basis, this should be made clear to the current contractor(s). Generally, when designing and planning public health services that GP practices could provide, local authorities will want to consult with GPs local representative committees (Local Medical Committees (LMCs)). Many GP practices may only be willing to provide services when there has been engagement with the LMC. Generally,

when designing and planning public health services, which community pharmacies could provide, local authorities will want to consult with relevant pharmacy organisations.

### **Local Enhanced Services (LESs)**

13. LESs are locally commissioned primary care services that PCTs contract using one of the three primary medical service contractor routes:

- a. General Medical Services (GMS) – GP practices signed to the national GP (GMS) contract.
- b. Personal Medical Services (PMS) – GP practices and other NHS professionals signed to locally agreed GP (PMS) contracts.
- c. Alternative Provider Medical Services (APMS) – any other provider.

14. The services that may be commissioned as a LES are generally defined as those outside the scope of the core GP contract (i.e. expanding the range of services provided in primary care); or those in scope of the core GP contract but provided to an enhanced level compared to that generally provided (i.e. improving the quality of primary medical services).

15. LESs can therefore be any type of medical service and in any setting and many PCTs have established LESs to fund areas of public health activity that are now mapped as functions transferring to local authorities. Examples include:

- All forms of long acting reversible contraception
- Sexual Health Services including STI testing/Chlamydia Screening
- NHS Health Checks Scheme
- IUCD (Fitting and Removal)
- Alcohol Misuse
- Substance Misuse
- Smoking cessation

16. In most instances, the service specification, monitoring and funding arrangements which define the LES will be described in a separate agreement, treated as an add-on to the main (GMS or PMS) contract (sometimes via formal variation notice) or as a separate standalone APMS contract. In either case the general terms for managing a transfer described earlier applies.

17. In some instances, there may be public health LES type activity embedded in the wider primary medical services contract. This will particularly be the case with locally agreed PMS contracts. Where the

activity and funding is separately identified from the baseline activity and funding it is to be treated just like any other LES. Where it is not it will remain treated as core primary medical services and will transfer to the NHS Commissioning Board.

18. Local authorities will not be able to commission LESs for services that commence on or after 1 April 2013 as these are primary medical services which only the NHS Commissioning Board may commission. In these circumstances the local authority will use their own commissioning powers and contracts to deliver public health services including from primary care providers. For LES arrangements that have not expired before 1 April the local authority will be able to continue to run the existing agreement until the contract expires or ends, however, these will be as local authority contracts not LES contracts.

### **GP Pensionable Pay**

19. There has been concern that the funding which currently flows to GP practices for PCT commissioned public health services will no longer be pensionable when the services are commissioned by local authorities from 1 April 2013. The Department is working to update the NHS Pension Scheme Regulations so that the income derived from local authority commissioned public health services and funded from their ring fenced budgets is recognised for purposes of GP pensionable pay.

### **Operational Roles and Responsibilities**

20. In all cases where pre-existing arrangements are being carried forwards, then local authorities will need to be clear on their new operational roles and responsibilities of these.
21. This will include understanding how delivery of the contract is achieved and the measurement of this: how this will be demonstrated. This will require clear definitions of data required, data flows (to where and to whom) and how these will be used to generate payments to contractors for the services delivered.

## Public Health Frequently Asked Questions

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| <b>How can LAs take on LESs?</b>  |
| <p>Existing relevant contracts with an expiry date beyond 31 March 2013 will transfer to the relevant local authority who will manage the transferred contract within the terms and conditions of that contract until it expires or terminates.</p> <p>Where a public health service contract expires on 31 March 2013 the local authority will enter into a new contract for the services to commence on 1 April 2013. To ensure continuity of services local authorities will have commenced discussions with potential providers as part of their procurement processes. The local authority will contract for these new services using a contract of their choice</p> |
| <b>What is the actual process for transferring contracts from one party to another?</b>   |
| <p>The contracts held by PCTs will be transferred to the relevant future commissioning authority under a statutory transfer arrangement. The transfer schemes documentation will list all contracts and other property and liabilities currently held by PCTs against the identified 'receiving' organisation. The legal transfer will take effect from 1 April 2013</p>  |
| <b>How will public health elements of larger contracts be disaggregated and passed to LAs? Eg school nursing?</b>   |
| <p>The PCT will identify the services within the existing contracts against the named receiving organisations. Although it has not yet been finally confirmed, it is likely that each of the receiving organisations will receive an electronic copy of the relevant contract within which the specified service sits. From 1 April the receiving organisation will be responsible for managing the transferred services using the terms and condition of the overall contract with the provider.</p>   |
| <b>What is the guidance for re-procuring other provider services such as sexual health. All our provider services run until 31 March 2013 – do we need to go through a full competitive procurement process even where these are integrated with other services?</b>  |
| <p>Local authorities will need to consider their requirements for the post April 2013 services in light of their needs assessment. The needs assessment will drive the scope of the future service and the procurement process. The local authority will run appropriate procurement processes, in line with their standing financial controls, to seek a range of providers that can meet the identified need.</p>   |
| <b>Our biggest worries are LESs and provider contracts. We need to give the provider notice in September that the contract will be subject to changes – preferably specifying what the likely changes are.</b>  |
| <p>Contracts transferring to local authorities under the statutory transfer processes will have to be managed within the scope of the terms and conditions of the contract until that contract expires or is terminated. Where a contract expires on 31 March 2013 and where the local authority wishes to continue the services, then a procurement process should be run to a timescale to ensure that the service is available from 1 April 2013.</p>  |
| <b>What do we need to do about contracts that do not appear to have been documented beyond the drawing up of the detailed Specifications and the pricing?</b>   |
| <p>PCTs are responsible for the identification of the 'receiving' body as part of the transition of clinical contracts.</p> <p>The list of contracts held by the PCT with the name of the provider and the type of services, identified to the receiving organisation, will form the information needed to populate the statutory 'transfer scheme' documentation</p>   |

**For contracts based on the NHS Standard Terms and Conditions it is not clear which year's terms and conditions apply and whether the assumption is that the contracts automatically transfer to the next year's terms and conditions each year**

Contracts which do not expire on 31 March 2013 will transfer with the exiting terms and conditions. New contracts for public health services that are due to commence from 1 April 2013 will use the form of contract that the local authority chooses.

**In respect of the terms and conditions as they stand there is very little flexibility in what we are able to do. According to the terms of the 2012/2013 contracts, all contracts will automatically expire on 31st March 2013. The notice period for terminations is 12 months, so for our purposes is not too helpful as it has passed, so therefore no contracts can be terminated earlier than the 31st March 2013 expiry date.**

The NHS Standard Contract expires on 31 March 2013; there is no requirement to serve notice to effect this expiry date. Where the contract is not the NHS Standard Contract format or where the NHS Standard Contract has been amended locally the terms of the contract will apply

The parties to the contract can mutually agree to terminate the contract at any time, however where one party wishes to terminate the NHS Standard Contract unilaterally the 12 month notice period applies, other than where the contract is due to expire within the 12 month period

**There is also no facility to extend the contract under the terms (and the terms themselves cannot be varied to allow the insertion of an extension clause), therefore the concept of transferring a contract is not really one which is at issue as the Local Authority will have to create new contracts as of 1st April 2013 regardless.**

PCTs can request an extension to the duration of an existing contract from their SHA Cluster. A contract that has already expired cannot have the duration changed retrospectively  
If an extension is granted then the contract will need to be included in the list of contract information for the transfer scheme process.

**It is not clear what terms and conditions are to be used for the new contracts that start from 1st April 2013 – is it the assumption that the 2013/2014 NHS Standard Terms will be used? If so, this is not necessarily in step with the terms the Local Authority would chose to have. If the providers refuse to adopt any new terms that the Local Authority seeks to impose, it is unlikely that the Local Authority would terminate the service, so we could be left in the position of having no terms/contract in place.**

The CCGs and the NHSCB will use the 2013/14 NHS Standard Contract. Local authorities are free to use the most appropriate contract form of their choosing.

The Department is working with local government representatives and other interested parties to develop a public health services contract which local authorities could choose to use when commissioning public health services.