Explanatory Note on NHS Directions

The NHS Act has always permitted the Secretary of State to make “directions” about specified matters related to the way that the NHS operates.

A “Direction” is a command issued by the Secretary of State which introduces a legal obligation on the person to whom it is directed to act in a certain way. The Secretary of State originally had very wide powers of direction. Section 9 of the NHS Act 2006 (as enacted) provided:

“(1) The Secretary of State may give directions to any of the bodies mentioned in subsection (2) about its exercise of any functions.

(2) The bodies are—

(a) Strategic Health Authorities,

(b) Primary Care Trusts,

(c) NHS trusts, and

(d) Special Health Authorities.

(3) Nothing in provision made by or under this or any other Act affects the generality of subsection (1)”

The Secretary of State also had other Direction making powers. Hence, for example, section 87 of the NHS Act provides:

“The Secretary of State may give directions as to payments to be made under general medical services contracts”

When Foundation Trusts were introduced by the Health and Social Care (Community Health and Standards) Act 2003 a decision was made that these new semi-autonomous NHS bodies should not be subject to directions by the Secretary of State. The Health and Social Care Act 2012 made amendments to the bodies to whom the Secretary of State could give
directions. The 2012 Act abolished primary care trusts and strategic health authorities. No direction making powers were introduced to make clinical commissioning groups subject to directions made by the Secretary of State. Hence the only NHS bodies who can now be give directions under section 9 are Special Health Authorities.

The Secretary of State continues to have the power to issue directions to define the amounts paid under GMS (and GDS) contracts, known as the Statement of Fees and Entitlements (“SFE”). The latest SFE direction is at: