



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

HEALTH SERVICE EXECUTIVE

NATIONAL FINANCIAL REGULATION

PROTECTING THE HSE'S INTEREST

NFR-18

NFR-18 **Protecting the HSE's Interest**

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18.1. Introduction

18.1.1. The Health Service Executive (HSE) is the statutory body with responsibility for delivering Health and Personal Social Services in the State. Under the provisions of the Health Act, 2004, the HSE will enter into agreements with Non Statutory Provider Organisations to deliver services on its behalf (Section 38 of the Health Act 2004 and Section 10 of the Child Care Act 2001).

18.1.2. The HSE may also provide funding to Non Statutory Provider Organisations in support of their activities where such activities are similar or ancillary to services the HSE may provide (Section 39 of the Health Act, 2004). The HSE also provides Capital Funding to Non Statutory Provider Organisations for approved developments.

18.1.3. Capital funding is provided towards the cost of;

- Buildings
- Grants for the upgrading / refurbishment of buildings
- Motor Vehicles
- Information and Communications Technology (ICT) Equipment
- Other Equipment.

18.1.4. It is the HSE's policy that the State's interest is adequately protected in respect of all funding provided to Non Statutory Providers for investment in their asset base in accordance with the standard procedures outlined in this financial regulation.

18.2. Purpose

18.2.1. The HSE as a Vote holder is accountable to the Oireachtas for all expenditure on Health and Personal Social Services incurred from public funds. This includes monies subsequently allocated from its Vote to Non Statutory Organisations ("Organisations"). In this context the HSE is obliged to ensure that the State's interests are adequately protected in respect of all allocations to Organisations for investment in their asset base by ensuring:

- Retention of funded assets within the Healthcare system, that is, ensuring the continued use of the asset for a health and/or personal social services purpose;
- In respect of assets which do not have enduring value, structuring the provision of funding to realise the value of the investment in the asset by the State over the course of the life of the asset; (e.g. the value of the asset when depreciation is taken into account as in the case of a vehicle).

18.2.2. The HSE maintains a financial interest in assets of enduring value, thereby ensuring that the provision of funding for the asset is secured against the asset and recycled back in to the health and/or personal social services system in the event of the sale/disposal of the asset or in the case of liquidation / examinership (where the asset is funded / part funded by the HSE). This would also apply where there is a breach, by the recipient Organisation, of the conditions attaching to the provision of funding for the asset.

18.3. Scope

18.3.1. The provisions of this National Financial Regulation apply to all Non Statutory Agencies/ Organisations who receive funding for investment in their asset base categorised as follows;

- Buildings
- Grants for the upgrading / refurbishment of buildings
- Motor Vehicles
- Information and Communications Technology (ICT) Equipment
- Other Equipment.

18.3.2. All decisions resulting in the allocation of funding to Section 38 and Section 39 Non-Statutory Organisations must have regard to:

- National Financial Regulations
- HSE Service Level Agreements
- Relevant HSE Estate's Protocols and Procedures
- HSE Capital Planning Group Protocols and Procedures
- Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector (Department of Finance, 2005)
- ICT Directorate's Protocols and Procedures (including CMOD approval requirements) for ICT expenditure in recognition of the HSE's obligations under Department of Finance Circular 02/09.
- Accounting Standards for Voluntary Hospitals and Agencies, (Department of Health and Children, 1999).
- Generally Accepted Accounting Principles (GAAP) in accordance with accounting standards issued by the Accounting Standards Board, subject to exceptions specified by the Minister.
- The need for Non Statutory Organisations to adhere to best practice as set out in HSE's Financial Regulations in terms of obtaining value for money in the placing of contracts for all Capital Projects which is in compliance with Public Procurement law.
- Companies Acts 1963-2006, (where Section 38/39 Organisations are incorporated bodies)
- Accessibility of the built environment to all through adherence to relevant legislative and good universal design principles so as to ensure that premises and services comply with minimum accessibility requirements. Accessibility of the built environment in Ireland for people with disabilities is mainly controlled by Part M of the Building Regulations (2000) entitled "Access for People with Disabilities".

18.4. Policies and Procedures for Securing the HSE's Interest

18.4.1. Land and Buildings

Land and buildings are assets of enduring value and the policies and procedures in respect of this asset category reflect this fact. In terms of assisting an Organisation to acquire its land, buildings or facilities the HSE will generally have two options;

- (i) The HSE could procure Buildings/Lands and/or Facilities and retain title in its (HSE) name. The use of the Buildings/ Lands and/or Facilities could be provided to the Organisation on the basis of a long term lease. This lease arrangement could include regular rent reviews. On expiry of the lease arrangement, the HSE will resume full responsibility for the Buildings/ Lands and/or Facilities.

- (ii) The HSE could provide all or some of the funding to allow the Organisation to acquire Buildings/ Lands and/or Facilities. In this scenario the funding arrangement would be subject to a standard integrated Service Level Agreement and a Deed of Charge document. The State's interest would remain in perpetuity and the realisation of such interest would be based on the real present day value of the State's investment (which may include, for example, indexation of the initial investment and any opportunity cost of that investment not having been devoted to other sources) at the time the asset's value is realised by the Organisation. The Deed of Charge must be registered against the property. In circumstances where the HSE is the minority State funder (e.g. where the Organisation is in receipt of funding from Department of Environment and Local Government under its Capital Assistance Scheme) it may be necessary to take account of the majority State funding agency in the context of the registration of the charge. In addition where that organisation has taken out a mortgage/ loan to provide some of the costs of the land, buildings or facility from a lending institution, the lending institution is likely to seek "first call" on the asset in terms of protecting its interests as part of the mortgage/loan terms. In such circumstances consideration will be required as to how to address this, through priority/subordination agreements, for example. The Service Level Agreement/ Deed of Charge document will set out strict terms and conditions relating to, inter alia, the use of the facility, compliance with HSE requirements (e.g. building and service requirements), the disposal or assignment of the Buildings, Lands and/ or Facilities in question, and will include certain claw back/termination provisions such as the option to transfer the title of the asset to the HSE.

Under no circumstances may an Organisation proceed with any capital expenditure or project involving capital expenditure that requires funding of a revenue nature to be provided by the HSE without prior written approval suitably authorised by the HSE. The organisation must record all land and buildings acquisitions on its fixed assets register.

In circumstances where, with the prior approval of the HSE, the Organisation disposes of land and/or buildings in respect of which the HSE has registered a charge and where the proceeds are to be used to acquire an alternative replacement land and/or buildings, the HSE's interest may be transferred to the new asset. This will be on the condition that the new acquisition meets HSE service requirements and the proceeds from the disposal of the original property

are sufficient to enable the Organisation to acquire the new property. In circumstances where the purchase price of the new land and/or building is less than the present day value of the original grant, the difference will revert to the HSE.

18.4.2. Grants for Upgrading / Refurbishment of Buildings

Grants in Excess of €0.200m

The State's interest will be protected through a standard integrated Service Level Agreement and Deed of Charge document. The State's interest in the funded asset will remain in perpetuity.

The Service Level Agreement and Deed of Charge document will require the Organisation to confirm that the works have been completed and have been properly certified by a competent person as well as the proposed use of the facility, compliance with HSE requirements (e.g. building and service requirements), the disposal or assignment of the land/ buildings/facilities in question, and include certain clawback/termination provisions. The Organisation will be required to include the asset on their balance sheet with a note of the HSE's interest in the asset. The Deed of Charge must also be shown as a contingent liability on the balance sheet of the recipient Organisation.

Grants Under €0.200m

The HSE's interest will be protected through a standard integrated Service Level Agreement and Deed of Charge document. The HSE's interest shall remain in place for a period of 30 years.

The Service Level Agreement and Deed of Charge document will require the Organisation to confirm that the works have been completed and have been properly certified by a competent person as well as the proposed use of the facility, compliance with HSE requirements (e.g. building and service requirements), the disposal or assignment of the land/ buildings/facilities in question, and include certain clawback/termination provisions. The Organisation will be required to include the asset on their balance sheet with a note of the HSE's interest in the asset. The Deed of Charge must also be shown as a contingent liability on the balance sheet of the recipient Organisation.

The €0.200m threshold will be reviewed every 3 years in line with building price index movements.

18.4.3. Grants for the Acquisition of Vehicles

Grants in Excess of €0.100m

An Organisation must record the purchase of vehicles on its balance sheet if the expenditure incurred is funded/ part funded by the HSE and its expected useful life is in excess of one year. Where the value of the HSE's investment exceeds €0.100m a Deed of Charge will be put in place for whichever is the earlier of:

- a period of 30 years, or
- until the asset is fully depreciated, or
- until the asset is sold,

after which period the HSE's financial interest in the vehicle may be deemed to have been realised and the charge released. Where the asset is not fully

depreciated the HSE will seek to have the asset transferred to it through an option agreement at the expiry of the term of the Service Level Agreement. Such terms and conditions will be set out in the Service Level Agreement/ Deed of Charge document.

Grants Under €0.100m

An Organisation must record the purchase of vehicles on its balance sheet if the expenditure incurred is funded/ part funded by the HSE and its expected useful life is in excess of one year. The State's interests will be secured through a Letter of Undertaking addressing the use of the vehicle, compliance with HSE requirements, the disposal or assignment of the vehicle, and include certain clawback/termination provisions. The State's interest in vehicles may be accounted for through the depreciation of the value of the asset to a nominal value of One Euro within normal commercial depreciation levels of the useful economic life for the said asset.

In all cases where a residual value exists such residual value will transfer to a new or replacement vehicle, that is, where the Organisation receives a trade in allowance on the vehicle.

18.4.4. Grants in respect of ICT Equipment

Grants in Excess of €0.100m

An Organisation must record the purchase of hardware or software on its balance sheet if the expenditure incurred is funded/ part funded by the HSE and its expected useful life is in excess of one year. Where the value of the HSE's investment exceeds €0.100m a Deed of Charge will be put in place for whichever is the earlier of:

- a period of 30 years, or
- until the asset is fully depreciated, or
- until the asset is sold,

after which period the HSE's financial interest in the ICT equipment may be deemed to have been realised and the charge released. Where the asset is not fully depreciated the HSE will seek to have the funded ICT asset transferred to it through an option agreement at the expiry of the term of the Service Level Agreement. Such terms and conditions will be set out in the Service Level Agreement/ Deed of Charge document.

Grants Under €0.100m

An Organisation must record the purchase of hardware or software as an asset on its balance sheet if the expenditure incurred is funded/ part funded by the HSE and its expected useful life is in excess of one year. The State's interests will be secured through a Letter of Undertaking addressing the use of the hardware or software, compliance with HSE requirements, the disposal or assignment of the hardware or software, and include certain clawback/termination provisions. The State's interest in hardware or software may be accounted for through the depreciation of the value of the asset to a nominal value of One Euro within normal commercial depreciation levels of the useful economic life for the said asset.

In line with the HSE's project approval protocol covering;

- The process involved in starting or initiating new ICT projects which require capital funding.
- The process associated with the subsequent continuation of existing ICT Capital projects which have previously successfully gone through process 1 (i.e. multi year projects which require subsequent additional funding).
- The process associated with the ongoing expenditure of non- capital funding (e.g. software licence costs, support and maintenance costs etc.)

the Organisation shall obtain prior sanction from the HSE for its annual expenditure on ICT and for all ICT related projects in line with Department of Finance (C.M.O.D) procedures and the HSE's obligations under Department of Finance Circular 02/09.

18.4.5. Grants in respect of Other Equipment

Grants in Excess of €0.100m

An Organisation must record the purchase of equipment on its balance sheet if the expenditure incurred is funded/ part funded by the HSE and its expected useful life is in excess of one year. Where the value of the HSE's investment exceeds €0.100m a Deed of Charge will be put in place for whichever is the earlier of:

- a period of 30 years, or
- until the asset is fully depreciated, or
- until the asset is sold,

after which period the HSE's financial interest in the equipment may be deemed to have been realised and the charge released. Where the asset is not fully depreciated the HSE will seek to have the funded asset transferred to it through an option agreement at the expiry of the term of the Service Level Agreement. Such terms and conditions will be set out in the Service Level Agreement/ Deed of Charge document.

Grants Under €0.100m

An Organisation must record the purchase of equipment on its balance sheet if the expenditure incurred is funded/part funded by the HSE and its expected useful life is in excess of one year. The State's interests will be secured through a Letter of Undertaking addressing the use of equipment, compliance with HSE requirements, the disposal or assignment of the equipment, and include certain clawback/termination provisions. The State's interest in equipment may be accounted for through the depreciation of the value of the asset to a nominal value of One Euro within normal commercial depreciation levels of the useful economic life for the said asset.

The useful economic life of an asset is defined as 'the period over which the entity expects to derive economic benefits from the asset'.

18.5. Assistance / Further Information

- 18.5.1.** Additional information regarding this regulation should be addressed to the Assistant National Director of Finance, Annual Financial Statements (AFS) and Governance.

18.5.2. Requests for derogation should be made in writing to the above Assistant National Director of Finance, and may be implemented only after written authorisation is received from the National Finance Director.

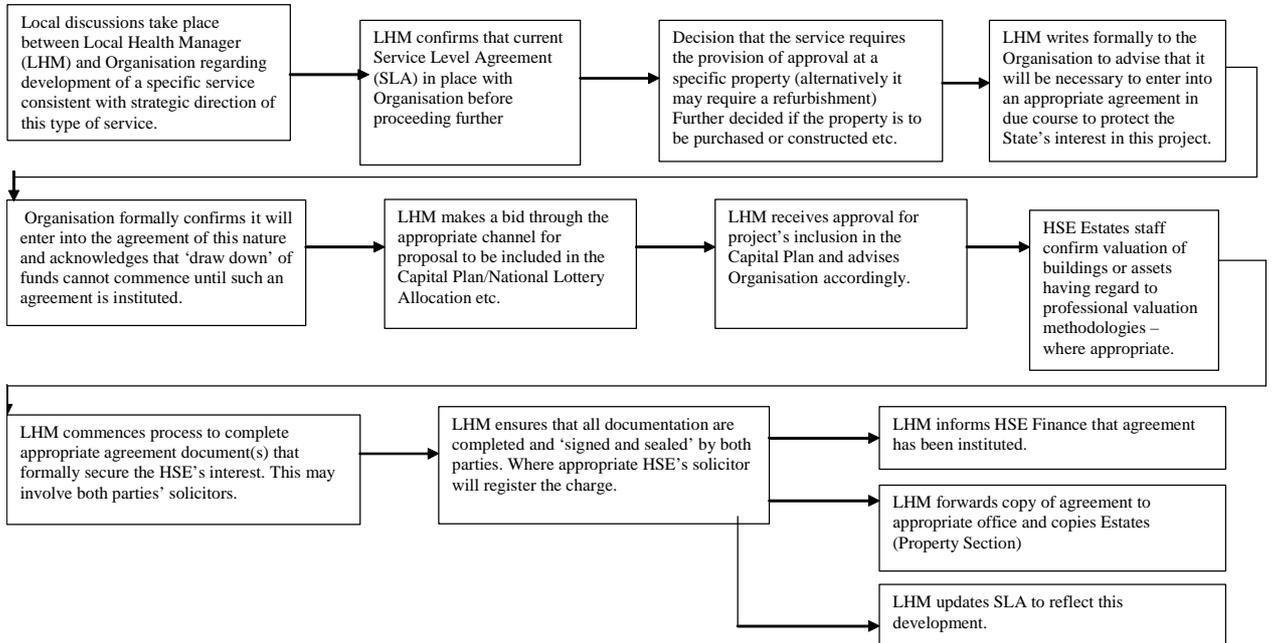
18.5.3. It is intended that this regulation will be regularly updated to reflect and incorporate new and additional legislative and other directives. Notifications will be issued on www.hse.ie and via email communications.

18.6. Effective Date

18.6.1. This regulation is effective immediately and supersedes all prior regulations / directives issued relating to protecting the HSE's interest. This regulation applies to all HSE employees.

18.7. Appendices

18.7.1. Appendix 1 – Protecting the HSE's Interest Procedures Flowchart



18.7.2. Appendix 2 – Summary of Arrangements for Each Asset Category

Description of Asset	Threshold	Protection afforded to HSE	Implication of default by Voluntary Service Provider	Documentation to be completed
Long term lease of land or buildings to grantee	€0	Lease agreement with regular rent reviews	Lease revocation	Lease agreement
Purchase of assets of enduring value (land & buildings)	€0	Charge in perpetuity	HSE to be re-imbursed the market value at date of sale	SLA which will include a Deed of Charge
Refurbishments over €200,000 (buildings)	€200,000+	Charge in perpetuity	If HSE only funded the extension to the building, it will be re-imbursed with a corresponding percent of the overall market value at date of sale	SLA which will include a Deed of Charge
Refurbishments under €200,000	€200,000 or less	Deed of Charge	HSE to be re-imbursed in respect of the original value of the grant provided to voluntary service provider	SLA which will include a Deed of Charge
Assets under €100,000 (including equipment, vehicles & ICT)	€100,000 or less	Letter of undertaking	HSE to be re-imbursed having regard to the depreciated value of the asset	Letter of undertaking
Assets (including equipment, vehicles & ICT) over €100,000	€100,001 or more	Deed of Charge	HSE to be re-imbursed having regard to the depreciated value of the asset	SLA which will include a Deed of Charge.

Note:

- It is anticipated that most equipment, vehicles and assets of an ICT nature would be included in the 'Assets under €100,000 category'.
- The 'assets over €100,000' category would include major refurbishment works, capital expenditure on lifts and other expenditure of a material nature but less than €200,000