**THE BETTER CARE FUND**

**TEMPLATE SECTION 75 PARTNERSHIP AGREEMENT (JUNE 2025)**

**GUIDANCE NOTE**

PURPOSE

* 1. This Guidance Note provides guidance on:
		1. the key features of a Section 75 Agreement, including in the Better Care Fund (**BCF**) context; and
		2. key points to consider when using the Template Section 75 Partnership Agreement for the Better Care Fund, published by NHS England alongside these notes (the **Template**)[[1]](#footnote-1).
	2. This Guidance Note does not constitute legal advice and we therefore strongly recommend that local authorities and ICBs (referred to as the **Partners** in the Template and in this Guidance Note) looking to enter into a Section 75 Agreement for any purpose, including using the Template, take their own legal advice before doing do.
	3. The Template:
		1. has been drafted so as to meet the requirements of section 75 of the NHS Act 2006 and the Better Care Fund as at June 2025. Subsequent changes in law or guidance after June 2025 may affect provisions in the Template and, again, the Partners should take specific legal advice to confirm the effect of any such changes on their arrangements; and
		2. includes footnotes explaining in further detail some of the issues to note in using the Template. This Guidance Note does not repeat those footnotes and Partner organisations looking to use the Template should read the footnotes carefully in adapting the Template for their own use.
	4. This Guidance Note sets out some basic information about section 75 agreements and the legislative requirements, before moving onto provide guidance on how to use the Template.
1. **SECTION 75 AGREEMENTS – SOME BASICS**
	1. Essentially, Section 75 provides a legal mechanism by which certain health and social care functions can be exercised in a more integrated way and budgets can be pooled to enable greater integration between health and social care. This is the mechanism through which ICBs and local authorities pool Better Care Fund funding in line with national directions from NHS England.
	2. Section 75 of the NHS Act 2006 enables NHS bodies and local authorities to enter into arrangements which allow:
		1. NHS bodies to carry out local authorities’ health-related functions alongside their NHS functions;
		2. local authorities to carry out NHS bodies’ NHS functions alongside their local authority health-related functions; and
		3. NHS bodies and local authorities to establish and maintain one or more pooled funds made up of contributions from the partners, and out of which payments may be made towards carrying out the functions that are within the scope of the arrangements.
	3. A pooled fund (sometimes referred to as a pooled budget) is a single fund that may be established by the NHS body and local authority Partners and is made up of contributions from each of the Partners. The pooled fund is then used to make payments towards expenditure incurred in the exercise of the functions which are the subject matter of the section 75 arrangements.
	4. It is a requirement of the Better Care Fund that Partners pool their designated minimum contribution (in the case of ICB Partners) and the Local Authority Better Care Fund Grant and Disabled Facilities Grant (in the case of local authority Partners). Partners are able to voluntarily pool additional funding through the BCF where they are assured that this represents value for money. Partners must be able to demonstrate through their BCF Plans that they will use the BCF funds allocated to them in line with the national conditions set by NHS England in the relevant year.
	5. The section 75 agreement documents the arrangements including the aims, accountabilities and responsibilities of the Partners, and financial and governance arrangements, as well as the BCF Plan agreed between the Partners.
	6. **Key legislation in respect of Section 75 Arrangements**

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| **Legislation** | **What it covers** |
| Section 75 of the National Health Service Act 2006 | * Permits local authorities and NHS bodies to enter into partnership arrangements for the exercise of:
* certain NHS functions (of NHS bodies) by local authorities; and
* certain health-related functions of local authorities by NHS bodies
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| NHS Bodies and Local Authority Partnerships 2000 SI 2000/617(the **Regulations**) | * Provides detail regarding:
* which bodies are able to enter into Section 75 arrangements;
* details to be recorded in Section 75 agreements;
* the functions which can be the subject of Section 75 arrangements.
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Which NHS bodies and local authorities can be a party to a Section 75 Agreement?

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| **NHS bodies** | **Local authorities** |
| * NHS England
* Integrated Care Boards
* NHS Trusts
* NHS Foundation Trusts
 | * District Councils
* County Councils
* County Borough Council
* a London borough council; and
* the Common Council of the City of London
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* 1. In the BCF context, the parties to the Section 75 Agreement will be Integrated Care Boards and their local authority partners.
	2. **Which functions can be the subject of a section 75 arrangement?**
		1. The Regulations set out the NHS functions (of NHS Bodies) and health-related functions (of Local Authorities) which can be the subject of section 75 arrangements. There are some functions of both NHS Bodies and Local Authorities which are expressly excluded and cannot be the subject of a section 75 agreement. Partners should always check the most up to date Regulations to confirm that the functions they wish to include in a section 75 agreement are capable of being included, and should obtain specific legal advice if necessary.
		2. The position as at June 2025 is as follows:

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| **NHS Functions** | **Health-Related Function (Local Authority)** |
| * Broad remit including:
	+ core commissioning functions of ICBs;
	+ core provisions of NHS Trusts and NHS FTs
* Key exclusions from section 75 arrangements, including:
	+ emergency ambulance services;
	+ general surgery
	+ radiotherapy
	+ termination of pregnancies
	+ endoscopy
	+ use of class 4 laser treatments
	+ any other invasive treatments
 | * Including:
	+ domiciliary social care;
	+ residential social care
	+ public health services (e.g drug services, sexual health, health visiting, school nursing)
* Key exclusion, including:
	+ adoption panels;
	+ inspection of children’s homes
	+ waste collection or waste disposal
	+ functions surrounding education for disabled children
	+ approval of mental health professional for purposes of the Mental Health Act 1983
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* 1. **What does the Section 75 Agreement need to specify?**
		1. The Regulations specify the details which must be recorded in Section 75 Agreements where the Partners have agreed to enter into pooled fund arrangements. These details include:
			1. agreed aims and outcomes of the arrangements;
			2. contributions of each of the parties to the fund and how they may be varied;
			3. NHS functions and health-related functions which are the subject of the agreement;
			4. persons in respect of whom and services in respect of which the functions may be exercised;
			5. staff, goods, services or accommodation to be provided by the parties;
			6. duration, review, variation and termination of the agreement;
			7. arrangements for management and monitoring by the host partner:
				1. specifying who will be the host partner and their responsibility for accounts and auditing and appointing; and
				2. specifying the pooled fund manager appointed by the host partner and the responsibility for quarterly financial reports and annual returns.
	2. **Are there any other conditions that need to be fulfilled to enter into a section 75 arrangement?**
		1. The arrangements must be likely to lead to an improvement in the way in which the functions are exercised.
		2. There is also a requirement to jointly consult people likely to be affected by the arrangements in the Regulations e.g. service users, carers, voluntary groups etc. Note however that this requirement does **not** apply to Better Care Fund arrangements where the Partners are directed by NHS England to pool funds.
1. **USING THE TEMPLATE SECTION 75 AGREEMENT**
	1. The Template comprises two main parts: the **main body** (containing the core contractual clauses) and the **schedules** (containing service / scheme specific information). The Template has been drafted so as to incorporate the details required under the Regulations (and noted at paragraph 2.10 above).
	2. The **main body** contains the core legal terms that apply broadly to the arrangements as a whole unless otherwise set out in the schedules. The main body includes standard contractual clauses such as the duration of the agreement, aims and objectives of the arrangements, financial framework, governance arrangements, dispute resolution provisions, termination provisions and liability clauses. These core legal clauses form the foundation of the agreement and will not in most cases require substantial amendment to be tailored to the specific arrangements.
	3. The **schedules**, in contrast, are used to capture the specific details in respect of each ‘scheme’ the Partners have agreed to bring within the scope of the arrangements. The Partners will need to complete the schedules according to their specific arrangements. The schedules include a template scheme specification (Schedule 1) which should be completed for each scheme is in scope of the arrangements, governance arrangements between the Partners (Schedule 2), financial arrangements including pooled fund(s) and risk sharing arrangements (Schedule 3) and template data sharing protocol (Schedule 8). The content of these schedules will vary according to local circumstances, but it is crucial that they are completed in detail so that the Partners are clear on the terms of the arrangements.
	4. It is possible to incorporate wider schemes into the Template which are outside of the BCF. Many Partners have already done this in existing BCF section 75 agreements. This is why there is reference to Non-Pooled Funds as well as Pooled Funds in the Template, so that the Partners may incorporate such schemes and Non-Pooled Funds as they agree.

**To assist users in completing the Template effectively, footnotes are provided within the Template itself. The footnotes provide guidance on the information to be incorporated, legal considerations, and drafting tips.**

1. [insert link to webpage] [↑](#footnote-ref-1)