



B-6

SECTION 38 & SECTION 39 ARRANGEMENTS



NATIONAL FINANCIAL REGULATIONS

Version 1.1.3

Effective 29 June 2023

This policy covers:

- guidance in relation to the HSE funding structure and how it relates to Section 38 and 39 agencies
- obligations of the HSE and Non-Statutory agencies

Ideally, you should read this document online, as we link to other guidelines you also need to know. Additional accessibility functions are also available such as the interactive Table of Contents where you can click on any section of the table and be brought directly to that content. While browsing the document, you can click the button at the bottom of the page at any time to return to the Table of Contents.

To help you take note of these links and other features of this policy, we use the icons below.

B-6 ICON SET

Highlighting Important Information



Download Form



Contact Details or Connection Point



Legal Reference

Who needs to read this policy?

The National Financial Regulations apply to all staff in all divisions, Community Healthcare Organisations (CHO) and Hospital Groups (HG) where services are provided on behalf of the HSE. This includes permanent, temporary and agency staff. Equivalent controls should also be implemented by Section 38 and Section 39 providers where services are being provided on behalf of the HSE or where HSE grant aid funding is being received.

How we keep the policy up to date – and how you can help

There is a change control process in place for the NFR documents to ensure they are kept up to date with current practice and guidelines. All change control requests, and feedback should be submitted using the [change control form](#).

If you have to create a local procedure document

If you are responsible for developing a local procedure document, you might find the following resources useful:

- the [key control checklist](#) on [page 15](#) as it lists required key controls which you must have in place
- a [sample local procedures template](#)

Frequently Asked Questions (FAQs)

You can find answers to some of the most common queries related to the NFRs on our [FAQs page](#) on the HSE website.

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At a Glance

| Document at a glance | |
|--|---|
| <ul style="list-style-type: none"> The HSE must have in place appropriate arrangements with non-statutory agencies as provided for under Section 38 and Section 39 of the Health Act 2004. Specifically, this document seeks to provide an explanation of the HSE's funding structure and relationship to Section 38 and Section 39 agencies. | |
| Key users | Key concepts |
| <ul style="list-style-type: none"> All HSE staff with responsibility for the management and administration of funding provided to agencies. All funded agencies are required to implement equivalent controls. | <ul style="list-style-type: none"> The Legal Framework Types of Service Arrangement Service Provider Governance (SPG) on-line. Performance Monitoring and Management Annual Compliance Requirements. |
| Key objectives of this document | Key relevant links |
| <ul style="list-style-type: none"> Set the respective obligations of both the HSE and the non-statutory agencies. Provide controls to support a standardised approach enabling consistency across these service relationships. The HSE must have in place appropriate contractual arrangements with all agencies that have funding released to them for the provision of services in accordance with Section 38 and 39 of the Health Act 2004. | <ul style="list-style-type: none"> Section 7(4)(a) Health Act 2004 Section 7(5)(a) Health Act 2004 Section 38(1) Health Act 2004 Section 39(1) Health Act 2004 Compliance Unit for operational guidelines and documentation. |
| Key contacts | |
| <ul style="list-style-type: none"> Controls Queries – Contact Governance and Compliance - govn.compliance@hse.ie Procurement Queries – Contact Procurement - procurement.helpdesk@hse.ie Compliance Queries – Contact Compliance Unit - compliance@hse.ie Finance Queries – Contact Annual Financial Statements – AFS-Team@hse.ie | |

1. Introduction

This document sets out guidance in relation to the HSE arrangements with non-statutory agencies as outlined in the [Section 38](#) and [Section 39](#) of the Health Act 2004.



This document applies to all HSE staff and external agencies in relation to the administration of funding provided to agencies. Compliance with the controls set out in this document will enable staff to meet their responsibilities.

It is important that you are aware of the key controls and procedures relevant to you and the support materials and contacts that are available to help you in your work.

We have included a [glossary of terms](#) and a table of [acronyms and abbreviations](#) on pages 13 and 14 respectively. You may find it helpful to refer to it as you read.

1.1 Overview

The [Health Act 2004](#) provides that the HSE may, subject to conditions, fund the services provided by non-statutory agencies.



This document sets out the policy framework to:

- set the respective obligations of both the HSE and the non-statutory agencies; and
- provide guidelines to support a standardised approach enabling consistency across these arrangements

Where the term “agency” is used within this document, it refers to a non-statutory organisation or body that receives funding from the HSE pursuant to Section 38 or Section 39 of the Health Act, 2004 as amended.

The detailed procedural guidance underpinning this policy is set out in the HSE Governance Framework Manual and should be referenced for practical and detailed guidance. To avail of a copy contact compliance@hse.ie.



1.2 Scope

This policy applies to the funding of the following services.

- HSE staff involved in the management and administration of health and personal social services and related funding provided by non-statutory agencies.
- All non-statutory agencies receiving funding from the HSE for the provision of personal health and social services. This includes voluntary, commercial, private and out of state agencies. This includes all funding sources including any special schemes where the HSE is the funder.

This policy does not apply to the following services.

- Commercial contracts such as cleaning, catering, agency staff services and taxi services. Any queries on the scope of this NFR should be referred to the [Compliance Unit](#).

For more, please see [Compliance Unit and documentation](#).



1.3 Legal framework (Health Act 2004)

The [Health Act 2004](#)



- [Section 7\(4\)\(a\)](#) states that the HSE “shall manage and shall deliver, or arrange to be delivered on its behalf, health and personal social services in accordance with this Act and shall (a) integrate the delivery of health and personal social services”
- [Section 7\(5\) \(a\)](#) states that the HSE in performing its functions “shall have regard to services provided by voluntary or other bodies that are similar or ancillary to services that it is authorised to provide.”
- Confers powers to the HSE to contract for provision of certain services as follows:

| Type of service under the Health Act 2004 | |
|---|---|
| <p>“Section 38” Funding arrangement:</p> <p>Arrangements with service providers</p> | <p>“The Executive may, subject to its available resources and any directions issued by the Minister under section 10, enter, on such terms and conditions as it considers appropriate, into an arrangement with a person for the provision of a health or personal social service by that person on behalf of the Executive.”</p> <p>Refer to Section 38 (1).</p> |
| <p>“Section 39” Funding Arrangement:</p> <p>Assistance for certain bodies</p> | <p>“The Executive may, subject to any directions given by the Minister under section 10 and on such terms and conditions as it sees fit to impose, give assistance to any person or body that provides or proposes to provide a service similar or ancillary to a service that the Executive may provide.”</p> <p>Refer to Section 39 (1).</p> |

General requirements

It is HSE policy that:

- all funding provided to non-statutory agencies for the provision of health and personal social services is managed under this regulation. This includes all funding sources including any special schemes where the HSE is the funder. For more, please see the most up to date [governance documents](#).
- **all funding is recorded on the [Service Provider Governance \(SPG\) System](#)**. This system is a database of agencies and funding arrangements.
- all funding and services are managed according to the [Performance and Accountability Framework](#)
- Grant Aid Agreements and Contract Change Notes are generated through the [SPG system](#)
- the deadline for completion of Service Arrangement and Grant Aid Agreement is the 28th of February each year
- for new and additional services commissioned after this deadline, the governance documentation must be completed prior to the payment of funding
- value for money is a key principle (more information is available in [NFR A- Internal Controls Framework and Principles](#)) and it requires that clarity exists in the Service Arrangement and Grant Aid Agreement
- the process of entering Service Arrangements complies fully with the expenditure provisions set out in [Section 1.4 Expenditure Bands and approval limits](#).
- first-time or expanded services may require a higher degree of oversight and approval
- HSE personnel should not be appointed as Directors of non-statutory agencies with which the HSE has a Service Arrangement or Grant Aid Agreement in place. This is due to the potential for conflicts of interest which may undermine the integrity of the service relationship. Please refer to [NFR A – Internal Control Environment](#) for further details.

1.4 Expenditure bands and approval limits

The following table outlines the approved thresholds to sign service arrangements or grant aid agreements.

| Voluntary/ For Profit funding released under a Service Arrangement and Grant Aid Agreement | |
|--|---------------------|
| Title | Financial Authority |
| Grade VIII | Up to €250k |
| General Managers | Up to €1m |
| Head of Service or Head of Function CHO, Hospital Group | Up to €3m |
| CEO Hospital Group Chief Officers CHO Assistant National Director | Up to €5m |
| National Director | Above €5m |

2. Governance process

The below table outlines what the governance process provides for the following arrangements. For further detail on the governance process, please refer to the HSE Governance Framework Manual.

| Governance process provides for the following: | |
|--|---|
| Section 38 Service Arrangements | <ul style="list-style-type: none"> Acute voluntary hospitals and non-acute voluntary agencies funded pursuant to Section 38(1) Health Act 2004. |
| Section 39 Service Arrangements | <ul style="list-style-type: none"> All non-acute voluntary agencies in receipt of funding over €250,000 pursuant to Section 39 of the Health Act 2004. It should be noted that some agencies in receipt of under €250,000 may at the discretion of the HSE, be managed by a Service Arrangement. |
| Section 39 Grant Aid Agreements | <ul style="list-style-type: none"> All non-acute voluntary agencies in receipt of funding less than €250,000 pursuant to Section 39 of the Health Act 2004. |



| | |
|-------------------------------------|--|
| | <ul style="list-style-type: none"> All Grant Aid Agreements are generated through the Service Provider Governance system. |
| National Lottery Funding | <ul style="list-style-type: none"> The National Lottery funding is the exception to this general rule with the governance requirements and Grant Aid Agreement being managed at application stage. For more see, HSE information on National Lottery funding. |
| Service Arrangements (Other) | <ul style="list-style-type: none"> Agencies in the commercial 'For Profit' sector regardless of funding level. All out of state arrangements with agencies regardless of their voluntary status. |
| Contract Change | <ul style="list-style-type: none"> The Change Control Note process allows for changes throughout the year for funding, services or both after the Governance documentation is signed. All Change Control Note documentation is generated through the SPG system. |

3. Performance monitoring and management

It is the policy of the HSE to ensure that a strong system of performance monitoring and management exists with agencies. This is a key control which enables the HSE to fulfil its statutory role in ensuring safe services of appropriate quality and value for money are delivered.

To enable this policy's effectiveness the following is required for each Service Arrangement and each Grant Aid Agreement where applicable:

- the existence of a detailed specification of services for the delivery of health and personal services; this should include a link back to the funding allocation
- a detailed review process to include:
 - submission of relevant documentation on a periodic basis
 - a schedule of review meetings for each year with a frequency that is appropriate

- The review process should ensure that:
 - the funding is monitored
 - the agency is aware the services must be delivered within the available funding allocation
 - no overruns will be accepted by the HSE unless they have been approved in advance and a Change Control Note is completed
- inspections (in certain circumstances where appropriate)
 - performance monitoring reports to examine variations from the Service Specification and assess the need for corrective action where appropriate

These performance monitoring arrangements should always be conducted in a context whereby it is understood that:

- the services are provided within, and only within, the amount of funding provided by the HSE; and
- the complexity and type of services that are being provided

4. Compliance requirements

An Annual Compliance Statement must be submitted by the voluntary agencies in receipt of over €3,000,000 in the previous year. This must be submitted by 31 May the following year.

Annual Financial Statements (AFS) must be submitted by all relevant funded agencies and be reviewed by the HSE. This must be submitted by 31 May the following year.

An Annual Financial Monitoring Return must be submitted by voluntary agencies where they are managed through a Service Arrangement. This must be submitted by 31 May the following year.

A Chairperson's Statement must be submitted by voluntary agencies managed through a Grant Aid Agreement. This must be submitted by 31 May the following year.

5. Audit

Please refer to [NFR A – Internal Controls Framework and Principles](#) for important audit requirements.

6. Protecting the HSE’s interests

Under the provisions of the [Health Act 2004](#), the HSE may enter into agreements with and provide funding to voluntary agencies (section 38 and 39 organisations) to deliver services on its behalf. This includes capital funding, such as for buildings, grants, motor vehicles, and ICT or other equipment.



The HSE is accountable to the Oireachtas for all expenditure using public funds, including any funds allocated to voluntary agencies. The HSE must ensure that the State’s interest is protected in respect of all funding provided to voluntary agencies for investment in their asset base. This is done by ensuring:

- retention of funded assets within the Healthcare system, that is, continued use of the asset for health purposes, personal social services purpose or both
- for assets which do not have long term 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 (for example, considering the effect of depreciation)
- for assets which have enduring value, provision of funding is secured against the asset and recycled back into the health system, personal social services system or both in the event of the sale or disposal of the asset or in the case of liquidation or examinership

For further detail on specific procedures regarding Land or Buildings and Grants, see [NFR B-7 – Property and Equipment](#)

7. Irregularities, whistleblowing and fraud

HSE staff must not engage in or be in any way associated with fraudulent or unlawful behaviour.

Any member of staff who considers that there may have been an irregularity that could lead to a misappropriation of funds or fraud should refer to the Whistleblowing and Fraud section of [NFR A – Internal Controls Framework and Principles](#) to report serious matters under the [Protected Disclosures Act 2014](#). This act aims to protect staff who raise concerns about possible wrongdoing in the workplace such as financial fraud.



Please also refer to the [HSE Fraud Policy](#).

8. Glossary of terms

| Term | Meaning |
|--------------------------|---|
| Asset Base | The total assets owned by an organisation which underlie various financial activities or operations, especially those assets on which an organisation draws or depends for its operation. |
| For Profit Sector | An organisation in the 'For Profit' sector is one which aims to earn profit through its operations and is concerned with its own interests. |

9. Acronyms and abbreviations

| Term | Meaning |
|------------|-----------------------------|
| AFS | Annual Financial Statements |
| HR | Human Resources |
| SPG | Service Provider Governance |

10. Key control checklist

Please click the icon below to view the B-6 key control checklist.

