

## Chancellor allows only restricted freedom for foundation hospitals

Nicholas Timmins *London*

Last week's settlement over the creation of foundation hospitals in England, the subject of a prolonged dispute between Gordon Brown, the chancellor, and the health secretary, Alan Milburn, might be described as a draw—if one was being charitable to Mr Milburn. But it is plain that the chancellor conceded little.

Mr Milburn got his desire for foundation hospitals to be created as independent, non-profit distributing, public interest companies—outside the NHS, in the sense that their assets will no longer be owned by the secretary of state.

These hospitals will also be able to borrow both publicly and privately to improve services. But the chancellor triumphed in his insistence that the borrowing will be on the government's balance sheet and that it will come off the departmental expenditure limits that the Treasury has already set for the NHS up to April 2008. In effect, therefore, any borrowing they undertake will come at the

expense of other NHS funds and lead to no more expenditure than under existing plans.

Mr Milburn and his supporters in the prime minister's office plainly hope to reopen that issue in the next spending round—negotiations on which begin in two years' time. They also hope that, as foundation hospitals prove themselves, they will be able to move off the government's balance sheet. But the Treasury at present is having none of that. It maintains that for as long as the hospitals treat chiefly NHS patients, the hospitals will stay on balance sheet with their borrowing ultimately controlled.

Further details of what foundation hospitals involve should become clearer later this month when a two day meeting is to be held for three star NHS trusts—from which the first of the new hospitals will be drawn. But managers and doctors will be asking precisely what extra freedoms the new status will provide compared with those that NHS



Gordon Brown (centre) triumphed over Alan Milburn (left) by ensuring that borrowing would come under departmental expenditure limits

trusts, at least in theory, have enjoyed since 1991.

The foundation hospitals will have a new independent status. They will have new borrowing rights, although subject to "prudential limits" set by a new regulator. But otherwise their freedoms—for example, to own and dispose of their own assets and to set pay and conditions—look little different from those that NHS trusts have had on paper, even if trusts have proved

largely unable, or unwilling, to exercise them.

Much will depend on the terms of the "licence" that the new hospitals are given, the precise nature of their supervisory councils, and the role and remit of the new regulator—none of which will become clear until the parliamentary bill to create them is published. □

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## "Primary purpose" of foundation hospitals is to treat NHS patients

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### What will a foundation hospital be?

It will be a new form of non-profit distributing public interest company, limited by guarantee, and independent of Whitehall control. It will have a "stakeholder council," likely to be about 30 strong, which will include patients, locally elected residents, NHS staff, and representatives of local primary care trusts, the NHS purchasers. This council will appoint the management board.

### What freedoms will foundation hospitals have?

They will manage their own assets, retain surpluses, and decide their own pay and conditions. Their licence will specify that their "primary purpose" is to treat NHS patients—on the basis of clinical need, not ability to pay.

They will be subject to a regulator, modelled more on the

lines of the Housing Corporation, which oversees the financial health of housing associations, rather than industry regulators such as Ofgem (Office of the Gas and Electricity Markets) that can control prices and rates of return. On current plans, however, they will be able to set up unregulated subsidiaries to provide extras such as staff accommodation, car parking, pathology or radiology services, and joint ventures (for example, with universities and drug companies) to exploit intellectual property.

**Will they treat private patients?** Current thinking is that the proportion of their income from private patients will be capped at the level it is at when they become a foundation hospital—a possible incentive for them to increase their private patient business in the run-up to

foundation status. Thereafter they would have to make a case to the regulator that any increase in private patients would not undermine their treatment of NHS patients.

### Who will appoint the regulator?

It could be the health department, parliament, or even the Treasury. This is one of the many important details still to be settled.

### Will foundation hospitals be able to borrow?

Yes, both publicly and privately. But private borrowing will only be up to a "prudential limit" decided by the regulator on the ability of the hospital to service the debt. A "lock" on their "core" assets means that banks would not be able to take their buildings as security or to turn them into a private hospital or hotel if the hospital failed.

### What is the impact on the public finances?

None, initially. Any borrowing will be taken off the health department's already agreed departmental expenditure limit, certainly up to 2005-6 and in the Treasury's view up to April 2008.

This implies that private sector borrowing by foundation trusts will come at the expense of funds available to other NHS trusts.

Beyond the current spending round, disagreement remains between the Treasury, the health department, and Downing Street over how the borrowing will be compiled and treated.

### What happens if a foundation hospital goes bust?

The regulator could replace the board and the chief executive or get another foundation trust to take it over. In the last analysis, the assets would revert to the secretary of state. The Treasury would have to stand behind the debt, but whether it would repay all of it or some of it—thus ensuring that the private sector took the risk—has still to be settled.

### When will foundation trusts come into existence?

Subject to legislation, they will be created in April 2004, drawn from the best performing NHS trusts. □

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