

# HEALTH AND SOCIAL CARE ACT 2001

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3: Care Trusts and Partnership Arrangements**

##### ***Sections 45 -47: Care Trusts and directed partnership arrangements***

217. *Section 45* provides for the designation of Primary Care Trusts (PCTs) and NHS trusts as Care Trusts in cases where they have local authority health-related functions delegated to them by agreement. The Care Trust will then be able to commission and/or provide integrated services covering health, social services and other health-related local authority functions. Designation as a Care Trust will lead to a change in governance arrangements so that local authority interests are duly represented within the governance structures of the Care Trust. Care Trusts are intended to provide for a high level of integration between health and local authority services enabling patients' needs to be addressed holistically, the synergies of joint working to be exploited and patients to benefit from a seamless provision of their care needs.
218. Care Trust status will be conferred where an application is made to the Secretary of State or the National Assembly for Wales jointly by the NHS bodies and local authorities involved. Under *section 46*, partnership arrangements will have to be set up where the Secretary of State or the National Assembly for Wales directs that partnership arrangements are to be entered in to in order to address the inadequate performance of an NHS body or of a local authorities social services functions .

##### ***Section 45: Care Trusts where voluntary arrangements***

219. *Section 45* provides for the designation of a PCT or NHS trust as a Care Trust following an application to the Secretary of State or the National Assembly for Wales by the partners in the proposed Care Trust.
220. *Subsection (1)* provides that the Secretary of State or the National Assembly for Wales may designate a PCT or NHS trust that is, or is to be, party to local authority delegation arrangements as a Care Trust. *Subsection (1)(b)* requires the Secretary of State or the National Assembly for Wales to be of the opinion that Care Trust status is likely to promote the effective exercise by the trust of any delegated health-related functions of the local authority alongside the trust's existing NHS functions. This reflects the main aim of a Care Trust which is to improve services through effective integration of NHS and local authority services.
221. *Subsection (2)* sets out the voluntary nature of this approach to forming a Care Trust. The Secretary of State or the National Assembly for Wales will only be able to designate a Care Trust following a joint application by the local partners. The NHS partner could be a PCT, NHS trust or Health Authority, where a Care Trust is to be based on an existing Primary Care Group (see paragraph 225 below). Regulations will define the detailed arrangements for the applications. This will enable the arrangements for the different NHS partners to be specified, and allow regulations to be made governing the

formation of a Care Trust where more than one local authority or health body has an interest.

222. *Subsection (3)* enables the Secretary of State or the National Assembly for Wales to direct that where a Care Trust is exercising health-related functions of a local authority alongside its NHS functions, it may exercise health-related functions of that local authority in relation to people for whom it does not exercise NHS functions. The intention is that the NHS and local authority health-related functions of the Care Trust should be exercised together as far as possible in order to provide integrated services. This flexibility will be required to cope with the different populations covered by local authorities and health bodies. A Care Trust may have responsibility for only NHS or only local authority health-related functions for some sections of the population.
223. *Subsection (4)* enables the designation of a Care Trust to be revoked by the Secretary of State or the National Assembly for Wales. This may be of the Secretary of State's or National Assembly for Wales's own motion (after consultation) or following an application by one or more of the parties. In the latter case, the Secretary of State or the National Assembly for Wales must revoke the designation at the earliest time considered appropriate having regard to the steps that need to be taken in connection with the revocation.
224. *Subsection (5)* provides for the Secretary of State or the National Assembly for Wales to designate a body as a Care Trust by order, either amending the establishment order of an existing PCT or NHS trust, or by creating a new PCT or NHS trust. A new body will be created where a Care Trust is to be formed from a partnership between a local authority and a Primary Care Group.
225. *Subsection (6)* contains provisions which enable the Secretary of State or the National Assembly for Wales to dissolve existing PCTs or NHS trusts where they think it is appropriate to do so in connection with the designation of another body as a Care Trust. *Subsection (7)* enables the Secretary of State or the National Assembly for Wales to make regulations dealing with matters which are consequential or supplementary to the formation of Care Trusts and the revocation of the designation of such trusts. *Subsection (8)* sets out particular circumstances for which such regulations may make provision. These include:
- (a) the process for applying for Care Trust status, the information to be supplied and the criteria to be met; and
  - (b) the governance arrangements for a Care Trust. The intention is to include local authority members on the boards of Care Trusts and to increase the representation of social services professionals within the governance arrangements for a Care Trust.
226. *Subsection (9)* explains that the designation of a PCT or a NHS trust as a Care Trust will not affect its functions, rights or liabilities as a PCT or NHS trust.
227. *Subsection (10)* provides that where an NHS body is to exercise social services functions as a Care Trust, it must act in accordance with directions and guidance from the Secretary of State or the National Assembly for Wales under certain powers relating to social services functions.

***Sections 46 and 47: Directed partnership arrangements and further provisions about directions in connection with such arrangements and Care Trusts.***

228. *Section 46* provides a power for the Secretary of State or National Assembly for Wales to require local authorities and NHS bodies to enter into partnership arrangements and/or pooled funding arrangements.
229. *Subsection (1)* provides the power for the Secretary of State or the National Assembly for Wales to direct local authorities and NHS bodies to enter into delegation

arrangements or pooled fund arrangements. The details of the arrangements are to be specified in the direction. *Subsection (1)(a)* limits the use of this power to circumstances where a local authority or NHS body is failing to deliver its functions adequately, and *subsection (1)(b)* further limits the use of the power to circumstances where the Secretary of State or the National Assembly for Wales is of the opinion that a delegation or pooled fund arrangement would be likely to improve the delivery of the failing function .

230. *Subsection (2)* provides that the directed partnership arrangements may cover not only the function which is being delivered inadequately but also other functions exercised by the same body where this would be likely to contribute to an improvement in the delivery of the failing function.
231. *Subsection (3)* sets out that the power to direct bodies to enter into delegation or pooled fund arrangements applies to NHS bodies and local authorities. In the case of local authorities, these powers can only be triggered by a failure to perform their social services functions adequately. As far as the NHS is concerned, the powers of direction relate to functions prescribed for the purposes of partnership arrangements under section 31 of the Health Act 1999 (see the [NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000, SI 2000/617](#)).
232. *Subsection (4)* makes it clear that an improvement in the way in which a function is exercised includes improvement of services to individuals.
233. *Section 47* contains further provisions relating to the Secretary of State's and the National Assembly for Wales' powers to give directions given under sections 45 and 46. *Subsection (1)* enables directions under section 46 to deal with matters which are required to be dealt with by virtue of regulations made under section 31 of the Health Act 1999. The partnership arrangements authorised by the Health Act 1999 are first, pooled fund arrangements, whereby NHS bodies and local authorities contribute to a communal pot so that the money is neither health nor local authority money and is used to purchase integrated services; secondly, arrangements whereby a local authority can delegate its health-related functions to an NHS body; and thirdly, arrangements whereby an NHS body can delegate its functions to a local authority. *Subsection (3)* makes it possible for the Secretary of State and the National Assembly for Wales to issue directions to other NHS bodies and local authorities in connection with the principal direction.
234. *Subsection (4)* makes it possible for the Secretary of State or the National Assembly for Wales to give directions requiring bodies to take such steps as are appropriate to enable a decision to be made about whether a direction under *section 46* should be made.
235. *Subsections (5) and (6)* make it clear that directions have to be given in writing, that they can be revoked by further directions and that they must be adhered to.
236. *Subsection (7)* provides that where a direction is revoked any arrangements required by the direction may continue.

#### ***Section 48: Transfer of staff in connection with partnership arrangements***

237. *Section 48* inserts into the Health Act 1999 a new Schedule 2A, set out as *schedule 4* to this Act. The new Schedule makes provision for the transfer of staff where any functions of a body are to be exercised by another body under section 31 of the Health Act (including where Care Trusts are established under section 45 of this Act). The Schedule enables staff transfer orders to be made which make the same provision as the [Transfer of Undertakings Regulations 1981 \(S.I. 1981/1794\)](#) ("the TUPE Regulations"). This is necessary because there is some doubt as whether the TUPE Regulations apply to transfers of functions in the public sector. Currently the TUPE Regulations exclude pensions, although the Acquired Rights Directive (which the TUPE Regulations implement) has just been amended to enable Member States

*These notes refer to the Health and Social Care Act 2001  
(c.15) which received Royal Assent on 11 May 2001*

to include pension provision. Orders under the new Schedule include the transfer of pension provision except in so far as the Order makes provision under paragraph 4 of the Schedule. This is so that the flexibility for Member States to make provision about pensions where the Acquired Rights Directive applies is also available in the case of staff transfers arising from partnership arrangements under section 31 of the 1999 Act.