

*These notes refer to the Health Act 2009 (c.21)
which received Royal Assent on 12 November 2009*

HEALTH ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Miscellaneous

Private patient income

Section 33: Private patient income of mental health foundation trusts

317. **Section 33** amends section 44 of the NHS Act (private health care). Section 44(1) provides for the authorisation of an NHS foundation trust to restrict the provision for purposes other than those of the health service of goods and services by the trust. In the case of a foundation trust that is a former NHS trust, section 44(2) requires the authorisation in particular to restrict the proportion of the trust's total income that may be derived from private charges (defined by section 44(4)). The effect of the amendment made by *subsection (2)* is that an NHS foundation trust designated as a mental health foundation trust may under section 44(2) be permitted to earn up to 1.5% of its total income in each financial year from income derived from private charges. The effect of new subsection (2A) of section 44 inserted by *subsection (3)* is that an authorisation containing a restriction under section 44(2) must designate the NHS foundation trust as a mental health foundation trust for the purposes of section 44 if it appears to Monitor that it provides goods or services relating to mental health as described in new subsection (2A).