

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – NHS foundation trusts and NHS trusts

Governance and management

Section 152 – Directors

1000. This section specifies some of the duties on directors of foundation trusts. *Subsection (1)*, by amending Schedule 7 to the NHS Act, places a general duty on the directors to promote the success of the trust.
1001. *Subsections (2) and (3)* set out the specific ways in which duties to avoid conflicts of interest, to declare any interest in a proposed transaction and not to accept benefits from third parties apply in relation to foundation trust directors. By virtue of their office in public sector organisations, directors are subject to certain duties that reflect administrative law principles. These are similar to specific duties on directors of other organisations, such as those on company directors which are set out in the Companies Act 2006. These general duties include, among others, a duty to act within their legal powers, a duty only to exercise their powers for the purposes of which they are conferred, a duty to exercise reasonable care, skill and diligence; and a duty to act in accordance with the constitution of the organisation. However, in relation to conflicts of interest and accepting benefits, the Act specifies the ways in which these duties apply to foundation trust directors. This creates certain exceptions to administrative law principles, for example by permitting a conflict of interest if sanctioned in accordance with the trust's constitution.
1002. To ensure that governors of foundation trusts have the information they require to discharge their duties, *subsection (4)* requires directors to send their governors agendas for, and minutes of, their meetings. *Subsection (5)* requires the foundation trust's constitution to provide for meetings of the board of directors to be held in public, so that governors and through them members and the public may better scrutinise the board's decisions. Provision is also made here for the board of directors to have a closed part of the meeting for specific reasons (for example, to discuss confidential and sensitive matters).