



National Health Service and Community Care Act 1990

1990 CHAPTER 19

PART I

THE NATIONAL HEALTH SERVICE: ENGLAND AND WALES

National Health Service trusts

5 NHS trusts

- (1) Subject to subsection (2) or, as the case may be, subsection (3) below the Secretary of State may by order establish bodies, to be known as National Health Service trusts (in this Act referred to as NHS trusts),—
- (a) to assume responsibility, in accordance with this Act, for the ownership and management of hospitals or other establishments or facilities which were previously managed or provided by Regional, District or Special Health Authorities; or
 - (b) to provide and manage hospitals or other establishments or facilities.
- (2) In any case where the Secretary of State is considering whether to make an order under subsection (1) above establishing an NHS trust and the hospital, establishment or facility concerned is or is to be situated in England, he shall direct the relevant Regional Health Authority to consult, with respect to the proposal to establish the trust,—
- (a) the relevant Community Health Council and such other persons or bodies as may be specified in the direction; and
 - (b) such other persons or bodies as the Authority considers appropriate;
- and, within such period (if any) as the Secretary of State may determine, the relevant Regional Health Authority shall report the results of those consultations to the Secretary of State.

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- (3) In any case where the Secretary of State is considering whether to make an order under subsection (1) above establishing an NHS trust and the hospital, establishment or facility concerned is or is to be situated in Wales, he shall consult the relevant Community Health Council and such other persons and bodies as he considers appropriate.
- (4) In subsections (2) and (3) above—
- (a) any reference to the relevant Regional Health Authority is a reference to that Authority in whose region the hospital, establishment or other facility concerned is, or is to be, situated; and
 - (b) any reference to the relevant Community Health Council is a reference to the Council for the district, or part of the district, in which that hospital, establishment or other facility is, or is to be, situated.
- (5) Every NHS trust—
- (a) shall be a body corporate having a board of directors consisting of a chairman appointed by the Secretary of State and, subject to paragraph 5(2) of Schedule 2 to this Act, executive and non-executive directors (that is to say, directors who, subject to subsection (7) below, respectively are and are not employees of the trust); and
 - (b) shall have the functions conferred on it by an order under subsection (1) above and by Schedule 2 to this Act.
- (6) The functions specified in an order under subsection (1) above shall include such functions as the Secretary of State considers appropriate in relation to the provision of services by the trust for one or more health authorities.
- (7) The Secretary of State may by regulations make general provision with respect to—
- (a) the qualifications for and the tenure of office of the chairman and directors of an NHS trust (including the circumstances in which they shall cease to hold, or may be removed from, office or may be suspended from performing the functions of the office);
 - (b) the persons by whom the directors and any of the officers are to be appointed and the manner of their appointment;
 - (c) the maximum and minimum numbers of the directors;
 - (d) the circumstances in which a person who is not an employee of the trust is nevertheless, on appointment as a director, to be regarded as an executive rather than a non-executive director;
 - (e) the proceedings of the trust (including the validation of proceedings in the event of a vacancy or defect in appointment); and
 - (f) the appointment, constitution and exercise of functions by committees and sub-committees of the trust (whether or not consisting of or including any members of the board) and, without prejudice to the generality of the power, any such regulations, may make provision to deal with cases where the post of any officer of an NHS trust is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.
- (8) Part I of Schedule 2 to this Act shall have effect with respect to orders under subsection (1) above; Part II of that Schedule shall have effect, subject to subsection (9) below, with respect to the general duties and the powers and status of NHS trusts; the

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supplementary provisions of Part III of that Schedule shall have effect; and Part IV of that Schedule shall have effect with respect to the dissolution of NHS trusts.

- (9) The specific powers conferred by paragraphs 14 and 15 in Part II of Schedule 2 to this Act may be exercised only to the extent that—
- (a) the exercise will not interfere with the duties of the trust to comply with directions under paragraph 6 of that Schedule; and
 - (b) the exercise will not to any significant extent interfere with the performance by the trust of its obligations under any NHS contract or any obligations imposed by an order under subsection (1) above.
- (10) The Secretary of State may by order made by statutory instrument confer on NHS trusts specific powers additional to those contained in paragraphs 10 to 15 of Schedule 2 to this Act.

6 Transfer of staff to NHS trusts

- (1) Subject to subsection (5) below, this section applies to any person who, immediately before an NHS trust's operational date—
- (a) is employed by a health authority to work solely at, or for the purposes of, a hospital or other establishment or facility which is to become the responsibility of the trust; or
 - (b) is employed by a health authority to work at, or for the purposes of, such a hospital, establishment or facility and is designated for the purposes of this section by a scheme made by the health authority specified as mentioned in paragraph 3(1)(f) of Schedule 2 to this Act.
- (2) A scheme under this section shall not have effect unless approved by the Secretary of State.
- (3) Subject to section 7 below, the contract of employment between a person to whom this section applies and the health authority by whom he is employed shall have effect from the operational date as if originally made between him and the NHS trust.
- (4) Without prejudice to subsection (3) above—
- (a) all the health authority's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the NHS trust on its operational date; and
 - (b) anything done before that date by or in relation to the health authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the NHS trust.
- (5) In any case where—
- (a) an order under section 5(1) above provides for the establishment of an NHS trust with effect from a date earlier than the operational date of the trust, and
 - (b) on or after that earlier date but before its operational date the NHS trust makes an offer of employment by the trust to a person who at that time is employed by a health authority to work (whether solely or otherwise) at, or for the purposes of, the hospital or other establishment or facility which is to become the responsibility of the trust, and
 - (c) as a result of the acceptance of the offer, the person to whom it was made becomes an employee of the NHS trust,

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subsections (3) and (4) above shall have effect in relation to that person's contract of employment as if he were a person to whom this section applies and any reference in those subsections to the operational date of the trust were a reference to the date on which he takes up employment with the trust.

- (6) Subsections (3) and (4) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only of the change in employer effected by this section.
- (7) A scheme under this section may designate a person either individually or as a member of a class or description of employees.

7 **Supplementary provisions as to transfer of staff**

- (1) In the case of a person who falls within section 6(1)(b) above, a scheme under that section may provide that, with effect from the NHS trust's operational date, his contract of employment (in this section referred to as "his original contract") shall be treated in accordance with the scheme as divided so as to constitute—
 - (a) a contract of employment with the NHS trust; and
 - (b) a contract of employment with the health authority by whom he was employed before that date (in this section referred to as "the transferor authority").
- (2) Where a scheme makes provision as mentioned in subsection (1) above,—
 - (a) the scheme shall secure that the benefits to the employee under the two contracts referred to in that subsection, when taken together, are not less favourable than the benefits under his original contract;
 - (b) section 6 above shall apply in relation to the contract referred to in subsection (1)(a) above as if it were a contract transferred under that section from the transferor authority to the NHS trust;
 - (c) so far as necessary to preserve any rights and obligations, the contract referred to in subsection (1)(b) above shall be regarded as a continuation of the employee's original contract; and
 - (d) for the purposes of section 146 of and Schedule 13 to the Employment Protection (Consolidation) Act 1978, the number of hours normally worked, or, as the case may be, the hours for which the employee is employed in any week under either of those contracts shall be taken to be the total of the hours normally worked or, as the case may be, for which he is employed under the two contracts taken together.
- (3) Where, as a result of the provisions of section 6 above, by virtue of his employment during any period after the operational date of the NHS trust,—
 - (a) an employee has contractual rights against an NHS trust to benefits in the event of his redundancy, and
 - (b) he also has statutory rights against the trust under Part VI of the Employment Protection (Consolidation) Act 1978 (redundancy payments),
 any benefits provided to him by virtue of the contractual rights referred to in paragraph (a) above shall be taken as satisfying his entitlement to benefits under the said Part VI.

8 Transfer of property, rights and liabilities to NHS trust

- (1) The Secretary of State may by order transfer or provide for the transfer to an NHS trust, with effect from such date as may be specified in the order, of such of the property, rights and liabilities of a health authority or of the Secretary of State as, in his opinion, need to be transferred to the trust for the purpose of enabling it to carry out its functions.
- (2) An order under this section may create or impose such new rights or liabilities in respect of what is transferred or what is retained by a health authority or the Secretary of State as appear to him to be necessary or expedient.
- (3) Nothing in this section affects the power of the Secretary of State or any power of a health authority to transfer property, rights or liabilities to an NHS trust otherwise than under subsection (1) above.
- (4) Stamp duty shall not be chargeable in respect of any transfer to an NHS trust effected by or by virtue of an order under this section.
- (5) Where an order under this section provides for the transfer—
 - (a) of land held on lease from a third party, that is to say, a person other than the Secretary of State or a health authority, or
 - (b) of any other asset leased or hired from a third party or in which a third party has an interest,the transfer shall be binding on the third party notwithstanding that, apart from this subsection, it would have required his consent or concurrence.
- (6) Any property, rights and liabilities which are to be transferred to an NHS trust shall be identified by agreement between the trust and a health authority or, in default of agreement, by direction of the Secretary of State.
- (7) Where, for the purpose of a transfer pursuant to an order under this section, it becomes necessary to apportion any property, rights or liabilities, the order may contain such provisions as appear to the Secretary of State to be appropriate for the purpose; and where any such property or rights fall within subsection (5) above, the order shall contain such provisions as appear to the Secretary of State to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.
- (8) In the case of any transfer made by or pursuant to an order under this section, a certificate issued by the Secretary of State that any property specified in the certificate or any such interest in or right over any such property as may be so specified, or any right or liability so specified, is vested in the NHS trust specified in the order shall be conclusive evidence of that fact for all purposes.
- (9) Without prejudice to subsection (4) of section 126 of the principal Act, an order under this section may include provision for matters to be settled by arbitration by a person determined in accordance with the order.

9 Originating capital debt of, and other financial provisions relating to NHS trusts

- (1) Each NHS trust shall have an originating capital debt of an amount specified in an order made by the Secretary of State, being an amount representing, subject to subsection (2) below, the excess of the valuation of the assets which, on or in connection with the establishment of the trust, are or are to be transferred to it (whether

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before, on or after its operational date) over the amounts of the liabilities which are or are to be so transferred.

- (2) In determining the originating capital debt of an NHS trust, there shall be left out of account such assets or, as the case may be, liabilities as are, or are of a class, determined for the purposes of this section by the Secretary of State, with the consent of the Treasury.
- (3) An NHS trust's originating capital debt shall be deemed to have been issued out of moneys provided by Parliament and shall constitute an asset of the Consolidated Fund.
- (4) In accordance with an order under subsection (1) above, an NHS trust's originating capital debt shall be divided between—
 - (a) a loan on which interest shall be paid at such variable or fixed rates and at such times as the Treasury may determine; and
 - (b) public dividend capital.
- (5) The loan specified in subsection (4)(a) above is in this Part of this Act referred to as an NHS trust's "initial loan" and a rate of interest on the initial loan shall be determined as if section 5 of the National Loans Act 1968 had effect in respect of it and subsections (5) to (5B) of that section shall apply accordingly.
- (6) Subject to subsections (4)(a) and (5) above, the terms of the initial loan shall be such as the Secretary of State, with the consent of the Treasury, may determine; and, in the event of the early repayment of the initial loan, the terms may require the payment of a premium or allow a discount.
- (7) With the consent of the Treasury, the Secretary of State may determine the terms on which any public dividend capital forming part of an NHS trust's originating capital debt is to be treated as having been issued, and, in particular, may determine the dividend which is to be payable at any time on any public dividend capital.
- (8) An order under subsection (1) above shall be made—
 - (a) with the consent of the Treasury; and
 - (b) by statutory instrument.
- (9) Schedule 3 to this Act shall have effect with respect to—
 - (a) borrowing by NHS trusts;
 - (b) the limits on their indebtedness;
 - (c) the payment of additional public dividend capital to them; and
 - (d) the application of any surplus funds of NHS trusts.

10 Financial obligations of NHS trusts

- (1) Every NHS trust shall ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account.
- (2) It shall be the duty of every NHS trust to achieve such financial objectives as may from time to time be set by the Secretary of State with the consent of the Treasury and as are applicable to it; and any such objectives may be made applicable to NHS trusts generally, or to a particular NHS trust or to NHS trusts of a particular description.

11 Trust funds and trustees for NHS trusts

- (1) The Secretary of State may by order made by statutory instrument provide for the appointment of trustees for an NHS trust; and any trustees so appointed shall have power to accept, hold and administer any property on trust for the general or any specific purposes of the NHS trust (including the purposes of any specific hospital or other establishment or facility which is owned and managed by the trust) or for all or any purposes relating to the health service.
- (2) An order under subsection (1) above may—
 - (a) make provision as to the persons by whom trustees are to be appointed and generally as to the method of their appointment;
 - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State);
 - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate; and
 - (d) make provision with respect to the term of office of any trustee and his removal from office.
- (3) Where, under subsection (1) above, trustees have been appointed for an NHS trust, the Secretary of State may by order made by statutory instrument provide for the transfer of any trust property from the NHS trust to the trustees so appointed.
- (4) In section 91 of the principal Act (private trusts for hospitals) in subsection (3) (definition of “the appropriate hospital authority”) after paragraph (a) there shall be inserted the following paragraphs—
 - “(aa) where the hospital is owned and managed by an NHS trust and trustees have been appointed for the NHS trust, those trustees;
 - (ab) where the hospital is owned and managed by an NHS trust and neither paragraph (a) nor paragraph (aa) above applies, the NHS trust;”.
- (5) In section 92 of the principal Act (further transfers of trust property)—
 - (a) in subsection (1) after the word “hospital” there shall be inserted “or other establishment or facility” and for the words “or special trustees”, in each place where they occur, there shall be substituted “NHS trust, special trustees or trustees for an NHS trust”;
 - (b) in subsections (2) to (4), after the word “authorities”, in each place where it occurs, there shall be inserted “or NHS trusts”;
 - (c) in subsection (2) after the word “authority”, there shall be inserted “or NHS trust”; and
 - (d) at the end of the section there shall be added the following subsection—
 - “(6) If it appears to the Secretary of State at any time that—
 - (a) the functions of any special trustees should be discharged by the trustees for an NHS trust, or
 - (b) the functions of the trustees for an NHS trust should be discharged by special trustees,then, whether or not there has been any such change as is mentioned in subsection (1) above, he may, after consulting the special trustees and the trustees for the NHS trust, by order provide for the transfer of

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all trust property from or to the special trustees to or from the trustees for the NHS trust.”

- (6) In section 96 of the principal Act (trusts: supplementary provisions)—
- (a) any reference to sections 90 to 95 of the principal Act includes a reference to subsections (1) to (3) above; and
 - (b) after subsection (1) there shall be inserted the following subsection—

“(1A) Where any transfer of property by virtue of those sections is of, or includes,—

 - (a) land held on lease from a third party, that is to say, a person other than the Secretary of State or a health authority, or
 - (b) any other asset leased or hired from a third party or in which a third party has an interest,

the transfer shall be binding on the third party notwithstanding that, apart from this subsection, it would have required his consent or concurrence.”
- (7) In section 98(1) of the principal Act (accounts and audit) after paragraph (d) there shall be inserted—
- “(dd) any trustees for an NHS trust appointed in pursuance of section 11 of the National Health Service and Community Care Act 1990; and”.