

HEALTH ACT 2006

EXPLANATORY NOTES

TRANSFER OF CRIMINAL LIABILITY

Section 74: Transfer of criminal liabilities of certain NHS bodies

310. The purpose of section 74 is to address a lacuna which arose from the case of *R v Pennine Acute Hospitals NHS Trust* (formerly Rochdale Health Care NHS Trust) [2003] EWCA Crim 3436, [2004] 1 All ER 1324. In that case, the Court of Appeal held that the general power in paragraph 30 of Schedule 2 to the NHS and Community Care Act 1990 to transfer property, rights and liabilities on the dissolution of an NHS trust did not include the power to transfer criminal liabilities.
311. The policy of the Department is that there should be a power to transfer the criminal liabilities of NHS bodies on their dissolution or abolition to other NHS bodies so that accountability for criminal offences committed by any such bodies can be retained within the NHS and will not wither away. Section 74, therefore, gives the Secretary of State for Health the power to transfer the criminal liabilities of any English NHS body on its abolition or dissolution to another specified English NHS body and the National Assembly for Wales the power to transfer the criminal liabilities of a Welsh Special Health Authority, a Local Health Board and a Welsh NHS Trust on its abolition or dissolution to another specified Welsh NHS body.
312. *Subsection (1)* amends the NHS Act 1977 (“the 1977 Act”) to provide the power to transfer the criminal liabilities of a Strategic Health Authority on its abolition to another Strategic Health Authority, a Special Health Authority, a Primary Care Trust, an NHS trust or an NHS foundation trust.
313. *Subsection (2)* amends the 1977 Act to provide the power to transfer the criminal liabilities of a Special Health Authority on its abolition to another Special Health Authority, a Strategic Health Authority, a Primary Care Trust, a Local Health Board, an NHS trust or a NHS foundation trust.
314. *Subsection (3)* amends the 1977 Act to provide the power to transfer the criminal liabilities of a Primary Care Trust on its dissolution to another Primary Care Trust, a Strategic Health Authority, a Special Health Authority, an NHS trust or an NHS foundation trust. *Subsection (4)* amends the 1977 Act to provide the power to transfer the criminal liabilities of a Local Health Board on its dissolution to another Local Health Board.
315. *Subsection (5)* amends the National Health Service and Community Care Act 1990 to provide the power to transfer the criminal liabilities of an NHS Trust on its dissolution to another NHS trust, a Strategic Health Authority, a Special Health Authority, a Primary Care Trust, a Local Health Board or an NHS foundation trust.
316. *Subsection (6)* amends the Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”) to provide the power to transfer the criminal liabilities of an NHS Foundation Trust on its dissolution to another NHS foundation trust, a Primary Care Trust or an NHS trust.

317. *Subsection (7)* amends section 28 of the 2003 Act. Section 28 of the 2003 Act is a supplementary section to section 27 of the same Act regarding the merger of one NHS Foundation Trust with another NHS Foundation Trust or NHS Trust. The effect of the amendment is threefold. Firstly, it places a requirement on the applicant to set out in the application to the independent regulator of foundation trusts for authorisation to merge which criminal liabilities it proposes should transfer to the new NHS foundation trust. Secondly, where an authorisation for a merger is given, it places a requirement on the independent regulator of foundation trusts to specify the criminal liabilities to be transferred to the new NHS foundation trust and on the Secretary of State to make an order transferring those specified criminal liabilities to the new NHS foundation trust. Thirdly, it gives the Secretary of State the power to transfer any remaining criminal liabilities by order to another NHS foundation trust, a Primary Care Trust or an NHS trust.