



# NHS (Charitable Trusts Etc) Act 2016

## 2016 CHAPTER 10

### *Removal of powers to appoint trustees*

#### **1 Removal of Secretary of State's powers to appoint trustees**

- (1) In the National Health Service Act 2006 (“the 2006 Act”) omit the following provisions—
  - (a) section 51 (foundation trusts: trust funds and trustees),
  - (b) section 212 (special trustees for a university hospital or teaching hospital),
  - (c) paragraph 11 of Schedule A1 (the National Health Service Commissioning Board: trust funds and trustees) and the italic heading before that paragraph,
  - (d) paragraph 15 of Schedule 1A (clinical commissioning groups: trust funds and trustees) and the italic heading before that paragraph, and
  - (e) paragraph 9 of Schedule 6 (Special Health Authorities: trust funds and trustees).
- (2) The Secretary of State may by regulations made by statutory instrument make such provision as the Secretary of State considers appropriate in consequence of subsection (1).
- (3) The provision that may be made by regulations under subsection (2) includes—
  - (a) different provision for different purposes,
  - (b) transitional, transitory or saving provision,
  - (c) incidental or supplementary provision, and
  - (d) provision amending, repealing or revoking any primary or subordinate legislation.
- (4) Subject to subsection (5), a statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Subsection (4) does not apply to a statutory instrument falling within subsection (6).
- (6) A statutory instrument containing regulations under subsection (2) which amend or repeal primary legislation (whether alone or with other provision) may not be made

unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

- (7) In subsection (3)(d) the reference to subordinate legislation includes subordinate legislation made after the passing of this Act.
- (8) In this section—
- “primary legislation” means—
    - (a) an Act of Parliament, or
    - (b) a Measure or Act of the National Assembly for Wales, and
  - “subordinate legislation” means—
    - (a) subordinate legislation within the meaning of the Interpretation Act 1978, and
    - (b) subordinate legislation made under a Measure or Act of the National Assembly for Wales.
- (9) Schedule 1 makes consequential amendments.

## **2 Section 1: supplementary provision**

- (1) The Secretary of State may by regulations made by statutory instrument provide for—
- (a) the transfer of trust property held by trustees for an NHS foundation trust appointed under section 51 of the National Health Service Act 2006 (“the 2006 Act”) from the trustees to the NHS foundation trust, and
  - (b) the transfer of trust property held by trustees for an NHS trust appointed under paragraph 10 of Schedule 4 to the 2006 Act from the trustees to the NHS trust.
- (2) Any discretion given by a trust instrument to the trustees mentioned in subsection (1) is exercisable by the person to whom the trust property is transferred by virtue of that subsection and, subject to subsections (3) and (4), the transfer does not affect the trusts on which the trust property is held.
- (3) Subsection (4) applies where the trustees mentioned in subsection (1) held any part of the trust property transferred by virtue of that subsection on trust wholly or mainly for hospitals for which they were appointed for all or any purposes relating to—
- (a) hospital services (including research), or
  - (b) any other part of the health service associated with hospitals.
- (4) The person to whom the trust property is transferred has a discretion to apply the part of the trust property in question or the income arising from it, to such extent as that person considers appropriate, for any purposes relating to the health service.
- (5) Subsections (2) to (7) of section 217 of the 2006 Act (trusts: supplementary provisions) apply as if subsection (1) above were a provision to which that section applies.
- (6) In their application by virtue of subsection (5), subsections (6) and (7) of section 217 of the 2006 Act are to be read as if references to an order were references to regulations.
- (7) Regulations under subsection (1) may make—
- (a) different provision for different purposes,
  - (b) transitional, transitory or saving provision, and
  - (c) incidental, supplementary or consequential provision.

- (8) A statutory instrument containing regulations under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section “the health service” and “hospital” have the same meaning as in the 2006 Act.