



Health and Care Act 2022

2022 CHAPTER 31

PART 1

HEALTH SERVICE IN ENGLAND: INTEGRATION, COLLABORATION AND OTHER CHANGES

NHS foundation trusts

61 Licensing of NHS foundation trusts

In section 88 of the Health and Social Care Act 2012 (application and grant of licenses: NHS foundation trusts), for subsection (1) substitute—

“(1) This section applies where—

- (a) an NHS trust becomes an NHS foundation trust in pursuance of section 36 of the National Health Service Act 2006 (effect of authorisation of NHS foundation trust), or
- (b) an NHS foundation trust is established under sections 56 or 56B of that Act (mergers and separations).”

62 Capital spending limits for NHS foundation trusts

(1) The National Health Service Act 2006 is amended as follows.

(2) After section 42A insert—

“42B Limits on capital expenditure

- (1) NHS England may make an order imposing a limit on the capital expenditure of an NHS foundation trust in respect of a single financial year.
- (2) The order must specify—
 - (a) the trust,
 - (b) the capital expenditure limit, and

Status: This is the original version (as it was originally enacted).

- (c) the financial year to which the limit relates.
- (3) NHS England must consult the trust before making the order.
- (4) NHS England must publish each order under this section.
- (5) An order under this section may be made at any time during or before the financial year to which it relates.
- (6) A trust that is the subject of an order under this section must not exceed the capital expenditure limit imposed by the order during the financial year to which it relates.
- (7) In this section “capital expenditure”, in relation to an NHS foundation trust, means expenditure of the trust which falls to be capitalised in its annual accounts.

42C Guidance in relation to orders under section 42B

- (1) NHS England must publish guidance about the exercise of its power to make orders under section 42B, including guidance about—
 - (a) the circumstances in which it is likely to make an order, and
 - (b) the method it will use to determine the capital expenditure limit.
 - (2) NHS England must consult the Secretary of State before it publishes guidance, or revised guidance, under this section.
 - (3) NHS England must have regard to the guidance in exercising its power to make orders under section 42B.”
- (3) In section 64 (orders and regulations under Chapter 5), in subsection (1), after “regulations” insert “, other than the power to make an order under section 42B,”.

63 Accounts, reports and forward plans

- (1) In the National Health Service Act 2006—
 - (a) in section 43, omit subsections (3B) and (3C) (requirements relating to content etc of forward plan for NHS foundation trusts);
 - (b) in paragraph 27 of Schedule 7, omit sub-paragraphs (2) and (3) (which require the forward plan to be prepared by the directors etc).
- (2) In the Health and Social Care Act 2012—
 - (a) omit section 155 (accounts: transfer of functions relating to accounts from the regulator to the Secretary of State);
 - (b) in section 156 omit—
 - (i) subsection (3) (power to provide for content of annual reports to be prescribed by regulations rather than determined by the regulator);
 - (ii) subsection (4) (duty to give forward plan to Secretary of State, rather than to the regulator).

64 NHS foundation trusts: joint exercise of functions

After section 47 of the National Health Service Act 2006 insert—

“47A Joint exercise of functions

An NHS foundation trust may enter into arrangements for the carrying out, on such terms as the NHS foundation trust considers appropriate, of any of its functions jointly with any other person.”

65 NHS foundation trusts: mergers, acquisitions and separations

(1) The National Health Service Act 2006 is amended as follows.

(2) In section 56 (mergers)—

- (a) in subsection (2), omit paragraph (a);
- (b) for subsection (4) substitute—

“(4) NHS England must grant the application if—

- (a) it is satisfied that such steps as are necessary to prepare for the dissolution of the trusts and the establishment of the new trust have been taken, and
- (b) the Secretary of State approves the grant of the application, and must otherwise refuse the application.”

(3) In section 56A (acquisitions)—

- (a) in subsection (3), omit paragraph (a) and the “and” at the end;
- (b) for subsection (4) substitute—

“(4) NHS England must grant the application if—

- (a) it is satisfied that such steps as are necessary to prepare for the acquisition have been taken, and
- (b) the Secretary of State approves the grant of the application, and must otherwise refuse the application.”

(4) In section 56B (separations), for subsection (4) substitute—

“(4) NHS England must grant the application if—

- (a) it is satisfied that such steps as are necessary to prepare for the dissolution of the trust and the establishment of each of the proposed new trusts have been taken, and
- (b) the Secretary of State approves the grant of the application, and must otherwise refuse the application.”

66 Transfers on dissolution of NHS foundation trusts

In section 57A of the National Health Service Act 2006 (dissolution)—

- (a) in subsection (3), omit paragraph (a) and the “and” at the end;
- (b) in subsection (4), for paragraph (b) substitute—

“(b) transferring, or providing for the transfer of, the property and liabilities (including criminal liabilities) to another NHS foundation trust, an NHS trust established under section 25 or the Secretary of State.”;

- (c) after subsection (4) insert—

“(5) The order must include provision for the transfer of any employees of the NHS foundation trust that is dissolved.”

67 NHS foundation trusts: wider effect of decisions

In the National Health Service Act 2006, after section 63 insert—

“63A Duty to have regard to wider effect of decisions

- (1) In making a decision about the exercise of its functions, an NHS foundation trust must have regard to all likely effects of the decision in relation to—
 - (a) the health and well-being of the people of England;
 - (b) the quality of services provided to individuals—
 - (i) by relevant bodies, or
 - (ii) in pursuance of arrangements made by relevant bodies, for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
 - (c) efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- (2) In subsection (1)—
 - (a) the reference to a decision does not include a reference to a decision about the services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness;
 - (b) the reference to effects of a decision in relation to the health and well-being of the people of England includes a reference to its effects in relation to inequalities between the people of England with respect to their health and well-being;
 - (c) the reference to effects of a decision in relation to the quality of services provided to individuals includes a reference to its effects in relation to inequalities between individuals with respect to the benefits that they can obtain from those services.
- (3) In discharging the duty under this section, NHS foundation trusts must have regard to guidance published by NHS England under section 13NB.
- (4) In this section “relevant bodies” means—
 - (a) NHS England,
 - (b) integrated care boards,
 - (c) NHS trusts established under section 25, and
 - (d) NHS foundation trusts.”

68 NHS foundation trusts: duties in relation to climate change

After section 63A of the National Health Service Act 2006 (inserted by section 67 of this Act) insert—

“63B Duties in relation to climate change etc

- (1) An NHS foundation trust must, in the exercise of its functions, have regard to the need to—
 - (a) contribute towards compliance with—
 - (i) section 1 of the Climate Change Act 2008 (UK net zero emissions target), and
 - (ii) section 5 of the Environment Act 2021 (environmental targets), and
 - (b) adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008.
- (2) In discharging the duty under this section, NHS foundation trusts must have regard to guidance published by NHS England under section 13ND.”