



# Health and Care Act 2022

## 2022 CHAPTER 31

### PART 1

#### HEALTH SERVICE IN ENGLAND: INTEGRATION, COLLABORATION AND OTHER CHANGES

##### *NHS trusts*

#### **48 NHS trusts in England**

In the Health and Social Care Act 2012, omit section 179 (abolition of NHS trusts in England).

#### **49 Removal of power to appoint trust funds and trustees**

In Schedule 4 to the National Health Service Act 2006, omit paragraph 10 (power to appoint trustees for an NHS trust) and the italic heading before it.

#### **50 Sections 48 and 49: consequential amendments**

Schedule 7 contains amendments that are consequential on sections 48 and 49.

#### **51 Licensing of NHS trusts**

(1) In the National Health Service (Licence Exemptions, etc) Regulations 2013 ([S.I. 2013/2677](#)), omit regulation 4 (which exempts NHS trusts in England from the requirement to hold a licence).

(2) After section 87 of the Health and Social Care Act 2012 insert—

##### **“87A Application and grant: NHS trusts**

(1) An NHS trust established under section 25 of the National Health Service Act 2006 is to be treated, on its establishment, as—

- (a) having made an application for a licence under section 85, and
  - (b) having met the criteria for holding a licence for the time being published under section 86.
- (2) An NHS trust established under section 25 of the National Health Service Act 2006 before the day on which section 51(1) of the Health and Care Act 2022 comes into force is to be treated, for the purposes of subsection (1), as having been established on that day.”

## 52 NHS trusts: wider effect of decisions

After section 26 of the National Health Service Act 2006 insert—

### “26A Duty to have regard to wider effect of decisions

- (1) In making a decision about the exercise of its functions, an NHS trust established under section 25 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 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.”

### **53 NHS trusts: duties in relation to climate change**

After section 26A of the National Health Service Act 2006 (inserted by section 52 of this Act) insert—

#### **“26B Duties in relation to climate change etc**

- (1) An NHS trust established under section 25 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 trusts must have regard to guidance published by NHS England under section 13ND.”

### **54 Oversight and support of NHS trusts**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 27 insert—

#### **“27A Oversight and support of NHS trusts**

NHS England must—

- (a) monitor NHS trusts established under section 25 in the carrying out of their functions, and
  - (b) provide such advice, guidance or other support as it considers appropriate to help NHS trusts established under section 25 in the carrying out of their functions.”
- (3) In Schedule 4—
    - (a) in paragraph 12 (reports etc), in sub-paragraph (1), for “the Secretary of State”, in both places it occurs, substitute “NHS England”;
    - (b) in paragraph 13 (provision of information by NHS trusts), in sub-paragraph (1) (as created by section 25(4) of this Act)—
      - (i) after “the Secretary of State” insert “or NHS England”;
      - (ii) for “he” substitute “the Secretary of State or NHS England”.

### **55 Directions to NHS trusts**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 27A (inserted by section 54 of this Act) insert—

**“27B NHS England’s directions to NHS trusts**

- (1) NHS England may give directions to an NHS trust established under section 25 about its exercise of any functions.
- (2) In so far as a direction under this section conflicts with a direction under section 8 or paragraph 25(3) of Schedule 4, it is of no effect.”
- (3) In section 73 (directions and regulations under Parts 1 and 2), in subsection (1), after paragraph (ba) (inserted by section 13 of this Act) insert—  
 “(bb) section 27B,”.
- (4) In Schedule 4—
  - (a) in paragraph 20 (additional income), in sub-paragraph (2)—
    - (i) omit the “and” at the end of paragraph (a);
    - (ii) at the end of paragraph (b) insert “, and
    - (c) in circumstances specified in directions under section 27B, with the consent of NHS England.”;
  - (b) in paragraph 25 (staff), in sub-paragraph (3), at the end insert “and any directions given by NHS England under section 27B”.

**56 Recommendations about restructuring of NHS trusts**

After section 27B of the National Health Service Act 2006 (inserted by section 55 of this Act) insert—

**“27C Recommendations about restructuring**

- (1) NHS England may—
  - (a) make recommendations to NHS trusts for or in connection with the making of restructuring applications;
  - (b) take such other steps as it considers appropriate to facilitate restructuring applications involving NHS trusts.
- (2) In this section “restructuring application”, in relation to an NHS trust, means an application by the NHS trust under—
  - (a) section 56 (mergers involving NHS foundation trusts);
  - (b) section 56A (acquisitions by NHS foundation trusts);
  - (c) section 69A (transfer of property etc between NHS bodies);
  - (d) paragraph 28 of Schedule 4 (dissolution of NHS trusts).”

**57 Intervention in NHS trusts**

After section 27C of the National Health Service Act 2006 (inserted by section 56 of this Act) insert—

**“27D Intervention in NHS trusts: recommendations etc by NHS England**

- (1) If NHS England considers that Secretary of State ought to make an order under section 66(2) or 68(2) in relation to an NHS trust established under section 25, NHS England must—
- (a) make a recommendation to that effect,
  - (b) set out its reasons for the recommendation, and
  - (c) make any recommendations it considers appropriate as to the contents of the order.
- (2) NHS England must make any inquiries, and provide any other assistance, that the Secretary of State may require in connection with deciding whether to make an order under section 66(2) or 68(2) in relation to an NHS trust established under section 25 and, if so, on what terms.”

**58 NHS trusts: conversion to NHS foundation trusts and dissolution**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 33 (application by NHS trusts to become NHS foundation trusts), in subsection (1), omit “, if the application is supported by the Secretary of State”.
- (3) In section 35 (authorisation of NHS foundation trusts), in subsection (1), after “if” insert “the Secretary of State approves the authorisation and”.
- (4) In section 57 (supplementary provision in connection with mergers and acquisitions with NHS foundation trusts), in subsection (5), after “Secretary of State” insert “or NHS England”.
- (5) In Schedule 4—
- (a) in paragraph 28 (power to dissolve NHS trusts)—
    - (i) in sub-paragraph (1), after “Secretary of State” insert “or NHS England”;
    - (ii) after sub-paragraph (1) insert—
 

“(1A) An order under this paragraph may be made by NHS England only with the approval of the Secretary of State.”;
    - (iii) in sub-paragraphs (2)(b) and (3), after “the Secretary of State” insert “or NHS England”;
  - (b) in paragraph 29 (transfers), for sub-paragraph (1) substitute—
 

“(1) If an NHS trust is dissolved under paragraph 28, the Secretary of State or NHS England may by order transfer, or provide for the transfer of, the property and liabilities of the NHS trust to the Secretary of State or an NHS body; and such an order may include provisions corresponding to those of paragraph 9.”;
  - (c) in paragraph 30 (transfers: pensions etc), in sub-paragraph (1), after “he” insert “or NHS England”.

**59 Appointment of chair of NHS trusts**

In paragraph 3(1)(a) of Schedule 4 to the National Health Service Act 2006 (appointment of chair of board of directors of NHS trust), for “the Secretary of State” substitute “NHS England”.

**60 Financial objectives for NHS trusts**

In paragraph 2 of Schedule 5 of the National Health Service Act 2006 (financial obligations of NHS trusts), for sub-paragraphs (2) and (3) substitute—

“(2) NHS England may set financial objectives for NHS trusts.

(3) An NHS trust must achieve any financial objectives set under sub-paragraph (2).

(4) Financial objectives under sub-paragraph (2) may apply to NHS trusts generally, or to a particular NHS trust or NHS trusts of a particular description.”