



# National Health Service Act 2006

## 2006 CHAPTER 41

### PART 11

#### PROPERTY AND FINANCE

### CHAPTER 2

#### TRUSTS

#### **212 Special trustees for a university hospital or teaching hospital**

- (1) In this Act “special trustees” are trustees appointed by the Secretary of State in relation to England under—
  - (a) section 29 of the National Health Service Reorganisation Act 1973 (c. 32),
  - (b) section 95 of the National Health Service Act 1977 (c. 49), and
  - (c) this section,for any hospital falling within subsection (2).
- (2) A hospital falls within this subsection if, immediately before the day appointed for the purposes of section 29 of the National Health Service Reorganisation Act 1973 (c. 32), it was controlled and managed by a University Hospital Management Committee or a Board of Governors, other than—
  - (a) a body on whose request an order was made under section 24(2) of that Act, or
  - (b) a preserved Board within the meaning of section 15(6) of that Act.
- (3) Special trustees must hold and administer the property transferred under the National Health Service Reorganisation Act 1973.
- (4) The number of special trustees appointed under this section is such as the Secretary of State may from time to time determine after consultation with such persons as he considers appropriate.

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- (5) Special trustees have power to accept, hold and administer any property on trust, being a trust which is wholly or mainly for hospitals for which they are 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.
- (6) The term of office of any special trustee appointed under this section must be fixed by the Secretary of State, but a special trustee may be removed by the Secretary of State at any time during the special trustee's term of office.
- (7) Subsection (3) is subject to sections 213 and 214.

### **213 Transfers of trust property**

- (1) The Secretary of State may, having regard to any change or proposed change—
  - (a) in the arrangements for the administration of a hospital or other establishment or facility, or
  - (b) in the area or functions of any NHS body other than an NHS foundation trust, by order provide for the transfer of any trust property from any relevant health service body to any other relevant health service body.
- (2) In this section “relevant health service body” means—
  - (a) an NHS body,
  - (b) special trustees, or
  - (c) trustees for a Primary Care Trust, an NHS trust or an NHS foundation trust.
- (3) Where property is transferred by an order under this section to two or more bodies, it must be apportioned by them in such proportions as they may agree, or as may in default of agreement be determined by the Secretary of State, and the order may provide for the way in which the property must be apportioned.
- (4) Where property is so apportioned, the Secretary of State may by order make any consequential amendments of the trust instrument relating to the property.
- (5) In this section “special trustees” includes special trustees within the meaning of section 160 of the National Health Service (Wales) Act 2006 (c. 42).

### **214 Transfer of functions and property to or from special trustees**

- (1) If it appears to the Secretary of State at any time that all the functions of any special trustees should be discharged by a Primary Care Trust, an NHS trust, a Special Health Authority or an NHS foundation trust, he may by order provide for the transfer of all trust property from the special trustees to the body or, in such proportions as may be specified in the order, to those bodies.
- (2) Before acting under subsection (1) the Secretary of State must consult the special trustees and other bodies concerned.
- (3) 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 a Primary Care Trust, an NHS trust or an NHS foundation trust (“the trustees of the body”), or

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- (b) the functions of the trustees of the body should be discharged by special trustees,  
he may, after consulting the special trustees and the trustees of the body, by order provide for the transfer of all trust property from the special trustees to the trustees of the body, or from the trustees of the body to the special trustees.
- (4) Where property is transferred by an order under this section to two or more bodies, it must be apportioned by them in such proportions as they may agree, or as may in default of agreement be determined by the Secretary of State, and the order may provide for the way in which the property must be apportioned.
- (5) Where property is so apportioned, the Secretary of State may by order make any consequential amendments of the trust instrument relating to the property.
- (6) “Special trustees” includes special trustees within the meaning of section 160 of the National Health Service (Wales) Act 2006.

## **215 Trustees and property under section 222**

- (1) Where property is given in pursuance of section 222 (power of NHS bodies to raise money) to or on trust for any purposes of a hospital for which special trustees have been appointed, the property may be held, administered and applied by the special trustees instead of by the body responsible for the hospital if that body and the special trustees agree.
- (2) The body responsible for a hospital is—
- (a) in the case of a hospital vested in an NHS trust or an NHS foundation trust, that trust, and
  - (b) in any other case, the Strategic Health Authority or Primary Care Trust exercising functions of the Secretary of State in respect of the hospital.
- (3) Subsection (4) applies where property is given in pursuance of section 222—
- (a) on trust for any purposes of a Primary Care Trust for which trustees have been appointed under paragraph 12 of Schedule 3,
  - (b) on trust for any purposes of an NHS trust for which trustees have been appointed under paragraph 10 of Schedule 4, or paragraph 10 of Schedule 3 to the National Health Service (Wales) Act 2006 (c. 42), or
  - (c) on trust for any purposes of an NHS foundation trust for which trustees have been appointed under section 51.
- (4) Where this subsection applies and the trustees and the Primary Care Trust, NHS trust or NHS foundation trust agree, the property may be held, administered and applied by the trustees instead of by the Primary Care Trust, NHS trust or NHS foundation trust.
- (5) Property given in pursuance of section 222 on trust may be transferred by order of the Secretary of State under section 213 or 214 in the same circumstances as other trust property may be transferred under either of those sections.

## **216 Application of trust property: further provisions**

- (1) Any discretion given by a trust instrument to the trustees of property transferred under—

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- (a) section 24 of the National Health Service Reorganisation Act 1973 (c. 32) (transfer of trust property from abolished authorities),
- (b) section 25 of that Act (transfer of trust property held for health services by local health authorities),
- (c) section 92 of the National Health Service Act 1977 (c. 49) (further transfers of trust property), or
- (d) section 213 or 214 of this Act,

is exercisable by the person to whom the property is so transferred and, subject to this section, the transfer does not affect the trusts on which the property is held.

(2) Where—

- (a) property has been transferred under section 24 of the National Health Service Reorganisation Act 1973, or section 92 of the National Health Service Act 1977, and
- (b) any discretion is given by a trust instrument to the trustees to apply the property, or income arising from the property, to such hospital services (including research) as the trustees consider appropriate without any restriction on the kinds of hospital services and without any restriction to one or more specified hospitals,

the discretion is enlarged so as to allow the application of the property or of the income arising from the property, to such extent as the trustees consider appropriate, for any other part of the health service associated with any hospital.

(3) Subsection (2) applies on any subsequent transfer of the property under section 213 or 214.

## **217 Trusts: supplementary provisions**

(1) This section applies in relation to—

- (a) section 51(1) to (3),
- (b) sections 212 to 214,
- (c) section 216,
- (d) section 218,
- (e) section 220,
- (f) paragraphs 12 and 13 of Schedule 2,
- (g) paragraph 12 of Schedule 3,
- (h) paragraph 10 of Schedule 4, and
- (i) paragraphs 8 and 9 of Schedule 6.

(2) A provision—

- (a) contained in a provision to which this section applies,
- (b) for the transfer of any property,

includes provision for the transfer of any rights and liabilities arising from that property.

(3) Where a transfer of property by virtue of a provision to which this section applies is of, or includes—

- (a) land held on lease from a third party, or
- (b) any other asset leased or hired from a third party or in which a third party has an interest,

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the transfer is binding on the third party notwithstanding that, apart from this subsection, it would have required his consent or concurrence.

- (4) “Third party” means a person other than the Secretary of State or an NHS body.
- (5) Nothing in a provision to which this section applies affects any power of Her Majesty, the court (as defined in the Charities Act 1993 (c. 10)) or any other person, to alter the trusts of any charity.
- (6) Nothing in section 12 of the Finance Act 1895 (c. 16) (which requires certain Acts and certain instruments relating to the vesting of property by virtue of an Act to be stamped as conveyances on sale) applies to—
  - (a) a provision to which this section applies, or
  - (b) an order made in pursuance of any such provision.
- (7) Stamp duty is not payable on an order falling within subsection (6)(b).

**Modifications etc. (not altering text)**

- C1** S. 217 modified (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 2 para. 10](#) (with [Sch. 3 Pt. 1](#))

## 218 Private trusts for hospitals

- (1) Subsection (2) applies where the terms of a trust instrument authorise or require the trustees, whether immediately or in the future, to apply any part of the capital or income of the trust property for the purposes of any health service hospital.
- (2) The trust instrument must be construed as authorising or requiring the trustees to apply the trust property to the like extent, and at the like times, for the purpose of making payments, whether of capital or income, to the appropriate hospital authority.
- (3) Any sum paid to the appropriate hospital authority must, so far as practicable, be applied by it for the purpose specified in the trust instrument.
- (4) “The appropriate hospital authority” means—
  - (a) where special trustees are appointed for the hospital, those trustees,
  - (b) where the hospital is managed by, and trustees have been appointed for, an NHS trust, an NHS foundation trust or Primary Care Trust, the trustees,
  - (c) where the hospital is managed by an NHS trust, an NHS foundation trust or Primary Care Trust and neither paragraph (a) nor paragraph (b) applies, the NHS trust, NHS foundation trust or Primary Care Trust, and
  - (d) in any other case, the Strategic Health Authority or Special Health Authority exercising functions of the Secretary of State in respect of the hospital, or the Special Health Authority or Local Health Board exercising functions of the Welsh Ministers in respect of the hospital.
- (5) Nothing in this section applies to property transferred under section 24 of the National Health Service Reorganisation Act 1973.
- (6) In this section—

“health service hospital” includes such a hospital within the meaning of section 206 of the National Health Service (Wales) Act 2006 (c. 42), and

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“special trustees” includes special trustees within the meaning of section 160 of that Act.

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