



National Health Service Act 2006

2006 CHAPTER 41

PART 2 **E+W**

HEALTH SERVICE BODIES

CHAPTER 5 **E+W**

NHS FOUNDATION TRUSTS

Introductory

30 NHS foundation trusts **E+W**

- (1) An NHS foundation trust is a public benefit corporation [^{F1}the function of which is to provide in accordance with this Chapter] goods and services for the purposes of the health service in England.
- (2) A public benefit corporation is a body corporate which, in pursuance of an application under this Chapter, is constituted in accordance with Schedule 7.

Textual Amendments

- F1** Words in s. 30(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 159(1), 306(4); S.I. 2013/671, art. 2(3)

^{F2}31 Independent Regulator of NHS Foundation Trusts **E+W**

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Textual Amendments

F2 S. 31 omitted (1.7.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 13 para. 9(1)**; S.I. 2012/1319, art. 2(3); S.I. 2012/2657, art. 2(2)

F3 32 General duty of regulator E+W

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Textual Amendments

F3 S. 32 omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 13 para. 10(1)** (with Sch. 13 para. 10(2)); S.I. 2012/2657, art. 2(2) (with art. 12)

Authorisation

33 Applications by NHS trusts E+W

- (1) An NHS trust may make an application to [^{F4}NHS England] for authorisation to become an NHS foundation trust ^{F5}....
- (2) The application must—
 - ^{F6}(a)
 - (b) be accompanied by a copy of the proposed constitution of the NHS foundation trust,
and must give any further information which [^{F4}NHS England] requires the applicant to give.
- (3) The applicant may modify the application with the agreement of [^{F4}NHS England] at any time before authorisation is given under section 35.
- (4) Once an NHS trust has made the application—
 - (a) the provisions of the proposed constitution which give effect to paragraphs 3 to 19 of Schedule 7 have effect, but only for the purpose of establishing the initial membership of the NHS foundation trust and of the [^{F7}council of governors], and the initial directors, and enabling the [^{F7}council of governors] and board of directors to make preparations for the performance of their functions,
 - (b) the NHS trust may do anything (including the things mentioned in paragraph 14 of Schedule 4) which appears to it to be necessary or expedient for the purpose of preparing it for NHS foundation trust status.

Textual Amendments

F4 Words in s. 33(1)-(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 11**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F5 Words in s. 33(1) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), **ss. 58(2)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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- F6** S. 33(2)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 159(2), 306(4); S.I. 2013/671, art. 2(3)
- F7** Words in s. 33(4)(a) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), ss. 151(9)(a), 306(4); S.I. 2012/1831, art. 2(2)

F8 34 Other applications **E+W**

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Textual Amendments

- F8** S. 34 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 160(1), 306(4) (with s. 160(4)(7)); S.I. 2012/1319, art. 2(3)

35 Authorisation of NHS foundation trusts **E+W**

- (1) [^{F9}NHS England] may give an authorisation under this section—
 - (a) to an NHS trust which has applied under section 33, ^{F10}...
 - ^{F10}(b)if [^{F11}the Secretary of State approves the authorisation and][^{F12}NHS England] is satisfied as to the following matters.
- (2) The matters are that—
 - (a) the applicant's constitution will be in accordance with Schedule 7 and will otherwise be appropriate,
 - (b) the applicant has taken steps to secure that (taken as a whole) the actual membership of any public constituency, and (if there is one) of the patients' constituency, will be representative of those eligible for such membership,
 - (c) there will be a [^{F13}council of governors], and a board of directors, constituted in accordance with the constitution,
 - (d) the steps necessary to prepare for NHS foundation trust status have been taken,
 - ^{F14}(e) the applicant will be able to provide goods and services for the purposes of the health service in England,]
 - (f) any other requirements which [^{F15}NHS England] considers appropriate are met.
- (3) In deciding whether it is satisfied as to the matters referred to in subsection (2)(e), [^{F16}NHS England] must consider (among other things)—
 - (a) any report or recommendation in respect of the applicant made by [^{F17}the Care Quality Commission],
 - (b) the financial position of the applicant.
- ^{F18}(4)
- (5) [^{F19}NHS England] must not give an authorisation unless it is satisfied that the applicant has sought the views about the application of the following—
 - ^{F20}(a)
 - (b) individuals who live in any area specified in the proposed constitution as the area for a public constituency,

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- (c) any local authority that would be authorised by the proposed constitution to appoint a member of the [^{F21}council of governors],
 - (d) if the proposed constitution provides for a patients' constituency, individuals who would be able to apply to become members of that constituency,
 - (e) any prescribed persons.
- (6) If regulations make provision about consultation, [^{F22}NHS England] may not give an authorisation unless it is satisfied that the applicant has complied with the regulations.

^{F23}(7)

Textual Amendments

- F9** Words in s. 35(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 12(2)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F10** S. 35(1)(b) and word omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. **160(2)**, 306(4) (with s. 160(5)); S.I. 2012/1319, art. 2(3)
- F11** Words in s. 35(1) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. **58(3)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F12** Words in s. 35(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 12(2)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F13** Words in s. 35(2)(c) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), ss. **151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)
- F14** S. 35(2)(e) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. **159(3)**, 306(4); S.I. 2013/671, art. 2(3)
- F15** Words in s. 35(2)(f) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 12(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F16** Words in s. 35(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 12(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F17** Words in s. 35(3)(a) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 5 para. 83**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)
- F18** S. 35(4) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. **159(5)**, 306(4); S.I. 2013/671, art. 2(3)
- F19** Words in s. 35(5) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 12(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F20** S. 35(5)(a) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.
- F21** Words in s. 35(5)(c) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), ss. **151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)
- F22** Words in s. 35(6) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 12(5)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F23** S. 35(7) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. **159(5)**, 306(4); S.I. 2013/671, art. 2(3)

36 Effect of authorisation **E+W**

- (1) On an authorisation being given to a body corporate which is an NHS trust—
- (a) it ceases to be an NHS trust and becomes an NHS foundation trust,
 - (b) the proposed constitution has effect, and
 - (c) any order under section 25(1) is revoked.

^{F24}(2)

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- (3) The authorisation is conclusive evidence that the body in question is an NHS foundation trust.
- (4) Subsections (1) to (3) do not affect the continuity of the body or of its property or liabilities (including its criminal liabilities).
- (5) The validity of any act of an NHS foundation trust is not affected by any vacancy among the directors or by any defect in the appointment of any director.
- (6) An NHS foundation trust must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and an NHS foundation trust's property must not be regarded as property of, or property held on behalf of, the Crown.

Textual Amendments

F24 S. 36(2) omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 160(3)**, 306(4) (with [s. 160\(6\)\(7\)](#)); [S.I. 2012/1319](#), **art. 2(3)**

37 Amendments of constitution **E+W**

- [^{F25}(1)] An NHS foundation trust may make amendments of its constitution [^{F26}only if—
- (a) more than half of the members of the council of governors of the trust voting approve the amendments, and
 - (b) more than half of the members of the board of directors of the trust voting approve the amendments.]
- [^{F27}(2) Amendments made under this section take effect as soon as the conditions in subsection (1)(a) and (b) are satisfied.
- (3) But an amendment is of no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7.
 - (4) The trust must inform [^{F28}NHS England] of amendments made under this section; but [^{F29}NHS England's] functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7.]

Textual Amendments

F25 S. 37 renumbered as s. 37(1) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 161(1)**, 306(4) (with [s. 161\(3\)](#)); [S.I. 2013/160](#), **art. 2(2)** (with arts. 7-9)

F26 Words in s. 37(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 161(1)**, 306(4) (with [s. 161\(3\)](#)); [S.I. 2013/160](#), **art. 2(2)** (with arts. 7-9)

F27 S. 37(2)-(4) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 161(2)**, 306(4) (with [s. 161\(3\)](#)); [S.I. 2013/160](#), **art. 2(2)** (with arts. 7-9)

F28 Words in s. 37(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 13(a)**; [S.I. 2022/734](#), **reg. 2(a)**, **Sch.** (with regs. 13, 29, 30)

F29 Words in s. 37(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 13(b)**; [S.I. 2022/734](#), **reg. 2(a)**, **Sch.** (with regs. 13, 29, 30)

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^{F30} 38 Variation of authorisation **E+W**

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Textual Amendments

F30 S. 38 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 159(6), 306(4); S.I. 2013/671, art. 2(3)

39 Register of NHS foundation trusts **E+W**

- (1) [^{F31}NHS England] must continue to maintain a register of NHS foundation trusts.
- (2) The register must contain in relation to each NHS foundation trust—
 - (a) a copy of the current constitution,
 - ^{F32}(b)
 - (c) a copy of the latest annual accounts and of any report of the auditor on them,
 - (d) a copy of the latest annual report,
 - ^{F33}(e)
 - ^{F34}(f)
 - ^{F35}(g) a copy of any order made under section 65D, 65J, 65KC, 65L or 65LA,
 - (h) a copy of any report laid under section 65D,
 - (i) a copy of any information published under section 65D,
 - (j) a copy of any draft report published under section 65F,
 - (k) a copy of any statement provided under section 65F,
 - (l) a copy of any notice published under section 65F, 65G, 65H, 65J, 65KA, 65KB, 65KC or 65KD,
 - (m) a copy of any statement published or provided under section 65G,
 - (n) a copy of any final report published under section 65I,
 - (o) a copy of any statement published under section 65J or 65KC,
 - (p) a copy of any information published under section 65M.]
- (3) In relation to any time before an NHS foundation trust is first required to send an annual report to [^{F36}NHS England], the register must contain a list of the persons who were first elected or appointed as—
 - (a) the members of the [^{F37}council of governors],
 - (b) the directors.
- (4) Members of the public may inspect the register at any reasonable time.
- (5) Any person who requests it must be provided with a copy of, or extract from, any document contained in the register on payment of a reasonable charge.

Textual Amendments

F31 Words in s. 39(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 14(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F32 S. 39(2)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 159(7), 306(4); S.I. 2013/671, art. 2(3)

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- F33** S. 39(2)(e) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 156\(5\), 306\(1\)\(d\)\(4\)](#); S.I. 2013/671, art. 2(3)
- F34** S. 39(2)(f) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 111\(11\)\(a\), 306\(4\)](#); S.I. 2013/671, art. 2(3)
- F35** S. 39(2)(g)-(p) inserted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 178\(5\), 306\(4\)](#); S.I. 2012/2657, art. 2(2)
- F36** Words in s. 39(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 14\(3\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F37** Words in s. 39(3)(a) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(a\), 306\(4\)](#); S.I. 2012/1831, art. 2(2)

[^{F38}39A Panel for advising governors **E+W**

- (1) [^{F39}NHS England] may appoint a panel of persons to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—
 - (a) to act in accordance with its constitution, or
 - (b) to act in accordance with provision made by or under this Chapter.
- (2) A governor may refer a question to the panel only if more than half of the members of the council of governors voting approve the referral.
- (3) The panel—
 - (a) may regulate its own procedure, and
 - (b) may establish such procedures, and make such other arrangements, as it considers appropriate for the purpose of determining questions referred to it under this section.
- (4) The panel may decide whether, or to what extent, to carry out an investigation on a question referred to it under this section.
- (5) The panel may for that purpose, or for the purpose of carrying out such an investigation, request information or advice.
- (6) Where the panel has carried out such an investigation, it must publish a report of its determination of the question referred to it.
- (7) If a person refuses to comply with a request made under subsection (5), the report under subsection (6) may refer to the refusal.
- (8) On any proceedings before a court or tribunal relating to a question referred to the panel under this section, the court may take the panel's report of its determination of the question into account.
- (9) [^{F40}NHS England]—
 - (a) must pay expenses properly incurred by the panel, and
 - (b) must make administrative support available to the panel.
- (10) Regulations may make provision as to—
 - (a) eligibility for membership of the panel;
 - (b) the number of persons that may be appointed as members;
 - (c) the terms of appointment of members;
 - (d) circumstances in which a person ceases to be a member or may be suspended.]

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Textual Amendments

- F38** S. 39A inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 162, 306\(1\)\(d\)\(4\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F39** Words in s. 39A(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 15](#); S.I. 2022/734, reg. 2(a), [Sch.](#) (with [regs. 13, 29, 30](#))
- F40** Words in s. 39A(9) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 15](#); S.I. 2022/734, reg. 2(a), [Sch.](#) (with [regs. 13, 29, 30](#))

Financial matters

40 Power of Secretary of State to give financial assistance **E+W**

- (1) The Secretary of State may give financial assistance to any NHS foundation trust.
- (2) The financial assistance may be given by way of loan, public dividend capital, grant or other payment.
- (3) The Secretary of State may guarantee the payment of any amount payable by an NHS foundation trust under an externally financed development agreement.
- (4) “Externally financed development agreement” has the same meaning as in paragraph 23 of Schedule 4, reading references in sub-paragraphs (3) and (5) of that paragraph to the NHS trust as references to the NHS foundation trust.
- [^{F41}(5) As soon as is practicable after the end of each financial year, the Secretary of State must prepare a report on the exercise of the power under subsection (1).
- (6) In relation to each exercise of the power under that subsection during the year to which the report relates, the report must specify the amount of the loan, issue of public dividend capital, grant or other payment and—
 - (a) in the case of a loan, the amount (if any) outstanding at the end of the year and the other terms on which the loan was made,
 - (b) in the case of an issue of public dividend capital, the terms on which it was issued (or, where a decision under section 42(3) is made in relation to it during that year, the terms so decided as those on which it is treated as having been issued), and
 - (c) in the case of a grant or other payment, the terms on which it was made.
- (7) In relation to each loan made under that subsection during a previous financial year but not repaid by the beginning of the year to which the report relates, the report must specify—
 - (a) the amount outstanding at the beginning of the year,
 - (b) the amount (if any) outstanding at the end of the year, and
 - (c) the other terms on which the loan was made.
- (8) A report under subsection (5) must, in relation to each NHS foundation trust, specify—
 - (a) the amount of the public dividend capital of that trust at the end of the year to which the report relates, and
 - (b) the conditions on which it is held.
- (9) The Secretary of State must publish a report under subsection (5).]

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Textual Amendments

F41 S. 40(5)-(9) inserted (1.4.2013 for specified purposes) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. [163\(1\)](#), [306\(4\)](#); S.I. [2013/160](#), art. [2\(2\)](#) (with arts. [7-9](#))

F42 **41 Prudential borrowing code** **E+W**

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Textual Amendments

F42 S. 41 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. [163\(2\)](#), [306\(4\)](#); S.I. [2013/671](#), art. [2\(3\)](#)

42 Public dividend capital **E+W**

- (1) Where an NHS trust becomes an NHS foundation trust, the amount which was the public dividend capital of the NHS trust immediately before the giving of the authorisation continues as public dividend capital of the NHS foundation trust held on the same conditions (“initial public dividend capital”), but subject to this section.
- (2) Any amount issued to an NHS foundation trust as public dividend capital under section 40 is (like initial public dividend capital) an asset of the Consolidated Fund.
- (3) The Secretary of State may, with the consent of the Treasury, decide the terms on which any public dividend capital of an NHS foundation trust must be treated as having been issued.

F43(4)

F44(5)

- (6) Any amount paid to the Secretary of State by an NHS foundation trust by way of repayment of public dividend capital must be paid into the Consolidated Fund.

[F45(7) The terms which may be decided under subsection (3) include terms to which the exercise of any power of an NHS foundation trust to do any of the following will be subject as a consequence—

- (a) providing goods or services,
- (b) borrowing or investing money,
- (c) providing financial assistance,
- (d) acquiring or disposing of property,
- (e) entering into contracts, or making other arrangements, to do anything referred to in paragraphs (a) to (d),
- (f) applying for dissolution (whether or not when also applying for the establishment of one or more other trusts),
- (g) applying to acquire another body.]

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Textual Amendments

- F43** S. 42(4) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 163\(3\)](#), 306(4); S.I. 2013/160, [art. 2\(2\)](#) (with [arts. 7-9](#))
- F44** S. 42(5) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 163\(4\)](#), 306(4); S.I. 2013/160, [art. 2\(2\)](#) (with [arts. 7-9](#))
- F45** S. 42(7) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 163\(5\)](#), 306(4); S.I. 2013/160, [art. 2\(2\)](#) (with [arts. 7-9](#))

[^{F46}42A Criteria for making loans etc. **E+W**

- (1) The Secretary of State must publish guidance on the powers conferred by sections 40 and 42.
- (2) The guidance on the power to make a loan under section 40(1) must in particular—
 - (a) explain that, in exercising the power, the Secretary of State will apply the principle that a loan should be made only where there is a reasonable expectation that it will be repaid in accordance with the terms on which it is made;
 - (b) include other criteria that the Secretary of State will apply when determining whether to exercise the power and, if so, the terms on which to make the loan.
- (3) The guidance on that power must also explain—
 - (a) the process for applying for a loan under section 40(1);
 - (b) the consequences of failing to comply with terms on which a loan is made under that provision.
- (4) The guidance on the power to decide terms under section 42(3) must, in particular, include the criteria that the Secretary of State will apply when deciding the terms.
- (5) The guidance on that power must also explain the consequences of failing to comply with the terms decided.
- (6) In preparing guidance under this section, the Secretary of State must have regard (among other things) to any generally accepted principles used by financial institutions to determine whether to make loans to bodies corporate and the terms on which to make loans to them.
- (7) Before publishing the guidance, the Secretary of State must consult—
 - (a) the Treasury,
 - (b) [^{F47}NHS England], and
 - (c) such other persons as the Secretary of State considers appropriate.]

Textual Amendments

- F46** S. 42A inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 163\(6\)](#), 306(4); S.I. 2013/160, [art. 2\(2\)](#) (with [arts. 7-9](#))
- F47** Words in s. 42A(7)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 16](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

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[^{F48}42B Limits on capital expenditure **E+W**

- (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
 - (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.

Textual Amendments

F48 Ss. 42B, 42C inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 62(2), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

42C Guidance in relation to orders under section 42B **E+W**

- (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.]

Textual Amendments

F48 Ss. 42B, 42C inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 62(2), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Functions

43 [^{F49}Provision of goods and services] **E+W**

- [^{F50}(1) The principal purpose of an NHS foundation trust is the provision of goods and services for the purposes of the health service in England.]

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[^{F50}(2) An NHS foundation trust may provide goods and services for any purposes related to—

- (a) the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
- (b) the promotion and protection of public health.]

[^{F50}(2A) An NHS foundation trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.]

- (3) [^{F51}An] NHS foundation trust may also carry on activities other than those mentioned in [^{F52}subsection (2)]^{F53} ... for the purpose of making additional income available in order better to carry on its principal purpose.

[^{F54}(3A) Each annual report prepared by an NHS foundation trust must give information on the impact that income received by the trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the trust of goods and services for those purposes.

^{F55}(3B)

^{F56}(3C)

(3D) An NHS foundation trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the trust voting approve its implementation.]

^{F57}(4)

^{F57}(5)

^{F57}(6)

^{F57}(7)

Textual Amendments

F49 S. 43 title substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 164(5)**, 306(4); S.I. 2013/671, art. 2(3)

F50 S. 43(1)-(2A) substituted for s. 43(1)(2) (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 164(1)**, 306(4); S.I. 2012/1831, art. 2(2)

F51 Word in s. 43(3) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 164(2)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

F52 Words in s. 43(3) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 164(2)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

F53 Words in s. 43(3) omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 164(2)(c)**, 306(4); S.I. 2012/1831, art. 2(2)

F54 S. 43(3A)-(3D) inserted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 164(3)**, 306(4); S.I. 2012/1831, art. 2(2)

F55 S. 43(3B) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 63(1)(a)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 17, 29)

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- F56** S. 43(3C) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. **63(1)(a)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 17, 29)
- F57** S. 43(4)-(7) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. **164(4)**, 306(4); S.I. 2013/671, art. 2(3)

44 [^{F58}**Power to charge for accommodation etc.**] **E+W**

- ^{F59}(1)
- ^{F60}(2)
- ^{F61}(2A)
- ^{F62}(3)
- ^{F62}(4)
- ^{F62}(5)

(6) According to the nature of its functions, an NHS foundation trust may, in the case of patients being provided with goods and services for the purposes of the health service, make accommodation or further services available for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the NHS foundation trust in respect of the accommodation or services.

(7) An NHS foundation trust may exercise the power conferred by subsection (6) only to the extent that its exercise does not to any significant extent interfere with the performance by the NHS foundation trust of its functions.

Textual Amendments

- F58** S. 44 title substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), ss. **165(2)**, 306(4); S.I. 2012/1831, art. 2(2)
- F59** S. 44(1) omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. **165(1)(a)**, 306(4); S.I. 2012/1831, art. 2(2)
- F60** S. 44(2) omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. **165(1)(b)**, 306(4); S.I. 2012/1831, art. 2(2)
- F61** S. 44(2A) omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. **165(1)(c)**, 306(4); S.I. 2012/1831, art. 2(2)
- F62** S. 44(3)-(5) omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. **165(1)(d)**, 306(4); S.I. 2012/1831, art. 2(2)

^{F63}**45** **Protection of property** **E+W**

.....

Textual Amendments

- F63** S. 45 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. **163(7)**, 306(4); S.I. 2013/671, art. 2(3)

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46 Financial powers **E+W**

- (1) An NHS foundation trust may borrow money for the purposes of or in connection with its functions.
- ^{F64}(2)
- ^{F64}(3)
- (4) An NHS foundation trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions.
- (5) The investment may include investment by—
 - (a) forming, or participating in forming, bodies corporate,
 - (b) otherwise acquiring membership of bodies corporate.
- (6) An NHS foundation trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

Textual Amendments

F64 S. 46(2)(3) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. **163(8)**, 306(4); S.I. 2013/671, art. 2(3)

47 General powers **E+W**

- (1) An NHS foundation trust may do anything which appears to it to be necessary or expedient for the purpose of or in connection with its functions.
- (2) In particular it may—
 - (a) acquire and dispose of property,
 - (b) enter into contracts,
 - (c) accept gifts of property (including property to be held on trust for the purposes of the NHS foundation trust or for any purposes relating to the health service),
 - (d) employ staff.
- (3) Any power of the NHS foundation trust to pay remuneration and allowances to any person includes power to make arrangements for providing, or securing the provision of, pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).
- (4) “The purposes of the NHS foundation trust” means the general or any specific purposes of the trust (including the purposes of any specific hospital at or from which services are provided by the trust).

^{F65}47A Joint exercise of functions **E+W**

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.]

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Textual Amendments

F65 S. 47A inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 64, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

[^{F66}48 Information **E+W**

(1) The Secretary of State may require an NHS foundation trust to provide the Secretary of State with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service.

[^{F67}(1A) An integrated care board may require any of its partner NHS foundation trusts to provide it with any information that it requires.]

(2) [^{F68}Information required under this section must be provided in such form, and at such time or within such period, as may be specified by the person imposing the requirement.]]

Textual Amendments

F66 S. 48 substituted (1.11.2012) by Health and Social Care Act 2012 (c. 7), ss. 166, 306(4); S.I. 2012/2657, art. 2(2) (with art. 10)

F67 S. 48(1A) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 25(3)(a), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30, 33)

F68 S. 48(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 25(3)(b), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30, 33)

^{F69}49 Entry and inspection of premises **E+W**

Textual Amendments

F69 S. 49 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 159(8), 306(4); S.I. 2013/671, art. 2(3)

[^{F70}50 Fees **E+W**

An NHS foundation trust must pay to [^{F71}NHS England] such fee as [^{F71}NHS England] may determine in respect of its exercise of functions under—

- (a) section 39;
- (b) section 39A.]

Textual Amendments

F70 S. 50 substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 163(9), 306(4); S.I. 2013/671, art. 2(3)

F71 Words in s. 50 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 17; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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^{F72} 51 Trust funds and trustees **E+W**

.....

Textual Amendments

F72 S. 51 omitted (17.6.2021) by virtue of NHS (Charitable Trusts Etc) Act 2016 (c. 10), ss. 1(1)(a), 5(1); S.I. 2021/712, reg. 3(a)

[^{F73} 51A Significant transactions **E+W**

- (1) An NHS foundation trust may enter into a significant transaction only if more than half of the members of the council of governors of the trust voting approve entering into the transaction.
- (2) “Significant transaction” means a transaction or arrangement of such description as may be specified in the trust's constitution.
- (3) If an NHS foundation trust does not wish to specify any descriptions of transaction or arrangement for the purposes of subsection (2), the constitution of the trust must specify that it contains no such descriptions.]

Textual Amendments

F73 S. 51A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 167, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Failure

^{F74} 52 Failing NHS foundation trusts **E+W**

.....

Textual Amendments

F74 S. 52 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 111(11), 306(4); S.I. 2013/671, art. 2(3)

^{F75} 52A Application of sections 52B to 52E **E+W**

.....

Textual Amendments

F75 Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by 2009 c. 21, s. 15(1) falls by virtue of the omission of that amending provision (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(5), 306(4); S.I. 2012/2657, art. 2(2)

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F76 52B De-authorisation: regulator's notice **E+W**

.....

Textual Amendments

F76 Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by 2009 c. 21, s. 15(1) falls by virtue of the omission of that amending provision (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(5), 306(4); S.I. 2012/2657, art. 2(2)

F77 52C Grounds for de-authorisation notice **E+W**

.....

Textual Amendments

F77 S. 52C omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(1), 306(4); S.I. 2012/2657, art. 2(2)

F78 52D De-authorisation **E+W**

.....

Textual Amendments

F78 Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by 2009 c. 21, s. 15(1) falls by virtue of the omission of that amending provision (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(5), 306(4); S.I. 2012/2657, art. 2(2)

F79 52E Secretary of State's request **E+W**

.....

Textual Amendments

F79 Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by 2009 c. 21, s. 15(1) falls by virtue of the omission of that amending provision (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(5), 306(4); S.I. 2012/2657, art. 2(2)

F80 53 Voluntary arrangements **E+W**

.....

Textual Amendments

F80 Ss. 53-55 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(2), 306(4); S.I. 2013/671, art. 2(3)

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F80 54 Dissolution etc E+W

.....

Textual Amendments
F80 Ss. 53-55 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(2), 306(4); S.I. 2013/671, art. 2(3)

F80 55 Sections 53 and 54: supplementary E+W

.....

Textual Amendments
F80 Ss. 53-55 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(2), 306(4); S.I. 2013/671, art. 2(3)

[^{F81}Mergers, acquisitions and separations]

Textual Amendments
F81 S. 56 cross-heading substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(9), 306(4); S.I. 2013/671, art. 2(3)

56 Mergers E+W

- (1) An application may be made jointly by—
 - (a) an NHS foundation trust, and
 - (b) another NHS foundation trust or an NHS trust [^{F82}established under section 25],
 to [^{F83}NHS England] for [^{F84}the dissolution of the trusts and the establishment of a new NHS foundation trust.]

[^{F85}(1A) An application under this section may be made only with the approval of more than half of the members of the council of governors of each applicant (that is an NHS foundation trust).]

- (2) The application must—
 - ^{F86}(a)
 - (b) specify the property and liabilities proposed to be transferred to the new NHS foundation trust,
 - (c) ^{F87}...and
 - (d) be accompanied by a copy of the proposed constitution of the new trust,^{F88} ...

^{F89}(3)

[^{F90}(4) NHS England must grant the application if—

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- (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.]

- F91(5)
- F91(6)
- F91(7)
- F91(8)
- F91(9)
- F91(10)

- (11) [F92On the grant of the application], the proposed constitution of the NHS foundation trust has effect, but the directors of the applicants may exercise the functions of the trust on its behalf until a board of directors is appointed in accordance with the constitution.

Textual Amendments

- F82 Words in s. 56(1)(b) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(1)(a)**, 306(4); S.I. 2013/671, art. 2(3)
- F83 Words in s. 56(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 18**; S.I. 2022/734, reg. 2(a), [Sch. \(with regs. 13, 29, 30\)](#)
- F84 Words in s. 56(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(1)(b)**, 306(4); S.I. 2013/671, art. 2(3)
- F85 S. 56(1A) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(2)**, 306(4); S.I. 2013/671, art. 2(3)
- F86 S. 56(2)(a) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 65(2)(a)**, 186(6); S.I. 2022/734, reg. 2(a), [Sch. \(with regs. 13, 29, 30\)](#)
- F87 S. 56(2)(c) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(3)(a)**, 306(4); S.I. 2013/671, art. 2(3)
- F88 Words in s. 56(2) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(3)(b)**, 306(4); S.I. 2013/671, art. 2(3)
- F89 S. 56(3) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(4)**, 306(4); S.I. 2013/671, art. 2(3)
- F90 S. 56(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), **ss. 65(2)(b)**, 186(6); S.I. 2022/734, reg. 2(a), [Sch. \(with regs. 13, 29, 30\)](#)
- F91 S. 56(5)-(10) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(6)**, 306(4); S.I. 2013/671, art. 2(3)
- F92 Words in s. 56(11) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(7)**, 306(4); S.I. 2013/671, art. 2(3)

[F93 56A Acquisitions **E+W**

- (1) An application may be made jointly by—
 - (a) an NHS foundation trust (A), and
 - (b) another NHS foundation trust or an NHS trust established under section 25 (B),

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to [^{F94}NHS England] for the acquisition by A of B.

(2) An application under this section may be made only with the approval of more than half of the members of the council of governors of each applicant (that is an NHS foundation trust).

(3) The application must—

- ^{F95}(a)
- (b) be accompanied by a copy of the proposed constitution of A, amended on the assumption that A acquires B.

[^{F96}(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.]

[Where [^{F98}NHS England] proposes to grant the application, it may by order make ^{F97}(4A) provision for the transfer of employees of B to A on the grant of the application.]

(5) On the grant of the application, the proposed constitution has effect, but where a person who is specified as a director of A in the constitution has yet to be appointed as such, the directors of A may exercise that person's functions under the constitution.]

Textual Amendments

- F93** S. 56A inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 169**, 306(4); S.I. 2013/671, art. 2(3)
- F94** Words in s. 56A(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 19(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F95** S. 56A(3)(a) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 65(3)(a)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F96** S. 56A(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), **ss. 65(3)(b)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F97** S. 56A(4A) inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), **ss. 96(2)**, 115(7); S.I. 2015/994, art. 6(r)
- F98** Words in s. 56A(4A) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 19(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

[^{F99}56AAAcquisitions under section 56A: supplementary **E+W**

(1) On the grant of an application under section 56A—

- (a) any order made by [^{F100}NHS England] under section 56A(4A) takes effect,
- (b) the property and liabilities of the acquired NHS foundation trust or NHS trust are transferred to the acquiring NHS foundation trust (other than rights and liabilities which may be dealt with by order under section 56A(4A)),
- (c) the acquired NHS foundation trust or NHS trust is dissolved, and
- (d) where the acquired trust is an NHS trust, the NHS trust order establishing it is revoked.

(2) So far as may be necessary for the purposes of subsection (1)(b)—

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- (a) anything done before the grant of the application by or in relation to the acquired trust is to be treated (on and after the grant) as having been done by or in relation to the acquiring trust;
 - (b) any reference in a document to the acquired trust is to be read as a reference to the acquiring trust.
- (3) Anything (including legal proceedings) that, immediately before the grant of the application, is in the process of being done by or in relation to the acquired trust may continue to be done afterwards by or in relation to the acquiring trust.
- (4) In subsection (1)—
- (a) “liabilities” includes criminal liabilities;
 - (b) “property” includes trust property.]

Textual Amendments

F99 S. 56AA inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), **ss. 96(3)**, 115(7); S.I. 2015/994, art. 6(r)

F100 Words in s. 56AA(1)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 20**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

[^{F101}56B Separations **E+W**

- (1) An application may be made to [^{F102}NHS England] by an NHS foundation trust for the dissolution of the trust and the establishment of two or more new NHS foundation trusts.
- (2) An application under this section may be made only with the approval of more than half of the members of the council of governors of the applicant.
- (3) The application must, by reference to each of the proposed new trusts—
 - (a) specify the property and liabilities proposed to be transferred to it;
 - (b) be accompanied by a copy of its proposed constitution.
- [^{F103}(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.]
- (5) On the grant of the application, the proposed constitution of each of the new trusts has effect but, in the case of each of the new trusts, the proposed directors may exercise the functions of the trust on its behalf until a board of directors is appointed in accordance with the constitution.]

Textual Amendments

F101 S. 56B inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 170**, 306(4); S.I. 2013/671, art. 2(3)

F102 Words in s. 56B(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 21**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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F103 S. 56B(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 65(4), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

57 [^{F104}Sections 56 to 56B: supplementary] **E+W**

- (1) Where [^{F105}an application is granted under section 56 or 56B], [^{F106}NHS England] must specify the property and liabilities to be transferred to the new NHS foundation trust [^{F107}or trusts].
- (2) Where [^{F108}such an application is granted, [^{F109}NHS England]] must make an order—
- (a) dissolving the [^{F110}trust or] trusts in question, and
 - (b) transferring, or providing for the transfer of, the property and liabilities specified by [^{F109}NHS England] to the new NHS foundation trust [^{F111}or trusts].
- [^{F112}(2A) An order under section 56 or 56B is conclusive evidence of incorporation and conclusive evidence that the corporation is an NHS foundation trust.]
- (3) The order may—
- (a) transfer, or provide for the transfer of, any of the remaining property or liabilities to [^{F113}another NHS foundation trust, an NHS trust established under section 25 or the Secretary of State],
 - [^{F114}(b)
- [^{F115}(3A) The order may include provision for the transfer of employees of the trust or trusts dissolved by the order.]
- (4) In [^{F116}sections 56(2) and 56B(3)], and subsections (1) and (2) of this section, “liabilities” includes criminal liabilities; and an order under subsection (3) of this section may transfer any remaining criminal liabilities to [^{F117}another NHS foundation trust or an NHS trust established under section 25].
- (5) Where one of the parties to an application under section 56 [^{F118}or 56A] is an NHS trust, the powers conferred on the Secretary of State [^{F119}or NHS England] by Part 3 of Schedule 4 are not exercisable in relation to the trust.
- [^{F120}(6)

Textual Amendments

- F104** S. 57 title substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(8), 306(4); S.I. 2013/671, art. 2(3)
- F105** Words in s. 57(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(1)(a), 306(4); S.I. 2013/671, art. 2(3)
- F106** Words in s. 57(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 22; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F107** Words in s. 57(1) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(1)(b), 306(4); S.I. 2013/671, art. 2(3)
- F108** Words in s. 57(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(2)(a), 306(4); S.I. 2013/671, art. 2(3)
- F109** Words in s. 57(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 22; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F110** Words in s. 57(2)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(2)(b), 306(4); S.I. 2013/671, art. 2(3)

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- F111** Words in s. 57(2)(b) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(2)(c), 306(4)**; S.I. 2013/671, art. 2(3)
- F112** S. 57(2A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(3), 306(4)**; S.I. 2013/671, art. 2(3)
- F113** Words in s. 57(3)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(4), 173(2)(a)(i), 306(4)**; S.I. 2013/671, arts. 2(2)(3)
- F114** S. 57(3)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(2)(a)(ii), 306(4)**; S.I. 2013/671, art. 2(3)
- F115** S. 57(3A) inserted (26.5.2015) by Deregulation Act 2015 (c. 20), **ss. 96(4), 115(7)**; S.I. 2015/994, art. 6(r)
- F116** Words in s. 57(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(5)(a), 306(4)**; S.I. 2013/671, art. 2(3)
- F117** Words in s. 57(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(5)(b), 173(2)(a)(iii), 306(4)**; S.I. 2013/671, arts. 2(2)(3)
- F118** Words in s. 57(5) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(6), 306(4)**; S.I. 2013/671, art. 2(3)
- F119** Words in s. 57(5) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), **ss. 58(4), 186(6)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F120** S. 57(6) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 172(7), 306(4)**; S.I. 2013/671, art. 2(3)

[^{F121}57A Dissolution **E+W**

- (1) An application may be made by an NHS foundation trust to [^{F122}NHS England] for dissolution.
- (2) An application under this section may be made only with the approval of more than half of the members of the council of governors of the applicant.
- (3) [^{F123}NHS England] must grant the application if it is satisfied that—
 - ^{F124}(a)
 - (b) such steps as are necessary to prepare for the dissolution have been taken.
- (4) Where an application under this section is granted, [^{F125}NHS England] must make an order—
 - (a) dissolving the trust in question, and
 - ^{F126}(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.]

[The order must include provision for the transfer of any employees of the NHS ^{F127}(5) foundation trust that is dissolved.]]

Textual Amendments

- F121** S. 57A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 171, 306(4)**; S.I. 2013/671, art. 2(3)
- F122** Words in s. 57A(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 23(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F123** Words in s. 57A(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 23(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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- F124** S. 57A(3)(a) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), **ss. 66(a)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F125** Words in s. 57A(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 23(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F126** S. 57A(4)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), **ss. 66(b)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F127** S. 57A(5) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), **ss. 66(c)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Miscellaneous

^{F128} 58 Taxation **E+W**

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Textual Amendments

- F128** S. 58 repealed (with effect in accordance with s. 216(3)(4) of the amending Act) by Finance Act 2012 (c. 14), **s. 216(2)(b)**

59 Conduct of elections **E+W**

- (1) Regulations may make provision as to the conduct of elections for membership of the [^{F129}council of governors] of an NHS foundation trust.
- (2) The regulations may in particular provide for—
 - (a) nomination of candidates and obligations to declare their interests,
 - (b) systems and methods of voting, and the allocation of places on the [^{F130}council of governors], at contested elections,
 - (c) filling of vacancies,
 - (d) supervision of elections,
 - (e) elections expenses and publicity,
 - (f) questioning of elections and the consequences of irregularities.
- (3) Regulations under this section may create offences punishable on summary conviction with a maximum fine not exceeding level 4 on the standard scale.
- (4) An NHS foundation trust must secure that its constitution is in accordance with regulations under this section.
- (5) Pending the coming into force of regulations under this section, elections for membership of the [^{F131}council of governors] of an NHS foundation trust, if contested, must be by secret ballot.

Textual Amendments

- F129** Words in s. 59(1) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)
- F130** Words in s. 59(2)(b) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

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F131 Words in s. 59(5) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(a\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

60 Voting and standing for election **E+W**

- (1) A person may not vote at an election for the [^{F132}council of governors] of an NHS foundation trust unless, within the specified period, he has made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held.
- (2) A person may not stand for election to [^{F133}the council] unless—
 - (a) he has within the specified period made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held, and
 - (b) he is not prevented from being a member of [^{F133}the council] by paragraph 8 of Schedule 7.
- (3) A person elected to [^{F133}the council] may not vote at a meeting of [^{F133}the council] unless—
 - (a) he has within the specified period made a declaration in the specified form of the particulars of his qualification to vote as a member of the trust, and
 - (b) he is not prevented from being a member of [^{F133}the council] by paragraph 8 of Schedule 7.
- (4) This section does not apply to an election held for the staff constituency.
- (5) “Specified” means specified in the trust's constitution.
- (6) A person is guilty of an offence if he—
 - (a) makes a declaration under this section which he knows to be false in a material particular, or
 - (b) recklessly makes such a declaration which is false in a material particular.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Textual Amendments

F132 Words in s. 60(1) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(a\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

F133 Words in s. 60(2)(3) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(b\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

61 Representative membership **E+W**

- [^{F134}(1)] [^{F135}An NHS foundation trust must] take steps to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) of the patients' constituency is representative of those eligible for such membership.
- [^{F136}(2)] In deciding which areas are to be areas for public constituencies, or in deciding whether there is to be a patients' constituency, an NHS foundation trust must have regard to

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the need for those eligible for such membership to be representative of those to whom the trust provides services.]

Textual Amendments

- F134** S. 61(1): s. 61 renumbered as s. 61(1) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 153(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F135** Words in s. 61(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 153(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F136** S. 61(2) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 153(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

62 Audit **E+W**

Schedule 10 makes provision in relation to the audit of accounts of NHS foundation trusts.

63 General duty of NHS foundation trusts **E+W**

An NHS foundation trust must exercise its functions effectively, efficiently and economically.

[^{F137}63A Duty to have regard to wider effect of decisions **E+W**

- (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.

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- (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.]

Textual Amendments

F137 S. 63A inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 67, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

[^{F138} 63B Duties in relation to climate change etc **E+W**

- (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.]

Textual Amendments

F138 S. 63B inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 68, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Supplementary

64 Orders and regulations under this Chapter **E+W**

- (1) Any power under this Chapter to make an order or regulations [^{F139}, other than the power to make an order under section 42B,] is exercisable by statutory instrument.
- (2) Subject to subsections (3) and (4), a statutory instrument made by virtue of this Chapter is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument containing—
- (a) the first regulations under section 55(4) or 59,
 - [^{F140}(aa) regulations under paragraph 30(1) of Schedule 7,] or
 - (b) an order or regulations under this Chapter making, by virtue of subsection (5) (b), provision which amends or repeals any part of the text of an Act,
- may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (4) Subsection (2) does not apply to a statutory instrument containing an order under—

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- (a) section 51,
 - ^{F141}(b)
 - ^{F142}(ba) section 56A(4A),]
 - (c) section 57 ^{F143}, or
 - (d) section 57A.]
- ^{F144}(4A) The Statutory Instruments Act 1946 applies in relation to the power of ^{F145}[NHS England] to make an order under section ^{F146}[56A(4A),] 57 or 57A as if ^{F145}[NHS England] were a Minister of the Crown.]
- (5) Any order or regulations under this Chapter—
- (a) may make different provision for different purposes, and
 - (b) may make incidental, supplementary, consequential, transitory or transitional or saving provision.
- (6) Any power under this Chapter to make an order or regulations (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case.

Textual Amendments

- F139** Words in s. 64(1) inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), **ss. 62(3)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F140** S. 64(3)(aa) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 158(2)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)
- F141** S. 64(4)(b) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 172(10)(a)**, 173(2)(b), 306(4); S.I. 2013/671, **art. 2(3)**
- F142** S. 64(4)(ba) inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), **ss. 96(5)(a)**, 115(7); S.I. 2015/994, art. 6(r)
- F143** S. 64(4)(d) and word inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 172(10)(b)**, 306(4); S.I. 2013/671, art. 2(3)
- F144** S. 64(4A) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 172(11)**, 306(4); S.I. 2013/671, art. 2(3)
- F145** Words in s. 64(4A) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 24**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F146** Word in s. 64(4A) inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), **ss. 96(5)(b)**, 115(7); S.I. 2015/994, art. 6(r)

65 Interpretation of this Chapter **E+W**

- (1) In this Chapter—
- “authorisation” means an authorisation under section 35 or 56,
 - “health service body” means a Strategic Health Authority, a Primary Care Trust, an NHS trust, a Special Health Authority or an NHS foundation trust.
- (2) Any references in this Chapter to goods and services include, in particular, facilities, education and training.

Changes to legislation:

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Changes and effects yet to be applied to :

- s. 33 cross-heading substituted by 2012 c. 7 s. 180(5)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 3B(1)(aa) inserted by 2022 c. 31 Sch. 3 para. 2(b)
- s. 3B(1)(za) inserted by 2022 c. 31 Sch. 3 para. 2(a)
- s. 13G(4) words omitted by virtue of 2012 c. 7, Sch. 14 para. 4A (as inserted) by 2014 c. 23 s. 120(18)(a)
- s. 35(3A)(3B) inserted by 2012 c. 7 s. 159(4)
- s. 35(3A) words substituted by 2022 c. 31 Sch. 5 para. 12(4) (This amendment not applied to legislation.gov.uk. The insertion of s. 35(3A) by 2012 c. 7 s.159(4) not yet in force.)
- s. 40(4)-(4B) substituted for s. 40(4) by 2012 c. 7 Sch. 14 para. 5
- s. 42(1A) inserted by 2012 c. 7 Sch. 14 para. 6
- s. 65F(2A)-(2F) inserted by 2012 c. 7 Sch. 14 para. 15(4) (This amendment is itself amended before it comes into force by 2014 c. 23, ss. 85(15), 120(18)(b)(c), 127(1); S.I. 2014/1714, art. 3(2)(b)(c))
- s. 65H(10A) inserted by 2012 c. 7 Sch. 14 para. 17(4)
- s. 65H(10A) omitted by 2022 c. 31 Sch. 8 para. 7(7) (This amendment not applied to legislation.gov.uk. 2012 c. 7 Sch. 14 revoked at 1.7.2022 by 2022 c. 31, s. 186(6), Sch. 7 para. 13 before the insertion of s. 65H(10A) could come into effect.)
- s. 82A-83A and cross-heading substituted for s. 83 and cross-heading by 2022 c. 31 Sch. 3 para. 3
- s. 84(4)-(4B) substituted for s. 84(4) by 2022 c. 31 Sch. 3 para. 4(4)
- s. 92(5A) inserted by 2022 c. 31 Sch. 3 para. 9(4)
- s. 94(3)(ca)(cb) substituted for s. 94(3)(ca) by 2022 c. 31 Sch. 3 para. 11(3)
- s. 98A98B substituted for s. 98A by 2022 c. 31 Sch. 3 para. 14
- s. 98BC-99B and cross-heading substituted for s. 99 and cross-heading by 2022 c. 31 Sch. 3 para. 15
- s. 100(3A)(3B) inserted by 2022 c. 31 Sch. 3 para. 16(4)
- s. 109(3)(ca)(cb) substituted for s. 109(3)(ca) by 2022 c. 31 Sch. 3 para. 23(3)
- s. 112(1)(za) inserted by 2022 c. 31 Sch. 3 para. 24(2)(b)
- s. 114A114B substituted for s. 114A by 2022 c. 31 Sch. 3 para. 26
- s. 114C and cross-heading inserted by 2022 c. 31 Sch. 3 para. 27
- s. 116A116B and cross-heading inserted by 2022 c. 31 Sch. 3 para. 30
- s. 117(4)(4A) substituted for s. 117(4) by 2022 c. 31 Sch. 3 para. 31(4)
- s. 125A125B substituted for s. 125A by 2022 c. 31 Sch. 3 para. 39
- s. 223C(1)(c)(d) inserted by 2022 c. 31 s. 28
- s. 223LA inserted by 2022 c. 31 s. 30(3)
- Sch. 15 para. 4(1)(b) and word omitted by 2012 c. 7 Sch. 14 para. 39(3)