



National Health Service Act 1977

1977 CHAPTER 49

PART IV

PROPERTY AND FINANCE

Trusts

90 Gifts on trust.

—A health authority has power to accept, hold and administer any property on trust for all or any purposes relating to the health service.

91 Private trusts for hospitals.

(1) Where—

- (a) 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, then
- (b) the trust instrument shall be construed as authorising or (as the case may be) 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.

(2) Any sum so paid to the appropriate hospital authority shall, so far as practicable, be applied by them for the purpose specified in the trust instrument.

(3) In this section “the appropriate hospital authority” means—

- (a) where special trustees are appointed for the hospital, those trustees;
- [^{F1}(aa) where the hospital is owned and managed by an NHS trust and trustees have been appointed for the NHS trust, those trustees;
- (ab) where the hospital is owned and managed by an NHS trust and neither paragraph (a) nor paragraph (aa) above applies, the NHS trust;]

Status: Point in time view as at 06/03/1991. This version of this cross heading contains provisions that are not valid for this point in time.

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- (b) in any other case, the . . . ^{F2}[^{F3}District] Health Authority exercising functions on behalf of the Secretary of State in respect of the hospital.
- (4) Nothing in this section applies to a trust for a special hospital, or to property transferred under section 24 of the ^{M1}National Health Service Reorganisation Act 1973.

Textual Amendments

- F1** S. 91(3)(aa)(bb) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 11(4)
- F2** Words repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), Sch. 10
- F3** Words inserted by Health Services Act 1980 (c. 53, SIF 113:2), Sch. 1, para. 67

Marginal Citations

- M1** 1973 c. 32(113:2).

92 Further transfers of trust property.

- (1) The Secretary of State may, having regard to any change or proposed change in the arrangements for the administration of a hospital [^{F4}or other establishment or facility] or in the area or functions of any health authority, by order provide for the transfer of any trust property from any health authority [^{F5}NHS trust, special trustees or trustees for an NHS trust] to any other health authority [^{F5}NHS trust, special trustees or trustees for an NHS trust].
- (2) If it appears to the Secretary of State at any time that all the functions of any special trustees should be discharged by one or more health authorities [^{F6}or NHS trusts] then, whether or not there has been any such change as is mentioned in subsection (1) above, he may by order provide for the transfer of all trust property from the special trustees to the health authority [^{F7}or NHS trust], or, in such proportions as he may specify in the order, to those health authorities [^{F6}or NHS trusts].
- (3) Before so acting the Secretary of State shall consult the health authorities [^{F6}or NHS trusts] and special trustees concerned.
- (4) Where by an order under this section, property is transferred to two or more authorities [^{F6}or NHS trusts], it shall 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 is to 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.
- [^{F8}(6) 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 an NHS trust, or
 - (b) the functions of the trustees for an NHS trust should be discharged by special trustees,
- then, whether or not there has been any such change as is mentioned in subsection (1) above, he may, after consulting the special trustees and the trustees for the NHS trust, by order provide for the transfer of all trust property from or to the special trustees to or from the trustees for the NHS trust.]

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Textual Amendments

- F4** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 11(5)(a)**
- F5** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 11(5)(a)**
- F6** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 11(5)(b)**
- F7** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 11(5)(c)**
- F8** [S. 92\(6\)](#) added by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 11(5)(d)**

Modifications etc. (not altering text)

- C1** [S. 92](#) restricted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 301, **Sch. 6 para. 7(2)**

93 Trust property previously held for general hospital purposes.

- (1) This section applies—
- (a) to property transferred under section 23 of the ^{M2}National Health Service Reorganisation Act 1973 (winding-up of hospital endowments funds), and
 - (b) to property transferred under section 24 of that Act (transfer of trust property from abolished authorities) which immediately before the day appointed for the purposes of that section was, in accordance with any provision contained in or made under section 7 of the ^{M3}National Health Service Act 1946, applicable for purposes relating to hospital services or relating to some form of research, and this section continues to apply to the property after any further transfer under section 92 above.
- (2) The person holding the property after the transfer or last transfer shall secure, so far as is reasonably practicable, that the objects of any original endowment and the observance of any conditions attached to that endowment, including in particular conditions intended to preserve the memory of any person or class of persons, are not prejudiced by this Part of this Act, or Part II of that Act of 1973.
- In this subsection “original endowment” means a hospital endowment which was transferred under section 7 of that Act of 1946 and from which the property in question is derived.
- (3) Subject to subsection (2) above, the property shall be held on trust for such purposes relating to hospital services (including research), or to any other part of the health service associated with any hospital, as the person holding the property thinks fit.
- (4) Where the person holding the property is a body of special trustees, the power conferred by subsection (3) above shall be exercised as respects the hospitals for which they are appointed.

Modifications etc. (not altering text)

- C2** [S. 93\(1\)\(2\)](#) extended (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 4\(1\)\(2\), 8\(1\)](#), **Sch. 2 para. 5(3)** (with [Sch. 2 para. 6](#))

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Marginal Citations

M2 1973 c. 32(113:2).

M3 1946 c. 81.

94 Application of trust property: further provisions.

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

- (a) section 24 of the ^{M4}National Health Service Reorganisation Act 1973 (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 above,

shall be exercisable by the person to whom the property is so transferred and, subject to section 93 above and the following provisions of this section, the transfer shall not affect the trusts on which property is held.

(2) Where—

- (a) property has been transferred under section 24 of that Act of 1973, 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 think fit without any restriction on the kinds of hospital services and without any restriction to one or more specified hospitals,

the discretion shall be enlarged so as to allow the application of the property or (as the case may be) of the income arising from the property, to such extent as the trustees think fit, for any other part of the health service associated with any hospital.

(3) Subsection (2) above shall apply on any subsequent transfer of the property under section 92 above.

Modifications etc. (not altering text)

C3 S. 94(1)(3) extended (E.W.) (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 4(1)(2), 8(1), **Sch. 2 para. 5(3)** (with Sch. 2 para. 6)

Marginal Citations

M4 1973 c. 32(113:2).

95 Special trustees for a university or teaching hospital.

(1) The bodies of trustees (in this Act referred to as special trustees) appointed by the Secretary of State under section 29 of the National Health Service Reorganisation Act 1973 [^{F9}or] this section shall (subject to section 92 above) hold and administer the property transferred to them under that Act of 1973.

The special trustees so appointed are bodies of trustees appointed for the hospital or hospitals which, immediately before the day appointed for the purposes of section 29 of that Act of 1973, were controlled and managed by a University Hospital Management Committee or a Board of Governors, but excluding—

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- (a) a body on whose request an order was made under section 24(2) of that Act of 1973;
 - (b) a preserved Board within the meaning of section 15(6) of that Act of 1973.
- (2) Special trustees have power to accept, hold and administer any property on trust for all or any purposes relating to hospital services (including research), or to any other part of the health service associated with hospitals, being a trust which is wholly or mainly for hospitals for which the special trustees are appointed.
- (3) The number of trustees for any hospital or hospitals shall be such as the Secretary of State may from time to time determine after consultation with such persons as he considers appropriate.
- (4) The term of office of any special trustee shall 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.

Textual Amendments

F9 Word substituted by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 1](#), para. 68

96 Trusts: supplementary provisions.

- (1) Any provision in sections 90 to 95 above for the transfer of any property includes provision for the transfer of any rights and liabilities arising from that property.

[^{F10}(1A) Where any transfer of property by virtue of those sections is of, or includes,—

- (a) land held on lease from a third party, that is to say, a person other than the Secretary of State or a health authority, or
- (b) any other asset leased or hired from a third party or in which a third party has an interest,

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

- (2) Nothing in those sections shall affect any power of Her Majesty, the court (as defined in the ^{M5}Charities Act 1960) or any other person to alter the trusts of any charity.
- (3) Nothing in section 12 of the ^{M6}Finance Act 1895 (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 sections 90 to 95 above or to an order made in pursuance of any of those sections; and stamp duty shall not be payable on such an order.

Textual Amendments

F10 [S. 96\(1A\)](#) inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 11\(6\)\(b\)](#)

Modifications etc. (not altering text)

C4 [S. 96](#) amended by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 11\(6\)](#)

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Marginal Citations

M5 1960 c. 58(19).

M6 1895 c. 16(114).

[^{F11}96A Power of health authorities, etc. to raise money, etc., by appeals, collections, etc.

- (1) A health authority [^{F12}or NHS trust] shall have power to engage in activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to assist the authority [^{F12}or NHS trust] in providing or improving any services or any facilities or accommodation which is or are or is or are to be provided as part of the health service or to assist them in connection with their functions with respect to research.
 - (2) A Board of Governors of a teaching hospital shall, so long as it is a preserved Board by virtue of section 15 of the ^{M7}National Health Service Reorganisation Act 1973, have the like power in relation to services, facilities or accommodation provided or to be provided at or by the hospital or their functions with respect to research.
 - (3) Subject to any directions of the Secretary of State excluding specified descriptions of activity, the activities authorised by this section include public appeals or collections and competitions, entertainments, bazaars, sales of produce or other goods and other similar activities and the activities may involve the use of land, premises or other property held by or for the benefit of the health [^{F13}authority, NHS trust or Board] exercising the power subject however to any restrictions on the purposes for which trust property may be used.
 - (4) Subject to the following provisions of this section, the health [^{F13}authority, NHS trust or Board] at whose instance property is given in pursuance of this section shall, after defraying out of it any expenses incurred in obtaining it, hold, administer and apply the property on trust for or for the purpose for which it was given.
 - (5) Where property is given in pursuance of this section 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 [^{F14}body responsible for the hospital if that body and the special trustees agree; and in this subsection the body responsible for a hospital is,—
 - (a) in the case of a hospital vested in a NHS trust, that trust; and
 - (b) in any other case, the District Health Authority exercising functions on behalf of the Secretary of State in respect of the hospital]
- [Where property is given in pursuance of this section on trust for any purposes of an
- ^{F15}(5A) NHS trust for which trustees have been appointed under section 11(1) of the National Health Service and Community Care Act 1990, then, if those trustees and the NHS trust agree, the property may be held, administered and applied by those trustees instead of by the NHS trust.]
- (6) Property given in pursuance of this section on trust may be transferred to another health authority [^{F16}to an NHS trust or to special trustees or trustees for an NHS trust] by order of the Secretary of State under section 92 above in the same circumstances as other trust property may be transferred under that section, and sections 94 and 96 above shall apply as they apply to other trust property transferred under the said section 92.
 - (7) Where property held by a health [^{F17}authority, NHS trust or Board] under this section is more than sufficient to enable the purpose for which it was given to be fulfilled the

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excess shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property comprising the excess was given, for such purposes connected with any of the functions of the authority or Board as the [^{F17}authority, NHS trust or Board] think fit.

- (8) Where property held by a health [^{F17}authority, NHS trust or Board] under this section is insufficient to enable the purpose for which it was given to be fulfilled then—
- (a) the [^{F17}authority, NHS trust or Board] may apply so much of the capital or income at their disposal as is needed to enable the purpose to be fulfilled subject, however, in the case of trust property, to any restrictions on the purpose for which the trust property may be applied and, in the case of money paid or payable by the Secretary of State or by a Regional Health Authority under section 97 below, to any directions he or that Authority may give; but
 - (b) where the capital or income applicable under paragraph (a) above is insufficient or is not applied to enable the purpose to be fulfilled, the property so held by the health [^{F17}authority, NHS trust or Board] shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property was given, for such purposes connected with any of the functions of the authority or Board as the [^{F17}authority, NHS trust or Board] think fit.
- (9) Where under subsection (7) or (8) above property becomes applicable for purposes other than that for which it was given the [^{F17}authority, NHS trust or Board] shall have regard to the desirability of applying the property for a purpose similar to that for which it was given.
- (10) In this section “special trustees” has the same meaning as in section 95 above and references to the purposes for which trust property may be used or applied are to be taken, in the case of trust property which has been transferred under section 92 above, to include references to those purposes as enlarged by section 94 above.]

Textual Amendments

- F11** S. 96A inserted by Health Services Act 1980 (c. 53, SIF 113:2), s. 5(1)
- F12** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), Sch. 2 para. 23(1)
- F13** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), Sch. 2 para. 23(2)
- F14** Words and subsections (a)(b) substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), Sch. 2 para. 23(3)
- F15** S. 96A(5A) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), Sch. 2 para. 23(4)
- F16** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), Sch. 2 para. 23(5)
- F17** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), Sch. 2 para. 23(2)

Marginal Citations

- M7** 1973 c. 32(113:2).

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VALID FROM 04/01/2000

[^{F18}96B Trust-funds and trustees for Primary Care Trusts.

- (1) The Secretary of State may by order provide for the appointment of trustees for any Primary Care Trust.
- (2) Trustees for a Primary Care Trust may accept, hold and administer any property on trust—
 - (a) for the general or any specific purposes of the Primary Care Trust (including the purposes of any specific hospital or other establishment or facility which is managed by the trust), or
 - (b) for all or any purposes relating to the health service.
- (3) An order under subsection (1) above may—
 - (a) make provision as to the persons by whom trustees are to be appointed and generally as to the method of their appointment,
 - (b) provide for any appointment to be subject to any conditions specified in the order (including conditions requiring the consent of the Secretary of State),
 - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with any persons he considers appropriate, and
 - (d) make provision about the term of office of any trustee and his removal from office.
- (4) Where trustees have been appointed for a Primary Care Trust under subsection (1) above, the Secretary of State may by order provide for the transfer of any trust property from the Primary Care Trust to the trustees so appointed.]

Textual Amendments

F18 S. 96B inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 7, 67; S.I. 1999/2342, art. 2(3), Sch. 2

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