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Changes to legislation: National Health Service and Community Care Act 1990, SCHEDULE 2 is up to date with all changes known to be in force on or before 31 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 2 **E+W**

Section 5.

NATIONAL HEALTH SERVICE TRUSTS

PART I **E+W**

ORDERS UNDER SECTION 5(1)

- 1 (1) Any reference in this Part of this Schedule to an order is a reference to an order under section 5(1) of this Act establishing an NHS trust or any subsequent order under that provision amending or revoking a previous order.
- (2) An order shall be made by statutory instrument.
- 2 The provisions made by an order shall be in conformity with any general provision made by regulations under section 5(7) of this Act.
- 3 (1) Without prejudice to any amendment made by a subsequent order, the first order to be made in relation to any NHS trust shall specify—
 - (a) the name of the trust;
 - (b) the functions of the trust;
 - (c) the number of executive directors and non-executive directors;
 - (d) where the trust is to be regarded as having a significant teaching commitment, a provision to secure the inclusion in the non-executive directors referred to in paragraph (c) above of a person appointed from a university with a medical or dental school specified in the order;
 - (e) the operational date of the trust, that is to say, the date on which the trust is to begin to undertake the whole of the functions conferred on it; and
 - (f) if a scheme is to be made under section 6 of this Act, the health authority which is to make the scheme.
- (2) For the purposes of sub-paragraph (1)(d) above, an NHS trust is to be regarded as having a significant teaching commitment in the following cases—
 - (a) if the trust is established to [^{F1}provide services at] a hospital or other establishment or facility which, in the opinion of the Secretary of State, has a significant teaching and research commitment; and
 - (b) in any other case, if the Secretary of State so provides in the order.
- (3) In a case where the order contains a provision made by virtue of sub-paragraph (1)(d) above and a person who is being considered for appointment by virtue of that provision—

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- (a) is employed by the university in question, and
- (b) would also, apart from this sub-paragraph, be regarded as employed by the trust,

his employment by the trust shall be disregarded in determining whether, if appointed, he will be a non-executive director of the trust.

- (4) An order shall specify the accounting date of the trust.

Textual Amendments

F1 Words in Sch. 2 para. 3(2) substituted (*retrospectively*) by 1999 c. 8, s. 13(7)(10); S.I. 1999/2540, art. 2(1)(a), Sch. 1; S.I. 1999/3184, art. 2(1), Sch. 1

- 4
 - (1) An order may require a Regional, District or Special Health Authority to make staff, premises and other facilities available to an NHS trust pending the transfer or appointment of staff to or by the trust and the transfer of premises or other facilities to the trust.
 - (2) An order making provision under this paragraph may make provision with respect to the time when the Regional, District or Special Health Authority's functions under the provision are to come to an end.
- 5
 - (1) An order may provide for the establishment of an NHS trust with effect from a date earlier than the operational date of the trust and, during the period between that earlier date and the operational date, the trust shall have such limited functions for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date as may be specified in the order.
 - (2) If an order makes the provision referred to in sub-paragraph (1) above, then, at any time during the period referred to in that sub-paragraph, the NHS trust shall be regarded as properly constituted (and may carry out its limited functions accordingly) notwithstanding that, at that time, all or any of the executive directors have not yet been appointed.
 - (3) If an order makes the provision referred to in sub-paragraph (1) above, the order may require a Regional, District or Special Health Authority to discharge such liabilities of the NHS trust as—
 - (a) may be incurred during the period referred to in that sub-paragraph; and
 - (b) are of a description specified in the order.

PART II **E+W**

DUTIES, POWERS AND STATUS

Specific duties

- 6
 - (1) An NHS trust shall carry out effectively, efficiently and economically the functions for the time being conferred on it by an order under section 5(1) of this Act and

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by the provisions of this Schedule and, with respect to the exercise of the powers conferred by section 5(10) of this Act and paragraphs 10 to 15 below, shall comply with any directions given to it by the Secretary of State, whether of a general or a particular nature.

- (2) An NHS trust shall comply with any directions given to it by the Secretary of State with respect to all or any of the following matters—
- (a) the qualifications of persons who may be employed as officers of the trust;
 - (b) the employment, for the purpose of performing functions specified in the direction, of officers having qualifications or experience of a description so specified;
 - (c) the manner in which officers of the trust are to be appointed;
 - (d) prohibiting or restricting the disposal of, or of any interest in, any asset which, at the time the direction is given, the Secretary of State reasonably considers to have a value in excess of such sum as may be specified in an order under section 5(1) of this Act and in respect of which the Secretary of State considers that the interests of the National Health Service require that the asset should not be disposed of;
 - (e) compliance with guidance or directions given (by circular or otherwise) to health authorities, or particular descriptions of health authorities; and
 - (f) the implementation of awards relating to the distinction or merit of medical practitioners or dental practitioners or any class or classes of such practitioners.
- 7 (1) For each accounting year an NHS trust shall prepare and send to the Secretary of State an annual report in such form as may be determined by the Secretary of State.
- (2) At such time or times as may be prescribed, an NHS trust shall hold a public meeting at which its audited accounts and annual report and any report on the accounts made pursuant to subsection (3) of section 15 of the ^{M1}Local Government Finance Act 1982 shall be presented.
- (3) In such circumstances and at such time or times as may be prescribed, an NHS trust shall hold a public meeting at which such document as may be prescribed shall be presented.

Marginal Citations

M1 1982 c. 32.

- 8 An NHS trust shall furnish to the Secretary of State such reports, returns and other information, including information as to its forward planning, as, and in such form as, he may require.
- 9 (1) An NHS trust shall be liable to pay—
- (a) to the chairman and any non-executive director of the trust remuneration of an amount determined by the Secretary of State, not exceeding such amount as may be approved by the Treasury;

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- (b) to the chairman and any non-executive director of the trust such travelling and other allowances as may be determined by the Secretary of State with the approval of the Treasury;
 - (c) to any member of a committee or sub-committee of the trust who is not also a director such travelling and other allowances as may be so determined.
- (2) If an NHS trust so determines in the case of a person who is or has been a chairman of the trust, the trust shall be liable to pay such pension, allowances or gratuities to or in respect of him as may be determined by the Secretary of State with the approval of the Treasury.
- (3) Different determinations may be made under sub-paragraph (1) or sub-paragraph (2) above in relation to different cases or descriptions of cases.

Modifications etc. (not altering text)

- C1** Sch. 2 para. 9(2): Treasury approval requirement continued (W.)(1.7.1999) by S.I. 1999/672, arts. 1(2), 2, Sch. 1

Specific powers

- 10 In addition to carrying out its other functions, an NHS trust may, as the provider, enter into NHS contracts.
- 11 An NHS trust may undertake and commission research and make available staff and provide facilities for research by other persons.
- 12 An NHS trust may—
- (a) provide training for persons employed or likely to be employed by the trust or otherwise in the provision of services under the principal Act; and
 - (b) make facilities and staff available in connection with training by a university or any other body providing training in connection with the health service.
- 13 An NHS trust may enter into arrangements for the carrying out, on such terms as seem to the trust to be appropriate, of any of its functions jointly with any Regional, District or Special Health Authority, with another NHS trust or with any other body or individual.
- 14 According to the nature of its functions, an NHS trust may make accommodation or services or both available for patients who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation or services (or both) such charges as the trust may determine.

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Modifications etc. (not altering text)

- C2** Sch 2 para. 14 extended (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199(1), **Sch. 4 para. 85(a)**; S.I. 2004/759, **art. 2**

- 15 For the purpose of making additional income available in order better to perform its functions, an NHS trust shall have the powers specified in section 7(2) of the ^{M2}Health and Medicines Act 1988 (extension of powers of Secretary of State for financing the Health Service).

Marginal Citations

- M2** 1988 c. 49.

VALID FROM 29/11/2002

- [^{F2}15A An NHS Trust may arrange for the provision of accommodation and services outside England and Wales.]

Textual Amendments

- F2** Sch. 2 para. 15A inserted (29.11.2002) by S.I. 2002/2759, **reg. 4**

General powers

- 16 (1) Subject to Schedule 3 to this Act, an NHS trust shall have power to do anything which appears to it to be necessary or expedient for the purpose of or in connection with the discharge of its functions, including in particular power—
- (a) to acquire and dispose of land and other property;
 - (b) to enter into such contracts as seem to the trust to be appropriate;
 - (c) to accept gifts of money, land or other property, including money, land or other property to be held on trust, either for the general or any specific purposes of the NHS trust or for all or any purposes relating to the health service; and
 - (d) to employ staff on such terms as the trust thinks fit.
- (2) The reference in sub-paragraph (1)(c) above to specific purposes of the NHS trust includes a reference to the purposes of a specific hospital or other establishment or facility [^{F3}at or from which services are provided] by the trust.

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Textual Amendments

F3 Words in Sch. 2 para. 16(2) substituted (*retrospectively*) by 1999 c. 8, s. 13(8)(10); S.I. 1999/2540, art. 2(1)(a), Sch. 1; S.I. 1999/3184, art. 2(1), Sch. 1

- 17 (1) Without prejudice to the generality of paragraph 16 above, for or in respect of such of its employees as it may determine, an NHS trust may make such arrangements for providing pensions, allowances or gratuities as it may determine; and such arrangements may include the establishment and administration, by the trust or otherwise, of one or more pension schemes.
- (2) The reference in sub-paragraph (1) above to pensions, allowances or gratuities to or in respect of employees of an NHS trust includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the trust's employees who suffer loss of office or employment or loss or diminution of emoluments.

Status

- 18 An NHS trust shall not be regarded as the servant or agent of the Crown or, except as provided by this Act, as enjoying any status, immunity or privilege of the Crown; and an NHS trust's property shall not be regarded as property of, or property held on behalf of, the Crown.

PART III **E+W**

SUPPLEMENTARY PROVISIONS

Re-imbursement for health services work carried out otherwise than under NHS contract

- 19 (1) In any case where an NHS trust provides goods or services for the benefit of an individual and—
- (a) the provision of those goods or services is not pursuant to an NHS contract, and
 - (b) the condition of the individual is such that he needs those goods or services and, having regard to his condition, it is not practicable before providing them to enter into an NHS contract for their provision, and
 - (c) the provision of those goods or services is within the primary functions of a District Health Authority or is a function of a health board,
- the trust shall be remunerated by that Authority or health board in respect of the provision of the goods or services in question.
- (2) The rate of any remuneration payable by virtue of sub-paragraph (1) above shall be calculated in such manner or on such basis as may be determined by the Secretary of State.

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- 20 In any case where an NHS trust provides goods or services for the benefit of an individual and—
- (a) the provision of those goods or services is not pursuant to an NHS contract, and
 - (b) the individual is resident outside the United Kingdom and is of a description (being a description associating the individual with another country) specified for the purposes of this paragraph by a direction made by the Secretary of State,
- the trust shall be remunerated by the Secretary of State in respect of the provision of the goods or services in question at such rate or rates as he considers appropriate.

Supply of goods and services by local authorities

- 21 In section 28 of the principal Act (supply of goods and services by local authorities) in subsection (3) after the words “health authorities”, in each place where they occur, there shall be inserted “and NHS trusts”, and at the end there shall be added “and the National Health Service and Community Care Act 1990”.

Making of charges

- 22 In each of sections 81 (charges for more expensive supplies) and 82 (charges for repairs and replacement necessitated by an act or omission of the person supplied etc.) of the principal Act, in paragraph (a)—
- (a) after the words “Secretary of State” there shall be inserted “or an NHS trust”; and
 - (b) after the word “him” there shall be inserted “or, as the case may be, by the trust”.

Power to raise money by appeals etc.

- 23 (1) In section 96A of the principal Act (power of health authorities etc. to raise money etc. by appeals, collections etc.) in subsection (1), after the word “authority”, in each place where it occurs, there shall be inserted “or NHS trust”.
- (2) In subsections (3), (4) and (7) to (9) of that section, for the words “authority or Board”, in each place where they occur, there shall be substituted “authority, NHS trust or Board”.
- (3) In subsection (5), of that section, for the words from “Area or District” onwards there shall be substituted “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”.
- (4) After subsection (5) of that section there shall be inserted the following subsection—

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“(5A) Where property is given in pursuance of this section on trust for any purposes of an 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.”

(5) In subsection (6) of that section for the words “or to special trustees” there shall be substituted “to an NHS trust or to special trustees or trustees for an NHS trust”.

Accounts and audit

24 (1) In section 98 of the principal Act (accounts and audit), in subsection (1) after paragraph (bb) there shall be inserted—

“(bbb) every NHS trust”.

(2) After subsection (2A) of that section there shall be inserted—

“(2B) in preparing its annual accounts in pursuance of subsection (2) above, an NHS trust shall comply with any directions given by the Secretary of State with the approval of the Treasury as to—

- (a) the methods and principles according to which the accounts are to be prepared; and
- (b) the information to be given in the accounts.”

Protection of members and officers

25 In section 125 of the principal Act (protection of members and officers of health authorities etc.)—

(a) for paragraph (b) there shall be substituted—

“(b) an NHS trust”; and

(b) at the end there shall be added “and the National Health Service and Community Care Act 1990”.

Compulsory acquisition

26 (1) An NHS trust may be authorised to purchase land compulsorily for the purposes of its functions by means of an order made by the trust and confirmed by the Secretary of State.

(2) Subject to sub-paragraph (3) below, the ^{M3}Acquisition of Land Act 1981 shall apply to the compulsory purchase of land under this paragraph.

(3) No order shall be made by an NHS trust under Part II of the Acquisition of Land Act 1981 with respect to any land unless the proposal to acquire the land compulsorily—

- (a) has been submitted to the Secretary of State in such form and together with such information as he may require; and
- (b) has been approved by him.

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Marginal Citations

M3 1981 c. 67.

Use and development of consecrated land and burial grounds

- 27 Section 128 of the ^{M4}Town and Country Planning Act 1971 (use and development of consecrated land and burial grounds) applies to consecrated land and land comprised in a burial ground, within the meaning of that section, which an NHS trust holds for any of its purposes as if—
- (a) that land had been acquired by the trust as mentioned in subsection (1) of that section; and
 - (b) the trust were a statutory undertaker, within the meaning of that Act.

Marginal Citations

M4 1971 c. 78.

Instruments etc.

- 28
- (1) The fixing of the seal of an NHS trust shall be authenticated by the signature of the chairman or of some other person authorised either generally or specially by the trust for that purpose and of one other director.
 - (2) Any document purporting to be a document duly executed under the seal of an NHS trust shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.
 - (3) A document purporting to be signed on behalf of an NHS trust shall be received in evidence and shall, unless the contrary is proved, be deemed to be so signed.

PART IV **E+W**

DISSOLUTION

- 29
- (1) The Secretary of State may by order made by statutory instrument dissolve an NHS trust.
 - (2) An order under this paragraph may be made—
 - (a) on the application of the NHS trust concerned; or
 - (b) if the Secretary of State considers it appropriate in the interests of the health service.
 - (3) Except where it appears to the Secretary of State necessary to make an order under this paragraph as a matter of urgency, no such order shall be made until after the completion of such consultation as may be prescribed.

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- 30 (1) If an NHS trust is dissolved under this Part of this Schedule, the Secretary of State may by order transfer or provide for the transfer to—
- (a) the Secretary of State, or
 - (b) a health authority, or
 - (c) another NHS trust,
- of such of the property, rights and liabilities of the NHS trust which is dissolved as in his opinion is appropriate; and any such order may include provisions corresponding to those of section 8 of this Act.
- (2) An order under this paragraph may make provision in connection with the transfer of staff employed by or for the purposes of the NHS trust which is dissolved; and such an order may include provisions corresponding to those of sections 6 and 7 of this Act, including provision for the making of a scheme by such health authority or other body as may be specified in the order.
- (3) No order shall be made under this paragraph until after completion of such consultation as may be prescribed.
- 31 Without prejudice to the generality of paragraph 30 above, if an NHS trust is dissolved under this Part of this Schedule, the Secretary of State or such other NHS trust or health authority as he may direct shall undertake the responsibility for the continued payment of any such pension, allowances or gratuities as, by virtue of paragraph 9(2) or paragraph 17 above, would otherwise have been the responsibility of the trust which has been dissolved.
- 32 An NHS trust may not be dissolved or wound up except in accordance with this Part of this Schedule.

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