



# National Health Service and Community Care Act 1990

## 1990 CHAPTER 19

### PART I

#### THE NATIONAL HEALTH SERVICE: ENGLAND AND WALES

##### *National Health Service trusts*

#### **5 NHS trusts.**

- (1) Subject to subsection (2) or, as the case may be, subsection (3) below the Secretary of State may by order establish bodies, to be known as National Health Service trusts (in this Act referred to as NHS trusts), [<sup>F1</sup>to provide goods and services for the purposes of the health service].
- (2) In any case where the Secretary of State is considering whether to make an order under subsection (1) above establishing an NHS trust and the hospital, establishment or facility concerned is or is to be situated in England, he shall direct the relevant Regional Health Authority to consult, with respect to the proposal to establish the trust,—
  - (a) the relevant Community Health Council and such other persons or bodies as may be specified in the direction; and
  - (b) such other persons or bodies as the Authority considers appropriate;and, within such period (if any) as the Secretary of State may determine, the relevant Regional Health Authority shall report the results of those consultations to the Secretary of State.
- (3) In any case where the Secretary of State is considering whether to make an order under subsection (1) above establishing an NHS trust and the hospital, establishment or facility concerned is or is to be situated in Wales, he shall consult the relevant Community Health Council and such other persons and bodies as he considers appropriate.

*Status: Point in time view as at 01/02/1991. This version of this provision has been superseded.*

**Changes to legislation:** National Health Service and Community Care Act 1990, Section 5 is up to date with all changes known to be in force on or before 30 June 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)

- (4) In subsections (2) and (3) above—
- (a) any reference to the relevant Regional Health Authority is a reference to that Authority in whose region the hospital, establishment or other facility concerned is, or is to be, situated; and
  - (b) any reference to the relevant Community Health Council is a reference to the Council for the district, or part of the district, in which that hospital, establishment or other facility is, or is to be, situated.
- (5) Every NHS trust—
- (a) shall be a body corporate having a board of directors consisting of a chairman appointed by the Secretary of State and, subject to paragraph 5(2) of Schedule 2 to this Act, executive and non-executive directors (that is to say, directors who, subject to subsection (7) below, respectively are and are not employees of the trust); and
  - (b) shall have the functions conferred on it by an order under subsection (1) above and by Schedule 2 to this Act.
- [<sup>F2</sup>(6) The functions which may be specified in an order under subsection (1) above include a duty to provide goods or services so specified at or from a hospital or other establishment or facility so specified.]
- (7) The Secretary of State may by regulations make general provision with respect to—
- (a) the qualifications for and the tenure of office of the chairman and directors of an NHS trust (including the circumstances in which they shall cease to hold, or may be removed from, office or may be suspended from performing the functions of the office);
  - (b) the persons by whom the directors and any of the officers are to be appointed and the manner of their appointment;
  - (c) the maximum and minimum numbers of the directors;
  - (d) the circumstances in which a person who is not an employee of the trust is nevertheless, on appointment as a director, to be regarded as an executive rather than a non-executive director;
  - (e) the proceedings of the trust (including the validation of proceedings in the event of a vacancy or defect in appointment); and
  - (f) the appointment, constitution and exercise of functions by committees and sub-committees of the trust (whether or not consisting of or including any members of the board) and, without prejudice to the generality of the power, any such regulations, may make provision to deal with cases where the post of any officer of an NHS trust is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.
- (8) Part I of Schedule 2 to this Act shall have effect with respect to orders under subsection (1) above; Part II of that Schedule shall have effect, subject to subsection (9) below, with respect to the general duties and the powers and status of NHS trusts; the supplementary provisions of Part III of that Schedule shall have effect; and Part IV of that Schedule shall have effect with respect to the dissolution of NHS trusts.
- (9) The specific powers conferred by paragraphs 14 and 15 in Part II of Schedule 2 to this Act may be exercised only to the extent that—
- (a) the exercise will not interfere with the duties of the trust to comply with directions under paragraph 6 of that Schedule; and

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- (b) the exercise will not to any significant extent interfere with the performance by the trust of its obligations under any NHS contract or any obligations imposed by an order under subsection (1) above.
- (10) The Secretary of State may by order made by statutory instrument confer on NHS trusts specific powers additional to those contained in paragraphs 10 to 15 of Schedule 2 to this Act.

#### Textual Amendments

- F1** Words in s. 5(1) substituted (*retrospectively*) for s. 5(1)(a)(b) by 1999 c. 8, s. 13(1)(10); S.I. 1999/2540, art. 2(1)(a), **Sch. 1**; S.I. 1999/3184, art. 2(1), **Sch. 1**
- F2** S. 5(6) substituted (*retrospectively*) by 1999 c. 8, s. 13(1)(10); S.I. 1999/2540, art. 2(1)(a), **Sch. 1**; S.I. 1999/3184, art. 2(1), **Sch. 1**

## 5 NHS trusts. **E+W**

- (1) Subject to subsection (2) or, as the case may be, subsection (3) below the Secretary of State may by order establish bodies, to be known as National Health Service trusts (in this Act referred to as NHS trusts),—
- (a) to assume responsibility, in accordance with this Act, for the ownership and management of hospitals or other establishments or facilities which were previously managed or provided by Regional, District or Special Health Authorities; or
- (b) to provide and manage hospitals or other establishments or facilities.
- (2) In any case where the Secretary of State is considering whether to make an order under subsection (1) above establishing an NHS trust and the hospital, establishment or facility concerned is or is to be situated in England, he shall direct the relevant Regional Health Authority to consult, with respect to the proposal to establish the trust,—
- (a) the relevant Community Health Council and such other persons or bodies as may be specified in the direction; and
- (b) such other persons or bodies as the Authority considers appropriate;
- and, within such period (if any) as the Secretary of State may determine, the relevant Regional Health Authority shall report the results of those consultations to the Secretary of State.
- (3) In any case where the Secretary of State is considering whether to make an order under subsection (1) above establishing an NHS trust and the hospital, establishment or facility concerned is or is to be situated in Wales, he shall consult the relevant Community Health Council and such other persons and bodies as he considers appropriate.
- (4) In subsections (2) and (3) above—
- (a) any reference to the relevant Regional Health Authority is a reference to that Authority in whose region the hospital, establishment or other facility concerned is, or is to be, situated; and
- (b) any reference to the relevant Community Health Council is a reference to the Council for the district, or part of the district, in which that hospital, establishment or other facility is, or is to be, situated.

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- (5) Every NHS trust—
- (a) shall be a body corporate having a board of directors consisting of a chairman appointed by the Secretary of State and, subject to paragraph 5(2) of Schedule 2 to this Act, executive and non-executive directors (that is to say, directors who, subject to subsection (7) below, respectively are and are not employees of the trust); and
  - (b) shall have the functions conferred on it by an order under subsection (1) above and by Schedule 2 to this Act.
- (6) The functions specified in an order under subsection (1) above shall include such functions as the Secretary of State considers appropriate in relation to the provision of services by the trust for one or more health authorities.
- (7) The Secretary of State may by regulations make general provision with respect to—
- (a) the qualifications for and the tenure of office of the chairman and directors of an NHS trust (including the circumstances in which they shall cease to hold, or may be removed from, office or may be suspended from performing the functions of the office);
  - (b) the persons by whom the directors and any of the officers are to be appointed and the manner of their appointment;
  - (c) the maximum and minimum numbers of the directors;
  - (d) the circumstances in which a person who is not an employee of the trust is nevertheless, on appointment as a director, to be regarded as an executive rather than a non-executive director;
  - (e) the proceedings of the trust (including the validation of proceedings in the event of a vacancy or defect in appointment); and
  - (f) the appointment, constitution and exercise of functions by committees and sub-committees of the trust (whether or not consisting of or including any members of the board) and, without prejudice to the generality of the power, any such regulations, may make provision to deal with cases where the post of any officer of an NHS trust is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.
- (8) Part I of Schedule 2 to this Act shall have effect with respect to orders under subsection (1) above; Part II of that Schedule shall have effect, subject to subsection (9) below, with respect to the general duties and the powers and status of NHS trusts; the supplementary provisions of Part III of that Schedule shall have effect; and Part IV of that Schedule shall have effect with respect to the dissolution of NHS trusts.
- (9) The specific powers conferred by paragraphs 14 and 15 in Part II of Schedule 2 to this Act may be exercised only to the extent that—
- (a) the exercise will not interfere with the duties of the trust to comply with directions under paragraph 6 of that Schedule; and
  - (b) the exercise will not to any significant extent interfere with the performance by the trust of its obligations under any NHS contract or any obligations imposed by an order under subsection (1) above.
- (10) The Secretary of State may by order made by statutory instrument confer on NHS trusts specific powers additional to those contained in paragraphs 10 to 15 of Schedule 2 to this Act.

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