

**Status:** Point in time view as at 01/04/2010. This version of this schedule contains provisions that are prospective.

**Changes to legislation:** Health Act 2009, Schedule 2 is up to date with all changes known to be in force on or before 25 July 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

Section 15(2)

#### DE-AUTHORISED NHS FOUNDATION TRUSTS

##### Commencement Information

**II** Sch. 2 in force at 15.2.2010 for specified purposes by S.I. 2010/30, art. 3(c)

PROSPECTIVE

After Schedule 8 to the National Health Service Act 2006 (c. 41) insert—

#### “SCHEDULE 8A

Sections 52D and 65E

#### DE-AUTHORISED NHS FOUNDATION TRUSTS

##### *Introductory*

- 1 (1) This Schedule applies to a body which is an NHS trust by virtue of an order made under section 52D(1) or 65E(1) (a “de-authorisation order”).
- (2) In this Schedule “the NHS foundation trust” means the body as it was constituted immediately before the order was made.

##### *Replacement of constitution*

- 2 (1) The constitution of the body pursuant to paragraph 1(1) of Schedule 7 ceases to have effect.
  - (2) The body ceases to have members and a board of governors.
  - (3) Subject to the following provisions of this Schedule, this Act applies in relation to the body as it applies in relation to an NHS trust established by an order made under section 25.
- 3 Nothing in this Chapter affects the continuity of the body or of its property or liabilities (including its criminal liabilities).

##### *Board of directors*

- 4 (1) This paragraph is subject to any provision made under section 52D(4) or (7) or 65L(4) or (5).
- (2) The number of executive directors and non-executive directors of the NHS trust is the number of executive directors and non-executive directors provided for in the constitution of the NHS foundation trust.

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- (3) On the de-authorisation order taking effect, the persons who were the chairman and executive and non-executive directors of the NHS foundation trust become, for the unexpired terms of their appointments, the chairman and executive and non-executive directors of the NHS trust.

#### *Name and functions*

- 5 (1) This paragraph applies only to a body which is an NHS trust by virtue of an order made under section 65E(1), and is subject to any provision made under section 65L(4).
- (2) “NHS trust” is substituted for “NHS foundation trust” in the name of the body.
- (3) The functions of the NHS trust (to be undertaken from the day on which the de-authorisation order takes effect) are to provide goods and services for the purposes of the health service.

#### *Trustees*

- 6 Any order appointing trustees for the NHS foundation trust has effect as an order under paragraph 10 of Schedule 4 appointing trustees for the NHS trust.

#### *Public dividend capital*

- 7 (1) The amount which was the public dividend capital of the NHS foundation trust continues as public dividend capital of the NHS trust held on the same conditions.
- (2) That is subject to any determination under paragraph 1(6) of Schedule 5.
- (3) Paragraph 1(1) of that Schedule does not apply.

#### *Accounts*

- 8 (1) The accounting date of the NHS trust is 31 March.
- (2) The first accounting period of the NHS trust begins with the first day of the financial year in which the de-authorisation order takes effect (and for that purpose the body is to be treated as having been an NHS trust with effect from that day).
- (3) But the Secretary of State may direct that the trust's first accounting period begins with the first day of the following financial year.
- (4) Paragraphs 24 and 25 of Schedule 7 apply to the body, as if it continued to be a public benefit corporation, in respect of any financial year before the NHS trust's first accounting period.

#### *Contracts*

- 9 (1) Nothing in this Act—
- (a) prevents the NHS trust continuing to be a party to a contract to which the NHS foundation trust was a party, or
  - (b) affects the rights or liabilities of any person under such a contract.
- (2) A contract to which the NHS foundation trust was a party and to which the NHS trust becomes a party is not an NHS contract by virtue of section 9(1).

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*Other property*

- 10 Nothing in this Act—
- (a) prevents the NHS trust continuing to hold property which the NHS foundation trust held, or
  - (b) affects the rights or liabilities of any person in respect of that property.

*Membership of bodies corporate*

- 11 Nothing in this Act—
- (a) prevents the NHS trust remaining a member of a body corporate of which the NHS foundation trust was a member, or
  - (b) affects the rights or liabilities of any person in respect of that membership.

*Directions*

- 12 Paragraphs 9 to 11 do not affect the Secretary of State's powers to give directions under this Act.”

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