

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Public involvement and local government

Chapter 2 – Local Government

Care Trusts

Section 200 – Care Trusts

1212. This section amends section 77 of the NHS Act to make it possible for NHS foundation trusts or CCGs, alongside local authorities, to form Care Trusts, if they decided that this was the best way to meet the needs of their local populations. The section also makes amendments that abolish the direct role of the Secretary of State in the process of forming or removing the designation of a Care Trust.
1213. Care Trusts, provision for which is made in section 77 of the NHS Act, provide opportunities for close integrated working across health and social care services..
1214. *Subsections (1), (11) and (12)* make changes to subsections (1), (10) and (12) of section 77 of the NHS Act to make it possible for foundation trusts and CCGs to be designated as Care Trusts. Current legislation makes no provision for Care Trusts to be formed with any NHS partners other than PCTs and NHS trusts. Provisions in other Parts of this Act for the abolition of PCTs and NHS trusts mean that Care Trusts, in their current form, would cease to exist without these changes. Inclusion of NHS foundation trusts and CCGs in subsection (10) of section 77 ensures that forming the Care Trust will not affect any of their core functions, rights or responsibilities. In addition, new subsection (5D) (inserted by *subsection (7)*) enables the parties to agree to act separately or jointly in respect of duties imposed by section 77 on the NHS body and local authorities.
1215. *Subsections (1), (2) and (5) to (7)* address subsections (1) and (5) of Section 77 of the NHS Act; subsections (2) and (5) in particular insert new subsections (1A), (5A), (5B), (5C) and (5D). These changes end the direct involvement of the Secretary of State in the process of forming a Care Trust or removing a designation as a Care Trust. This includes removing the Secretary of State from any direct involvement in specifying the area of the Care Trust. The decision to form or remove the designation of a Care Trust would be for local bodies and they would make the designation themselves. *Subsection (4)* makes amendments to subsection (4) of section 77 which enables the designated NHS body to also be able to perform the health related functions of the local authority in agreed areas of that local authority, even though it may not exercise NHS functions in that area. In future the area served by the Care Trust will be agreed by the NHS body and local authority in the Care Trust arrangement rather than by Secretary of State and this will be influenced by the scope of their partnership agreement and the areas which the NHS body and local authority cover.

*These notes refer to the Health and Social Care Act 2012
(c.7) which received Royal Assent on 27 March 2012*

1216. Repealing subsections (2) and (3) of section 77 of the NHS Act removes the requirement to make a joint application to the Secretary of State for designation as a Care Trust. Subsection (1)(c) to (f) provides that the NHS body and the local authority wishing to form a Care Trust must satisfy themselves that the Care Trust arrangement would lead to an improvement in the health or care outcomes for their local populations. Subsection (2) of section 200 inserts new sections (1A) and (1B) into section 77 which require the body and the local authority to publish and consult on their reasoning and the proposed Care Trust governance arrangements. Regulations may prescribe the manner and form of the consultation, when a consultation must commence, how long the consultation period must be and what actions must happen after consultation. This could include publishing the date on which the Care Trust designation would begin (or end in the case that the Care Trust designation was removed) and the names of the bodies involved in the Care Trust.
1217. Subsections (2) and (5) (in particular, new subsections (1B) and (5B)) provide that having decided to form a Care Trust or remove a Care Trust designation, the NHS body and the local authority will have to notify interested parties. The prescribed persons to be notified could include the NHS Commissioning Board, Monitor, the lead elected member of the local authority and the Care Quality Commission. In addition, if local Health and Wellbeing Boards are established, notification would be extended to cover those Boards.
1218. The intention is that the NHS and health related functions of the local authority should be exercised together as far as possible in order to provide or commission integrated services.
1219. *Subsections (13) to (15)* are saving provisions. Subsection (13) ensures that that the requirement to consult (see new subsection (1A)) before being designated as a Care Trust will not apply to Care Trusts that have already gone through the process under the previous legislative requirements. Care Trusts that have already met those requirements will not have to fulfil any additional requirements to enable them to remain as Care Trusts.
1220. Subsections (14) and (15) provide that an NHS trust or PCT which became a Care Trust prior to the commencement of the new provisions but then decided to cancel the arrangement after commencement of this Section, will still need to notify the Secretary of State, who will amend the establishment order to remove the words ‘Care Trust’ from its title. These provisions will remain in force until the point when PCTs and NHS trusts are abolished. This is because the name of a PCT or NHS trust is set out in its establishment order which could only be amended by an order made by the Secretary of State. By repealing subsection (6) of Section 77 the requirement that an NHS body must include the words “Care Trust” in its title or branding is removed.