

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – NHS foundation trusts and NHS trusts

Governance and management

Section 151 – Governors

995. This section makes changes to the powers of foundation trust governors as specified in Schedule 7 to the NHS Act and makes provision about their collective duties. It is intended to strengthen foundation trusts' internal governance given that the Act reduces specific oversight of foundation trusts by Monitor, with future controls operating through regulatory licensing and clinically-led NHS commissioning of all providers.
996. *Subsection (1)* formally renames the board of governors the “council of governors” in order to avoid confusion between it and the board of directors and to reflect practice.
997. The Act retains minimum requirements on the composition of the council of governors, including the existing requirement for there to be a majority of elected governors. *Subsection (2)* removes the existing requirement for the council of governors to include a member appointed by a Primary Care Trust, reflecting the abolition of Primary Care Trusts elsewhere in the Act. *Subsection (3)* provides that a foundation trust can specify in its constitution any other organisation that is entitled to appoint a member or members of the council of governors. This would enable foundation trusts to tailor their governance to local circumstances.
998. *Subsection (4)* sets out the duties of the council of governors, making explicit the duties on governors that are implicit in the NHS Act through their election by members and existing powers over non-executive directors. *Subsection (5)* provides that foundation trusts will be required to take steps to ensure that governors are equipped with the skills and knowledge they require. *Subsection (6)* gives governors an additional power to hold directors of the trust to account by enabling them to require directors to attend a meeting for the purposes of obtaining information about the performance of the trust or its directors, and to vote on issues concerning their performance. The trust is required to include any such meetings in its annual report (*subsection (8)*).
999. *Subsection (7)* amends paragraph 23(4)(c) of Schedule 7 to the NHS Act to enable the Secretary of State to decide who is eligible for appointment as auditor by a foundation trust's governors. This section moves a power currently held by Monitor to the Secretary of State. This is in line with the changes to accounting requirements described below in the Accounts sections. This power supplements paragraph 23(4)(a), which stipulates that a person may be appointed as an auditor if he is a member of one of the bodies mentioned in section 3(7)(a) to (e) of the Audit Commission Act 1998.