

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – NHS foundation trusts and NHS trusts

Functions

Section 164 – Goods and services

1038. This section amends section 43 of the NHS Act on authorised services to remove references to ongoing terms of authorisation, since terms of authorisation will no longer exist under changes proposed by the earlier section on foundation trust authorisation.
1039. *Subsection (1)* retains the position that the principal purpose of a foundation trust is to provide goods and services for the health service in England and that a foundation trust may provide goods and services for any purposes related to the provision of health care. It provides that the effect of the principal purpose is that a foundation trust must raise the majority of its income from the provisions of goods and services for the health service in England. This covers services commissioned by and for the health service in England, as well as the publicly funded public health services commissioned by local authorities.
1040. *Subsection (3)* requires every foundation trust to explain in their annual reports the impact that non-NHS income earned has had on their NHS service provision. It also places a duty on the directors to detail their proposals to earn non-NHS income in the foundation trust's forward plan and the income they expect to receive from those activities. *Subsection (3)* also requires governors to consider the forward plan and to satisfy themselves that any proposal to increase non-NHS income would not significantly interfere with the fulfilment by the foundation trust of its principal purpose or the performance of its other functions. Any proposal by the directors to increase the proportion of total income earned from non-NHS work by five percentage points or more requires agreement by more than half of the members of the council of governors of the trust voting. For example, the governors will be required to vote where a foundation trust plans to increase its non-NHS income from 2% to 7% or more of the trust's total income.