

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4 – NHS foundation trusts and NHS trusts**

#### **Mergers, acquisitions, separations and dissolution**

##### *Section 168 – Mergers*

1046. This section, and the subsequent sections enabling other types of organisational change, make the regime for foundation trusts more flexible, in line with legislation on other types of organisations. They also give foundation trust governors a role in decisions on these organisational changes.
1047. The section removes the specific discretion that Monitor had in relation to mergers involving foundation trusts and some of the information requirements needed alongside an application. Monitor's licensing powers under Part 3 will allow it to protect patient and public interests by setting licence conditions giving it a role in any organisational changes which impacted on the provision of essential services.
1048. A foundation trust planning to merge will still have to make an application to Monitor, but *subsection (5)* provides that Monitor's foundation trust-specific role in relation to such mergers will be limited to ensuring the necessary steps in the process have been followed, which now include the approval of the council of governors. If satisfied on this point, Monitor is required to grant the application to effect the change. *Subsection (3)* retains the need for Secretary of State to support the application if one of the parties is an NHS trust, to ensure that the interests of the public are properly taken into account.
1049. The section also clarifies that references to NHS trusts in this context relate only to English NHS trusts, which are those established under section 25 of the NHS Act.

##### *Section 169 – Acquisitions*

1050. This section inserts a new section 56A into the NHS Act which makes explicit provision for a foundation trust to acquire another foundation trust or an NHS trust in England.
1051. The general powers under section 47 of the NHS Act enable a foundation trust to acquire property of an NHS trust. However, a foundation trust cannot currently acquire another foundation trust: the general powers under section 47 cannot be used as there are currently no powers to dissolve the foundation trust being acquired unless it is in failure or being merged, which would also require the dissolution of the acquiring foundation trust.
1052. The foundation trust proposing to make the acquisition, and the foundation trust or NHS trust to be acquired, would make a joint application to Monitor. Monitor's role is limited to ensuring that the process prescribed by statute has been followed. Subsection (4) of new section 56A provides that Monitor must grant the application if it is satisfied that the necessary steps have been taken.

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

1053. Subsection (2) of new section 56A requires that an application for an acquisition could be made only with the approval of the majority of the governors of each of the foundation trusts involved. Subsection (3)(a) provides that an NHS trust must obtain the support of the Secretary of State before it can be acquired by a foundation trust, which is in line with requirements already in place for mergers.
1054. The provision for a foundation trust to be able to acquire an English NHS trust will be removed when the relevant NHS trust legislation is repealed.

***Section 170 – Separations***

1055. This section inserts a new section 57A into the NHS Act which makes explicit provision for a foundation trust to separate into two or more new foundation trusts. This may be necessary, for example, if following a merger a foundation trust was too large to manage itself effectively. This section would allow it to take action to address this.
1056. An application may be made by the foundation trust to Monitor for the separation. Monitor is required to grant the application effecting the change if it is satisfied that the necessary preparatory steps had been taken. Subsection (2) of new section 56B requires that such an application may be made only with the approval of the majority of the governors of the foundation trust.

***Section 171 – Dissolution***

1057. This section inserts a new section 57A into the NHS Act which makes provision for a foundation trust, with no remaining liabilities, to dissolve.
1058. An application may be made by the foundation trust to Monitor which is required to grant the application, and make the order to effect the administration of the dissolution, if it is satisfied that the foundation trust has no liabilities and that the necessary preparatory steps have been taken. Subsection (2) of the new section 57A requires that such an application may be made only with the approval of the majority of the governors of the foundation trust involved.

***Section 172 – Supplementary***

1059. This section extends the supplementary provisions in the NHS Act relating to mergers involving foundation trusts, so that they now cover mergers, acquisitions, separations and dissolutions.
1060. The section makes provision for Monitor to make an order to dissolve a foundation trust and to effect mergers and separations in which a new foundation trust is (or trusts are) created. The section requires that such orders must specify the properties and liabilities to be transferred, and to whom they are to be transferred.
1061. This section provides that sections 52A to 52E of, and Schedule 8A to the NHS Act (which would have been inserted by the Health Act 2009) will not come fully into force. These sections would have provided for the de-authorisation of foundation trusts. The effect of de-authorisation would be to revert a foundation trust to being an NHS trust, which will no longer be appropriate given the intention that all NHS trusts are to become foundation trusts and the associated repeal of the NHS trust model. The section also removes references to sections 52A to 52E, in force only for certain purposes, and Schedule 8A to the NHS Act from other parts of the NHS Act.