



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 4

#### NHS FOUNDATION TRUSTS & NHS TRUSTS

##### *Functions*

#### 164 Goods and services

- (1) In section 43 of the National Health Service Act 2006 (authorised services), for subsections (1) and (2) substitute—

“(1) The principal purpose of an NHS foundation trust is the provision of goods and services for the purposes of the health service in England.

- (2) An NHS foundation trust may provide goods and services for any purposes related to—

- (a) the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
- (b) the promotion and protection of public health.

(2A) An NHS foundation trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.”

- (2) In subsection (3) of that section (power to carry on other activities in order to generate additional income)—

- (a) for “The” substitute “An”,
- (b) for “subsection (1)” substitute “subsection (2)”, and
- (c) omit “, subject to any restrictions in the authorisation,”.

- (3) After that subsection insert—

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- “(3A) Each annual report prepared by an NHS foundation trust must give information on the impact that income received by the trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the trust of goods and services for those purposes.
- (3B) Each document prepared by an NHS foundation trust under paragraph 27 of Schedule 7 (forward plan) must include information about—
- (a) the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and
  - (b) the income it expects to receive from doing so.
- (3C) Where a document which is being prepared under paragraph 27 of Schedule 7 contains a proposal that an NHS foundation trust carry on an activity of a kind mentioned in subsection (3B)(a), the council of governors of the trust must—
- (a) determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its principal purpose or the performance of its other functions, and
  - (b) notify the directors of the trust of its determination.
- (3D) An NHS foundation trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the trust voting approve its implementation.”
- (4) Omit subsections (4) to (7) of that section (goods and services that may be authorised, etc.).
- (5) For the title to that section substitute “Provision of goods and services”.
- (6) In paragraph 2 of Schedule 7 to that Act (constitution), the existing text of which becomes sub-paragraph (1), after that sub-paragraph insert—
- “(2) If the corporation is an NHS foundation trust, the constitution must specify its principal purpose (as to which, see section 43(1)).”

**Commencement Information**

- 11** S. 164(1)-(3)(6) in force at 1.10.2012 by [S.I. 2012/1831](#), **art. 2(2)**
- 12** S. 164(4)(5) in force at 1.4.2013 by [S.I. 2013/671](#), **art. 2(3)**

**165 Private health care**

- (1) In section 44 of the National Health Service Act 2006 (private health care), omit—
- (a) subsection (1) (restriction on provision of private health services),
  - (b) subsection (2) (cap on private income),
  - (c) subsection (2A) (special provision for mental health foundation trusts), and
  - (d) subsections (3) to (5) (interpretation etc.).

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(2) For the title to that section substitute “Power to charge for accommodation etc.”.

(3) In consequence of subsection (1)(b) and (c), omit section 33 of the Health Act 2009.

**Commencement Information**

**I3** S. 165 in force at 1.10.2012 by [S.I. 2012/1831](#), [art. 2\(2\)](#)

**166 Information**

For section 48 of the National Health Service Act 2006 (information) substitute—

**“48 Information**

- (1) The Secretary of State may require an NHS foundation trust to provide the Secretary of State with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service.
- (2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.”

**Commencement Information**

**I4** S. 166 in force at 1.11.2012 by [S.I. 2012/2657](#), [art. 2\(2\)](#) (with [art. 10](#))

**167 Significant transactions**

“After section 51 of the National Health Service Act 2006 insert—

**51A Significant transactions**

- (1) An NHS foundation trust may enter into a significant transaction only if more than half of the members of the council of governors of the trust voting approve entering into the transaction.
- (2) “Significant transaction” means a transaction or arrangement of such description as may be specified in the trust’s constitution.
- (3) If an NHS foundation trust does not wish to specify any descriptions of transaction or arrangement for the purposes of subsection (2), the constitution of the trust must specify that it contains no such descriptions.”

**Commencement Information**

**I5** S. 167 in force at 1.4.2013 by [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2012/1831 art. 10 by [S.I. 2012/2657 art. 15](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 9 Ch. 1B inserted by [2022 c. 31 s. 96](#)
- s. 102(4)(ba) inserted by S.I. 2019/93, Sch. 1 para. 13(3) (as substituted) by [S.I. 2019/1245 reg. 28](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 105(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 21](#)
- s. 106(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 22](#)
- s. 250(2)-(2B) substituted for s. 250(2) by [2022 c. 31 s. 95\(2\)\(a\)](#)
- s. 250(6)-(6D) substituted for s. 250(6) by [2022 c. 31 s. 95\(2\)\(d\)](#)
- s. 251251ZA substituted for s. 251 by [2022 c. 31 s. 95\(3\)](#)
- s. 251C(6A) inserted by [2022 c. 31 s. 95\(4\)\(a\)](#)
- s. 259(1)(aa)(b) substituted for s. 259(1)(b) by [2022 c. 31 s. 98\(b\)](#)
- s. 259(1)(aa) words substituted by [S.I. 2023/98 Sch. para. 17\(11\)\(a\)\(iii\)](#) (This amendment comes in force at the same time as 2022 c. 31, s. 98 comes into force)
- s. 259(10A)(10B) inserted by [2022 c. 31 s. 98\(h\)](#)
- s. 304(5)(ja) inserted by [2022 c. 31 s. 95\(5\)](#)