



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 4

#### NHS FOUNDATION TRUSTS & NHS TRUSTS

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

#### 168 Mergers

- (1) In section 56 of the National Health Service Act 2006 (mergers), in subsection (1)—
  - (a) in paragraph (b), after “NHS trust” insert “established under section 25”, and
  - (b) for the words from “authorisation” to the end substitute “the dissolution of the trusts and the establishment of a new NHS foundation trust.”
- (2) After that subsection insert—

“(1A) An application under this section may be made only with the approval of more than half of the members of the council of governors of each applicant (that is an NHS foundation trust).”
- (3) In subsection (2) of that section, omit—
  - (a) paragraph (c) (but not the “and” following it), and
  - (b) the words from “and must give” to the end.
- (4) Omit subsection (3) of that section.
- (5) For subsection (4) of that section substitute—

“(4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the dissolution of the trusts and the establishment of the proposed new trust have been taken.”
- (6) Omit subsections (5) to (10) of that section.
- (7) In subsection (11) of that section, for “On an authorisation being given under this section” substitute “On the grant of the application”.

## 169 Acquisitions

After section 56 of the National Health Service Act 2006 insert—

### “56A Acquisitions

- (1) An application may be made jointly by—
  - (a) an NHS foundation trust (A), and
  - (b) another NHS foundation trust or an NHS trust established under section 25 (B),to the regulator for the acquisition by A of B.
- (2) An application under this section may be made only with the approval of more than half of the members of the council of governors of each applicant (that is an NHS foundation trust).
- (3) The application must—
  - (a) be supported by the Secretary of State if B is an NHS trust, and
  - (b) be accompanied by a copy of the proposed constitution of A, amended on the assumption that A acquires B.
- (4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the acquisition have been taken.
- (5) On the grant of the application, the proposed constitution has effect, but where a person who is specified as a director of A in the constitution has yet to be appointed as such, the directors of A may exercise that person’s functions under the constitution.”

## 170 Separations

After section 56A of the National Health Service Act 2006 insert—

### “56B Separations

- (1) An application may be made to the regulator by an NHS foundation trust for the dissolution of the trust and the establishment of two or more new NHS foundation trusts.
- (2) An application under this section may be made only with the approval of more than half of the members of the council of governors of the applicant.
- (3) The application must, by reference to each of the proposed new trusts—
  - (a) specify the property and liabilities proposed to be transferred to it;
  - (b) be accompanied by a copy of its proposed constitution.
- (4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the dissolution of the trust and the establishment of each of the proposed new trusts have been taken.
- (5) On the grant of the application, the proposed constitution of each of the new trusts has effect but, in the case of each of the new trusts, the proposed directors may exercise the functions of the trust on its behalf until a board of directors is appointed in accordance with the constitution.”

## 171 Dissolution

After section 57 of the National Health Service Act 2006 insert—

### “57A Dissolution

- (1) An application may be made by an NHS foundation trust to the regulator for dissolution.
- (2) An application under this section may be made only with the approval of more than half of the members of the council of governors of the applicant.
- (3) The regulator must grant the application if it is satisfied that—
  - (a) the trust has no liabilities, and
  - (b) such steps as are necessary to prepare for the dissolution have been taken.
- (4) Where an application under this section is granted, the regulator must make an order—
  - (a) dissolving the trust in question, and
  - (b) transferring, or providing for the transfer of, the property of the trust (if any) to the Secretary of State.”

## 172 Supplementary

- (1) In section 57 of the National Health Service Act 2006 (mergers: supplementary), in subsection (1)—
  - (a) for “an authorisation is given under section 56” substitute “an application is granted under section 56 or 56B”, and
  - (b) at the end insert “or trusts”.
- (2) In subsection (2) of that section—
  - (a) for “such an authorisation is given, the Secretary of State” substitute “such an application is granted, the regulator”, and
  - (b) in paragraph (a), after “dissolving the” insert “trust or”, and
  - (c) in paragraph (b), at the end insert “or trusts”.
- (3) After that subsection insert—

“(2A) An order under section 56 or 56B is conclusive evidence of incorporation and conclusive evidence that the corporation is an NHS foundation trust.”
- (4) In subsection (3)(a) of that section, for “section 54(3)” substitute “section 54(4)”.
- (5) In subsection (4) of that section—
  - (a) for “section 56(1) and (2)” substitute “sections 56(2) and 56B(3)”, and
  - (b) for “section 54(4)(a) to (c)” substitute “section 54(4)(a) or (c)”.
- (6) In subsection (5) of that section, after “section 56” insert “or 56A”.
- (7) Omit subsection (6) of that section.
- (8) For the title to that section substitute “Sections 56 to 56B: supplementary”.

---

*Status: This is the original version (as it was originally enacted).*

---

- (9) For the cross-heading preceding section 56 of that Act substitute “Mergers, acquisitions and separations”.
- (10) In section 64 of that Act (orders and regulations under Chapter 5 of Part 2 of that Act), in subsection (4)—
- (a) omit the “or” following paragraph (b), and
  - (b) after paragraph (c), insert “, or
  - (d) section 57A.”
- (11) After that subsection insert—
- “(4A) The Statutory Instruments Act 1946 applies in relation to the power of the regulator to make an order under section 57 or 57A as if the regulator were a Minister of the Crown.”
- (12) In section 271(3)(b) of that Act (territorial limit of exercise of functions under Chapter 5), for “Part 1” substitute “Part 2”.