



# Health Act 1999

## 1999 CHAPTER 8

### PART I

#### THE NATIONAL HEALTH SERVICE

##### *NHS trusts*

### 13 Establishment orders

- (1) In section 5 of the 1990 Act (NHS trusts)—
- (a) in subsection (1), for paragraphs (a) and (b) there is substituted “to provide goods and services for the purposes of the health service”, and
  - (b) for subsection (6) there is substituted—

“(6) The functions which may be specified in an order under subsection (1) above include a duty to provide goods or services so specified at or from a hospital or other establishment or facility so specified.”
- (2) In section 26(3) of that Act (interpretation of Part I), after the definition of “health board” there is inserted—
- ““provide” includes manage”.
- (3) Any order under section 5(1) of that Act—
- (a) is to be treated as always having had effect with the omission of any obligation for the NHS trust to which the order relates to own land specified in the order, and
  - (b) so far as any functions specified in it could have been specified under that provision as amended by this Act, is to be treated as having been made under that provision as so amended.
- (4) Any restriction preventing the acquisition of any land by any NHS trust (including an NHS trust dissolved before the commencement of this section) merely because the land did not comprise a hospital or other establishment or facility previously managed

or provided by a Health Authority, a Special Health Authority, a Regional Health Authority or a District Health Authority is to be treated as never having had effect.

- (5) An order under section 63 may—
  - (a) provide for any provision made by it for the purposes of, in consequence of or for giving full effect to this section to be treated as having had effect from a time before the commencement of this section,
  - (b) make such provision about an NHS trust dissolved before that commencement.
- (6) In section 11(1) of the 1990 Act (trust funds and trustees for NHS trusts), for “which is owned and managed” there is substituted “at or from which services are provided”.
- (7) In paragraph 3(2) of Schedule 2 to that Act (establishment orders), for “assume responsibility for the ownership and management of” there is substituted “provide services at”.
- (8) In paragraph 16(2) of that Schedule (general powers of NHS trusts), for “which is owned and managed” there is substituted “at or from which services are provided”.
- (9) In paragraph 3 of Schedule 3 to that Act (borrowing limits), in sub-paragraphs (1) and (2), for the words from “established” to “manage” there is substituted “which are required to provide services at or from”.
- (10) The 1990 Act is to be treated as always having had effect subject to the amendments made by this section.
- (11) Paragraphs (aa) and (ab) of section 91(3) of the 1977 Act (private trusts for hospitals) are to be treated as always having had effect (until their replacement by paragraph 27(a) of Schedule 4 to this Act) with the omission of “owned and”.

## **14 Exercise of powers**

For section 5(9) of the 1990 Act (restrictions on exercise of certain powers) there is substituted—

- “(9) A power conferred by paragraph 14 or 15 of Part II of Schedule 2 to this Act may only be exercised—
  - (a) to the extent that its exercise does not to any significant extent interfere with the performance by the NHS trust of its functions or of its obligations under NHS contracts, and
  - (b) in circumstances specified in directions under section 17 of the principal Act, with the consent of the Secretary of State.”

## **15 Public dividend capital**

- (1) Section 9 of the 1990 Act (originating capital debt of, and other financial provisions relating to, NHS trusts) is amended as provided in subsections (2) to (5).
- (2) In subsections (1), (2) and (3), for “originating capital debt” there is substituted “originating capital”.
- (3) For subsection (4) there is substituted—
  - “(4) An NHS trust’s originating capital shall be public dividend capital.”

- (4) Subsections (5) and (6) are omitted.
- (5) In subsection (7), for the words from “the terms” to the end there is substituted—
  - “(a) the dividend which is to be payable at any time on any public dividend capital issued, or treated as issued, under this Act,
  - (b) the amount of any such public dividend capital which is to be repaid at any time,
  - (c) any other terms on which any public dividend capital is so issued, or treated as issued”.
- (6) In Schedule 3 to that Act—
  - (a) in paragraph 3 (limits on indebtedness), sub-paragraph (3) is omitted, and
  - (b) in paragraph 5 (additional public dividend capital), sub-paragraph (2) is omitted.

## **16 Existing NHS trusts: conversion of initial loan**

- (1) This section applies to any NHS trust in existence immediately before commencement.
- (2) On commencement so much of the originating capital debt of the NHS trust as remains outstanding immediately before commencement is to be treated as the originating capital of the NHS trust and accordingly is public dividend capital.
- (3) Any reference in any enactment, instrument or other document to the originating capital debt of the NHS trust is to be construed (except where the context otherwise requires) as a reference to its originating capital.
- (4) The Secretary of State may with the consent of the Treasury determine the amount and time for payment of interest on the NHS trust’s initial loan in respect of the period ending with commencement.
- (5) In this section—
  - “commencement” means the coming into force of this section,
  - “initial loan” has the meaning given by section 9(5) of the 1990 Act.

## **17 Borrowing**

- (1) Schedule 3 to the 1990 Act is amended as follows.
- (2) In paragraph 1 (borrowing powers of NHS trusts), in sub-paragraph (1), after “Subject to” there is inserted “any direction given by the Secretary of State under section 17 of the principal Act, to”.
- (3) Sub-paragraphs (3) to (5) of that paragraph are omitted.
- (4) For sub-paragraph (6) of that paragraph there is substituted—
  - “(6) It shall be for the Secretary of State, with the consent of the Treasury, to determine the terms of any loan made by him to an NHS trust (including terms as to the payment of interest, if any).”