

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### OVERVIEW OF THE STRUCTURE

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

21. This Part amends Chapter 5 of Part 2 of the NHS Act, which makes provision for NHS foundation trusts.
22. It removes various restrictions on foundation trusts and makes changes to the authorisation of foundation trusts, in light of the provisions in Part 3 for Monitor to become a provider regulator and to license all providers of NHS services. It repeals NHS trust legislation, and Monitor's power to authorise new foundation trusts, as the Government intends all NHS trusts to become foundation trusts. It amends the duties on governors and directors and introduces new powers for governors, including oversight and control of plans by directors to earn non-NHS income. It makes amendments to the financing and accounting arrangements of foundation trusts.
23. In addition, it makes amendments to the process of foundation trust mergers and enables acquisitions, separations and dissolution of foundation trusts. It repeals provision about de-authorisation, preventing foundation trusts being returned to NHS trust status, and allows Monitor to operate the failure arrangements for foundation trusts, ahead of their replacement by the new failure arrangements set out in Part 3 of this Act. In the longer-term, when most of Monitor's specific functions in relation to foundation trusts will be repealed, there will still be a specific role for Monitor in maintaining an adapted register of foundation trusts. Monitor will also have power to establish a panel to advise foundation trust governors.