

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – NHS foundation trusts and NHS trusts

Abolition of NHS trusts

Section 179 – Abolition of NHS trusts in England

1106. This section repeals the legal framework that establishes NHS trusts in England. All NHS trusts should become foundation trusts as soon as clinically feasible. *Subsection (1)* therefore abolishes NHS trusts established under section 25 of the NHS Act and *subsection (2)* repeals Chapter 3 of Part 2 of the NHS Act. The section is to be commenced by order made by the Secretary of State.
1107. There is one circumstance under which an organisation could remain as an NHS trust after the NHS trust legislation is repealed. Under what is described as a franchise agreement (which is defined under this section), a franchisee assumes many of the risks and rewards of ownership. It will be required to deliver agreed outcomes as part of the franchise contract. Under the proposed terms of the contract, the trust will retain its NHS trust status. *Subsection (5)* provides the legislative basis that will enable an NHS trust whose functions are exercised under a franchise agreement to remain an NHS trust after the repeal of the NHS trust legislation. A trust could also retain its NHS trust status for up to three years after the franchise contract had ended in order for it to be authorised as a foundation trust, or for an alternative solution to be found.
1108. [Schedule 14](#) to this Act (abolition of NHS trusts in England: consequential amendments) makes the necessary consequential amendments to the NHS Act, and other relevant Acts.

Section 180 – Repeal of provisions on authorisation for NHS foundation trusts

1109. *Subsections (1) and (2)* of this section repeal sections 33 and 35 of the NHS Act (which enable an NHS trust to apply to become, and be authorised as, a foundation trust) which will no longer be needed once all NHS trusts have become foundation trusts. It also makes associated changes.
1110. *Subsection (3)* repeals relevant provisions of section 36 of the NHS Act about the effect of authorisation, as the provisions will not be needed when all NHS trusts are foundation trusts.
1111. It also repeals provisions about the automatic grant of a licence under Part 3 of this Act to a foundation trust, as set out in section 88, once the NHS trust legislation is repealed. The section also amends the title of section 36 from “effect of authorisation” to “Status etc of NHS foundation trusts”, recognising that organisations will not be authorised as new foundation trusts following the repeal of section 33. *Subsection (7)* provides the savings provisions necessary to enable NHS trusts in franchise agreements to apply for

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foundation trust status and to be granted a licence under section 88 after the legislation relating to NHS trusts has been repealed.