



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 4

#### NHS FOUNDATION TRUSTS & NHS TRUSTS

##### *Finance*

#### **163 Financial powers etc.**

(1) At the end of section 40 of the National Health Service Act 2006 (power of Secretary of State to give financial assistance to NHS foundation trusts), insert—

“(5) As soon as is practicable after the end of each financial year, the Secretary of State must prepare a report on the exercise of the power under subsection (1).

(6) In relation to each exercise of the power under that subsection during the year to which the report relates, the report must specify the amount of the loan, issue of public dividend capital, grant or other payment and—

- (a) in the case of a loan, the amount (if any) outstanding at the end of the year and the other terms on which the loan was made,
- (b) in the case of an issue of public dividend capital, the terms on which it was issued (or, where a decision under section 42(3) is made in relation to it during that year, the terms so decided as those on which it is treated as having been issued), and
- (c) in the case of a grant or other payment, the terms on which it was made.

(7) In relation to each loan made under that subsection during a previous financial year but not repaid by the beginning of the year to which the report relates, the report must specify—

- (a) the amount outstanding at the beginning of the year,
- (b) the amount (if any) outstanding at the end of the year, and
- (c) the other terms on which the loan was made.

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*Changes to legislation: Health and Social Care Act 2012, Section 163 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (8) A report under subsection (5) must, in relation to each NHS foundation trust, specify—
  - (a) the amount of the public dividend capital of that trust at the end of the year to which the report relates, and
  - (b) the conditions on which it is held.
- (9) The Secretary of State must publish a report under subsection (5).”
- (2) Omit section 41 of that Act (prudential borrowing code).
- (3) In section 42 of that Act (public dividend capital), omit subsection (4) (dividend payable by NHS foundation trust to be same as that payable by NHS trust).
- (4) Omit subsection (5) of that section (requirement for Secretary of State to consult the regulator).
- (5) At the end of that section insert—
  - “(7) The terms which may be decided under subsection (3) include terms to which the exercise of any power of an NHS foundation trust to do any of the following will be subject as a consequence—
    - (a) providing goods or services,
    - (b) borrowing or investing money,
    - (c) providing financial assistance,
    - (d) acquiring or disposing of property,
    - (e) entering into contracts, or making other arrangements, to do anything referred to in paragraphs (a) to (d),
    - (f) applying for dissolution (whether or not when also applying for the establishment of one or more other trusts),
    - (g) applying to acquire another body.”
- (6) After that section insert—

**“42A Criteria for making loans etc.**

- (1) The Secretary of State must publish guidance on the powers conferred by sections 40 and 42.
- (2) The guidance on the power to make a loan under section 40(1) must in particular—
  - (a) explain that, in exercising the power, the Secretary of State will apply the principle that a loan should be made only where there is a reasonable expectation that it will be repaid in accordance with the terms on which it is made;
  - (b) include other criteria that the Secretary of State will apply when determining whether to exercise the power and, if so, the terms on which to make the loan.
- (3) The guidance on that power must also explain—
  - (a) the process for applying for a loan under section 40(1);
  - (b) the consequences of failing to comply with terms on which a loan is made under that provision.

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- (4) The guidance on the power to decide terms under section 42(3) must, in particular, include the criteria that the Secretary of State will apply when deciding the terms.
- (5) The guidance on that power must also explain the consequences of failing to comply with the terms decided.
- (6) In preparing guidance under this section, the Secretary of State must have regard (among other things) to any generally accepted principles used by financial institutions to determine whether to make loans to bodies corporate and the terms on which to make loans to them.
- (7) Before publishing the guidance, the Secretary of State must consult—
  - (a) the Treasury,
  - (b) the regulator, and
  - (c) such other persons as the Secretary of State considers appropriate.”
- (7) Omit section 45 of that Act (disposal of protected property).
- (8) Omit section 46(2) and (3) of that Act (limitation on power of NHS foundation trusts to borrow money).
- (9) For section 50 of that Act (fees) substitute—

#### “50 Fees

An NHS foundation trust must pay to the regulator such fee as the regulator may determine in respect of its exercise of functions under—

- (a) section 39;
- (b) section 39A.”

#### Commencement Information

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| <b>I1</b> | S. 163(1) in force at 1.4.2013 for specified purposes by <a href="#">S.I. 2013/160</a> , <b>art. 2(2)</b> (with <a href="#">arts. 7-9</a> ) |
| <b>I2</b> | S. 163(2)(7)-(9) in force at 1.4.2013 by <a href="#">S.I. 2013/671</a> , <b>art. 2(3)</b>   |
| <b>I3</b> | S. 163(3)-(6) in force at 1.4.2013 by <a href="#">S.I. 2013/160</a> , <b>art. 2(2)</b> (with <a href="#">arts. 7-9</a> )                    |

**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\(5\)](#)