
Changes to legislation: National Health Service Act 2006, SCHEDULE 5 is up to date with all changes known to be in force on or before 16 June 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

SCHEDULES

SCHEDULE 5

Section 27

FINANCIAL PROVISION ABOUT NHS TRUSTS ESTABLISHED UNDER SECTION 25

Originating capital of NHS trusts

- 1 (1) Each NHS trust has an originating capital of an amount specified in an order made by the Secretary of State.
- (2) The originating capital of an NHS trust is an amount representing the excess of the valuation of its assets over the amounts of its liabilities.
- (3) In determining the originating capital of an NHS trust, there must be left out of account such assets or liabilities as are, or are of a class, determined for the purposes of this paragraph by the Secretary of State with the consent of the Treasury.
- (4) An NHS trust's originating capital is deemed to have been issued out of moneys provided by Parliament and is an asset of the Consolidated Fund.
- (5) An NHS trust's originating capital is public dividend capital.
- (6) With the consent of the Treasury, the Secretary of State may determine—
- (a) the dividend which is payable at any time on any public dividend capital issued, or treated as issued, to an NHS trust under this Act,
 - (b) the amount of any such public dividend capital which must be repaid at any time,
 - (c) any other terms on which any public dividend capital is so issued, or treated as issued.
- (7) An order under sub-paragraph (1) may be made only with the consent of the Treasury.
- (8) In this paragraph—
- “assets” means the assets which, on or in connection with the establishment of the NHS trust, are or will be transferred to it (whether before, on or after its operational date), and
- “liabilities” means the liabilities which are or will be so transferred.

Financial obligations of NHS trusts

- 2 (1) Each NHS trust must ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account.
- [^{F1}(2) NHS England may set financial objectives for NHS trusts.
- (3) An NHS trust must achieve any financial objectives set under sub-paragraph (2).

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- (4) Financial objectives under sub-paragraph (2) may apply to NHS trusts generally, or to a particular NHS trust or NHS trusts of a particular description.]

Textual Amendments

- F1** Sch. 5 para. 2(2)-(4) substituted for Sch. 5 para. 2(2)(3) (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 60, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 14, 29)

Borrowing

- 3 (1) For the purpose of its functions an NHS trust may borrow (both temporarily, by way of overdraft, and longer term) from the Secretary of State or from any other person.
- (2) Sub-paragraph (1) is subject to any direction given by the Secretary of State under section 8, to the provisions of this paragraph and to any limit imposed under this Schedule.
- (3) An NHS trust may not mortgage or charge any of its assets or in any other way use any of its assets as security for a loan.
- (4) The Secretary of State must determine the terms of any loan made by him to an NHS trust (including terms as to the payment of interest, if any).

Guarantees of borrowing

- 4 (1) The Secretary of State may guarantee, in such manner and on such conditions as, with the approval of the Treasury, he considers appropriate, the repayments of the principal of, and the payment of interest on, any sums which an NHS trust borrows from a person other than the Secretary of State.
- (2) Immediately after a guarantee is given under this paragraph, the Secretary of State must lay a statement of the guarantee before each House of Parliament.
- (3) Where any sum is issued for fulfilling a guarantee so given, the Secretary of State must lay before each House of Parliament a statement relating to that sum as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.
- (4) If any sums are issued in fulfilment of a guarantee given under this paragraph, the NHS trust concerned must make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct—
- (a) payments of such amounts as the Secretary of State with the consent of the Treasury so directs in or towards repayment of the sums so issued, and
 - (b) payments of interest, at such rates as the Secretary of State with the consent of the Treasury so directs, on what is outstanding for the time being in respect of sums so issued.

Limits on indebtedness

- 5 The aggregate of all sums borrowed by NHS trusts which are required to provide or manage services at or from hospitals or other establishments or facilities which are situated in England must not exceed £5,000 million or such other sum not exceeding

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£10,000 million as may be specified by order made by the Secretary of State with the consent of the Treasury.

Additional public dividend capital

- 6 The Secretary of State may, with the consent of the Treasury, instead of making a loan to an NHS trust under paragraph 3, pay an amount to the NHS trust as public dividend capital.

Supplementary payments

- 7 (1) The Secretary of State may make a payment to an NHS trust.
(2) The payment may be subject to such conditions as he considers appropriate, including conditions as to repayment.

Surplus funds

- 8 If it appears to the Secretary of State that any sum held by an NHS trust otherwise than as trustee is surplus to its foreseeable requirements, the trust must, if the Secretary of State with the approval of the Treasury and after consultation with the trust so directs, pay that sum into the Consolidated Fund.

Investment

- 9 (1) An NHS trust has power to invest money held by it in any investments, including investments which do not produce income, specified in directions under section 8.
(2) Sub-paragraph (1) does not apply in relation to money held by an NHS trust as trustee.
- 10 Any direction under section 8 with respect to—
(a) the power conferred on an NHS trust by paragraph 3, or
(b) the maximum amount which an NHS trust may invest in any investments or class of investments,
may be given only with the consent of the Treasury.

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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):

- s. 3B(1)(aa) inserted by [2022 c. 31 Sch. 3 para. 2\(b\)](#)
- s. 3B(1)(za) inserted by [2022 c. 31 Sch. 3 para. 2\(a\)](#)
- s. 13G(4) words omitted by virtue of 2012 c. 7, Sch. 14 para. 4A (as inserted) by [2014 c. 23 s. 120\(18\)\(a\)](#)
- s. 35(3A)(3B) inserted by [2012 c. 7 s. 159\(4\)](#)
- s. 35(3A) words substituted by [2022 c. 31 Sch. 5 para. 12\(4\)](#) (This amendment not applied to legislation.gov.uk. The insertion of s. 35(3A) by 2012 c. 7 s.159(4) not yet in force.)
- s. 40(4)-(4B) substituted for s. 40(4) by [2012 c. 7 Sch. 14 para. 5](#)
- s. 42(1A) inserted by [2012 c. 7 Sch. 14 para. 6](#)
- s. 65F(2A)-(2F) inserted by [2012 c. 7 Sch. 14 para. 15\(4\)](#) (This amendment is itself amended before it comes into force by 2014 c. 23, ss. 85(15), 120(18)(b)(c), 127(1); S.I. 2014/1714, art. 3(2)(b)(c))
- s. 65H(10A) inserted by [2012 c. 7 Sch. 14 para. 17\(4\)](#)
- s. 65H(10A) omitted by [2022 c. 31 Sch. 8 para. 7\(7\)](#) (This amendment not applied to legislation.gov.uk. 2012 c. 7 Sch. 14 revoked at 1.7.2022 by 2022 c. 31, s. 186(6), Sch. 7 para. 13 before the insertion of s. 65H(10A) could come into effect.)
- s. 82A-83A and cross-heading substituted for s. 83 and cross-heading by [2022 c. 31 Sch. 3 para. 3](#)
- s. 84(4)-(4B) substituted for s. 84(4) by [2022 c. 31 Sch. 3 para. 4\(4\)](#)
- s. 92(5A) inserted by [2022 c. 31 Sch. 3 para. 9\(4\)](#)
- s. 94(3)(ca)(cb) substituted for s. 94(3)(ca) by [2022 c. 31 Sch. 3 para. 11\(3\)](#)
- s. 98A98B substituted for s. 98A by [2022 c. 31 Sch. 3 para. 14](#)
- s. 98BC-99B and cross-heading substituted for s. 99 and cross-heading by [2022 c. 31 Sch. 3 para. 15](#)
- s. 100(3A)(3B) inserted by [2022 c. 31 Sch. 3 para. 16\(4\)](#)
- s. 109(3)(ca)(cb) substituted for s. 109(3)(ca) by [2022 c. 31 Sch. 3 para. 23\(3\)](#)
- s. 112(1)(za) inserted by [2022 c. 31 Sch. 3 para. 24\(2\)\(b\)](#)
- s. 114A114B substituted for s. 114A by [2022 c. 31 Sch. 3 para. 26](#)
- s. 114C and cross-heading inserted by [2022 c. 31 Sch. 3 para. 27](#)
- s. 116A116B and cross-heading inserted by [2022 c. 31 Sch. 3 para. 30](#)
- s. 117(4)(4A) substituted for s. 117(4) by [2022 c. 31 Sch. 3 para. 31\(4\)](#)
- s. 125A125B substituted for s. 125A by [2022 c. 31 Sch. 3 para. 39](#)
- s. 223C(1)(c)(d) inserted by [2022 c. 31 s. 28](#)
- s. 223LA inserted by [2022 c. 31 s. 30\(3\)](#)
- Sch. 15 para. 4(1)(b) and word omitted by [2012 c. 7 Sch. 14 para. 39\(3\)](#)