

NHS (Charitable Trusts Etc) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Health with the consent of Wendy Morton MP, the Member in charge of the Bill, are published separately as Bill 11 – EN.

NHS (Charitable Trusts Etc) Bill

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B I L L

TO

Make provision for, and in connection with, the removal of the Secretary of State's powers under the National Health Service Act 2006 to appoint trustees; to make provision transferring to Great Ormond Street Hospital Children's Charity the right to a royalty conferred by Schedule 6 to the Copyright, Designs and Patents Act 1988; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Removal of powers to appoint trustees

1 Removal of Secretary of State's powers to appoint trustees

- (1) In the National Health Service Act 2006 ("the 2006 Act") omit the following provisions—
- (a) section 51 (foundation trusts: trust funds and trustees), 5
 - (b) section 212 (special trustees for a university hospital or teaching hospital),
 - (c) paragraph 11 of Schedule A1 (the National Health Service Commissioning Board: trust funds and trustees) and the italic heading before that paragraph, 10
 - (d) paragraph 15 of Schedule 1A (clinical commissioning groups: trust funds and trustees) and the italic heading before that paragraph, and
 - (e) paragraph 9 of Schedule 6 (Special Health Authorities: trust funds and trustees).
- (2) The Secretary of State may by regulations made by statutory instrument make such provision as the Secretary of State considers appropriate in consequence of subsection (1). 15
- (3) The provision that may be made by regulations under subsection (2) includes—
- (a) different provision for different purposes, 20
 - (b) transitional, transitory or saving provision,

- (c) incidental or supplementary provision, and
 - (d) provision amending, repealing or revoking any primary or subordinate legislation.
- (4) Subject to subsection (5), a statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament. 5
- (5) Subsection (4) does not apply to a statutory instrument falling within subsection (6).
- (6) A statutory instrument containing regulations under subsection (2) which amend or repeal primary legislation (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 10
- (7) In subsection (3)(d) the reference to subordinate legislation includes subordinate legislation made after the passing of this Act.
- (8) In this section – 15
- “primary legislation” means –
 - (a) an Act of Parliament, or
 - (b) a Measure or Act of the National Assembly for Wales, and
 - “subordinate legislation” means –
 - (a) subordinate legislation within the meaning of the Interpretation Act 1978, and 20
 - (b) subordinate legislation made under a Measure or Act of the National Assembly for Wales.
- (9) Schedule 1 makes consequential amendments.
- 2 Section 1: supplementary provision** 25
- (1) The Secretary of State may by regulations made by statutory instrument provide for –
- (a) the transfer of trust property held by trustees for an NHS foundation trust appointed under section 51 of the National Health Service Act 2006 (“the 2006 Act”) from the trustees to the NHS foundation trust, and 30
 - (b) the transfer of trust property held by trustees for an NHS trust appointed under paragraph 10 of Schedule 4 to the 2006 Act from the trustees to the NHS trust.
- (2) Any discretion given by a trust instrument to the trustees mentioned in subsection (1) is exercisable by the person to whom the trust property is transferred by virtue of that subsection and, subject to subsections (3) and (4), the transfer does not affect the trusts on which the trust property is held. 35
- (3) Subsection (4) applies where the trustees mentioned in subsection (1) held any part of the trust property transferred by virtue of that subsection on trust wholly or mainly for hospitals for which they were appointed for all or any purposes relating to – 40
- (a) hospital services (including research), or
 - (b) any other part of the health service associated with hospitals.
- (4) The person to whom the trust property is transferred has a discretion to apply the part of the trust property in question or the income arising from it, to such 45

- extent as that person considers appropriate, for any purposes relating to the health service.
- (5) Subsections (2) to (7) of section 217 of the 2006 Act (trusts: supplementary provisions) apply as if subsection (1) above were a provision to which that section applies. 5
- (6) In their application by virtue of subsection (5), subsections (6) and (7) of section 217 of the 2006 Act are to be read as if references to an order were references to regulations.
- (7) Regulations under subsection (1) may make— 10
- (a) different provision for different purposes,
 - (b) transitional, transitory or saving provision, and
 - (c) incidental, supplementary or consequential provision.
- (8) A statutory instrument containing regulations under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section “the health service” and “hospital” have the same meaning as in the 2006 Act. 15

Great Ormond Street Hospital for Children

3 Transfer of right to royalties relating to the play “Peter Pan”

- (1) The Copyright, Designs and Patents Act 1988 is amended as set out in subsections (2) to (11). 20
- (2) In the following headings for “the Hospital for Sick Children” substitute “Great Ormond Street Hospital for Children”—
- (a) the heading of section 301, and
 - (b) the italic heading before section 301.
- (3) In section 301 (which provides for Schedule 6 to have effect) for the words from “trustees” to “London,” substitute “GOSH Children’s Charity for the benefit of Great Ormond Street Hospital for Children”. 25
- (4) In section 304(2) (extent) omit paragraph (b).
- (5) In the heading of Schedule 6 (provisions for the benefit of Great Ormond Street Hospital for Children) for “the Hospital for Sick Children” substitute “Great Ormond Street Hospital for Children”. 30
- (6) Schedule 6 is amended as follows.
- (7) In paragraph 1(1) (interpretation)—
- (a) in the appropriate place insert— 35

““GOSH Children’s Charity” means Great Ormond Street
Hospital Children’s Charity (company registration
number 9338724);”,
 - (b) in the definition of “the Hospital” for “The Hospital for Sick Children, Great Ormond Street, London” substitute “Great Ormond Street Hospital for Children”, and 40
 - (c) omit the definition of “the trustees”.
- (8) In paragraph 2 (entitlement to royalty)—

- (a) in sub-paragraph (1) for “The trustees” are” substitute “GOSH Children’s Charity is”, and
- (b) in sub-paragraph (2) for “the trustees are” substitute “GOSH Children’s Charity is”.
- (9) In paragraph 3(a) (exceptions) for “trustees as copyright owners” substitute “copyright owner at that time”. 5
- (10) For paragraph 6 (requirement as to how sums received are held) and the italic heading before it substitute –
- “Sums received to be held for the benefit of the Hospital*
- 6 The sums received by GOSH Children’s Charity by virtue of this Schedule, after deduction of any relevant expenses, are to be held by it for the purposes of the Hospital.” 10
- (11) In paragraph 7 (restrictions in relation to right to royalty) –
- (a) in sub-paragraph (1) –
- (i) for “the trustees”, in the first place, substitute “GOSH Children’s Charity”, and 15
- (ii) for “the trustees purport” substitute “GOSH Children’s Charity purports”,
- (b) in sub-paragraph (2) omit the words from “may” to “and”, and
- (c) omit sub-paragraph (3). 20
- (12) Schedule 2 makes supplementary provision.

General

4 Extent

- (1) Sections 1 and 2 and Schedule 1 extend to England and Wales only.
- (2) The remaining provisions of this Act extend to England and Wales, Scotland and Northern Ireland. 25

5 Commencement

- (1) Sections 1 and 2 and Schedule 1 come into force on a day appointed in regulations made by the Secretary of State by statutory instrument.
- (2) Regulations under subsection (1) may – 30
- (a) appoint different days for different purposes,
- (b) make transitional, transitory or saving provision, and
- (c) make incidental, supplementary or consequential provision.
- (3) Section 3 and Schedule 2 come into force at the end of the period of two months beginning with the day on which this Act is passed. 35
- (4) Section 4, this section and section 6 come into force on the day on which this Act is passed.

6 Short title

This Act may be cited as the NHS (Charitable Trusts Etc) Act 2016.

SCHEDULES

SCHEDULE 1

Section 1

SECTION 1: CONSEQUENTIAL AMENDMENTS

National Health Service Act 2006 (c. 41)

- | | | |
|---|--|----------------------|
| 1 | The National Health Service Act 2006 is amended as follows. | 5 |
| 2 | <p>In section 213 (transfers of trust property) –</p> <p>(a) in subsection (2) –</p> <p style="padding-left: 20px;">(i) in paragraph (b) at the beginning insert “Welsh”, and</p> <p style="padding-left: 20px;">(ii) in paragraph (c) omit “the Board or a clinical commissioning group,” and “or an NHS foundation trust”, and</p> <p>(b) in subsection (5) for ““special trustees” includes” substitute ““Welsh special trustees” means”.</p> | 10 |
| 3 | <p>In section 214 (transfer of functions and property to and from special trustees) –</p> <p>(a) in the heading of the section after “from” insert “Welsh”,</p> <p>(b) in subsections (1) to (3) for “special trustees”, in each place, substitute “Welsh special trustees”,</p> <p>(c) In subsection (3)(a) omit “the Board or a clinical commissioning group,” and “or an NHS foundation trust”, and</p> <p>(d) in subsection (6) for ““Special trustees” includes” substitute ““Welsh special trustees” means”.</p> | 15

20 |
| 4 | <p>In section 215 (trustees and property under section 222) –</p> <p>(a) omit subsections (1) and (2),</p> <p>(b) in subsection (3) –</p> <p style="padding-left: 20px;">(i) omit paragraphs (za), (zb) and (c) (and the “or” before paragraph (c)), and</p> <p style="padding-left: 20px;">(ii) in paragraph (b) omit “paragraph 10 of Schedule 4, or”, and</p> <p>(c) in subsection (4) omit the following –</p> <p style="padding-left: 20px;">(i) “Board, clinical commissioning group,” in both places, and</p> <p style="padding-left: 20px;">(ii) “or NHS foundation trust” in both places.</p> | 25

30 |
| 5 | <p>In section 217 (trusts: supplementary provisions) in subsection (1) –</p> <p>(a) omit paragraphs (a), (ea) and (eb),</p> <p>(b) in paragraph (b) for “212 to” substitute “213 and”, and</p> <p>(c) in paragraph (i) for “paragraphs 8 and 9” substitute “paragraph 8”.</p> | |
| 6 | <p>In section 218 (private trusts for hospitals) –</p> <p>(a) in subsection (4) –</p> <p style="padding-left: 20px;">(i) in paragraph (a) after “where” insert “Welsh”, and</p> | 35 |

	(ii) in paragraph (b) omit “an NHS foundation trust”, and		
	(b) in subsection (6) in the definition of “special trustees” for ““special trustees” includes” substitute ““Welsh special trustees” means”.		
7	In section 220 (trust property previously held for general hospital purposes) omit subsection (6).	5	
8	In section 226 (financial duties of Special Health Authorities) in subsection (4)(a) omit the words from “or on” to the end.		
9	In section 276 (index of defined expressions) omit the entry relating to special trustees.		
10	In Schedule 15 (accounts and audit) omit paragraph 1(1)(f).	10	
<i>National Health Service (Wales) Act 2006 (c. 42)</i>			
11	The National Health Service (Wales) Act 2006 is amended as follows.		
12	In section 161 (transfers of trust property) –		
	(a) in subsection (2)(c) omit –		
	(i) the words from “the National” to “group,” and	15	
	(ii) “or an NHS foundation trust”, and		
	(b) omit subsection (5).		
13	In section 162 (transfer of functions and property to or from special trustees) –		
	(a) in subsection (3)(a) omit –	20	
	(i) the words from “the National” to “group”, and		
	(ii) “or an NHS foundation trust”, and		
	(b) omit subsection (6).		
14	In section 163 (trustees and property under section 169) in subsection (3) omit the words from “, or paragraph” to the end.	25	
<i>Charities Act 2011 (c. 25)</i>			
15	In section 149(7) of the Charities Act 2011 (meaning of “English NHS charity”) omit paragraphs (bc) and (bd).		
<i>Health and Social Care Act 2012 (c.7)</i>			
16	In the Health and Social Care Act 2012 –	30	
	(a) in Schedule 4 (amendments of the National Health Service Act 2006) omit paragraphs 109(a), 110(3)(a), 111(3)(a) and 113(a), and		
	(b) in Schedule 21 (amendments relating to relationships between the health services) omit paragraphs 34(a) and 35(3)(a).		
<i>Local Audit and Accountability Act 2014 (c.2)</i>			35
17	The Local Audit and Accountability Act 2014 is amended as follows.		
18	Omit the following (which relate to special trustees for hospitals in England) –		
	(a) section 3(9)(b),		
	(b) section 4(5),	40	

-
- (c) section 8(4)(c),
 - (d) section 10(10)(c),
 - (e) section 21(3),
 - (f) “and trustees of NHS trusts” in section 43(6)(b),
 - (g) the definition of “special trustees for a hospital” in section 44(1), 5
 - (h) “and trustees for NHS trusts” in section 47 (and its heading),
 - (i) paragraph 24 of Schedule 2 (and the note to that paragraph), and
 - (j) paragraph 4(8)(c) of Schedule 7.
- 19 (1) Schedule 13 (transitory and saving provisions in relation to NHS trusts) is amended as follows. 10
- (2) Omit the following –
- (a) “and Trustees for NHS trusts” in the heading,
 - (b) paragraph 1(2)(b) (and the “and” before it),
 - (c) paragraph 2(2)(b), and
 - (d) paragraph 3(1)(b) (and the “and” before it). 15
- (3) In paragraph 3(2) omit the paragraph 24B notionally inserted into Schedule 2.
- (4) In paragraph 4 omit the paragraph (d) notionally inserted into section 3(9).
- (5) In paragraph 5(1), in the subsection (6) notionally inserted into section 4, omit “, or the trustees for an NHS trust”. 20
- (6) In paragraph 6 omit the paragraph (e) notionally inserted into section 8(4).
- (7) In paragraph 7 omit the paragraph (e) notionally inserted into section 10(10).
- (8) In paragraph 8(1) omit the words from “, or the trustees” to the end.
- (9) In paragraph 9 –
- (a) in sub-paragraph (1) omit “, or the trustees for an NHS trust fail,” 25
 - (b) in that sub-paragraph omit “or (as the case may be) the trustees”,
 - (c) in sub-paragraph (2) omit “, or the trustees for an NHS trust have,” and
 - (d) in sub-paragraphs (4) to (7) omit “or trustees” in each place.
- (10) For paragraph 10 substitute – 30
- “10 Section 21 is to be read as if it contained the following subsection –
- “(2A) In auditing the accounts of a health service body other than a clinical commissioning group, a local auditor must, by examination of the accounts and otherwise, be satisfied –
- (a) that the accounts present a true and fair view, and comply with the requirements of the enactments that apply to them, 35
 - (b) that proper practices have been observed in the preparation of the accounts, and
 - (c) that the body has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.”” 40
- (11) In paragraph 11 omit paragraph (b) (and the “or” before it).
- (12) In paragraph 12 –

- (a) in sub-paragraph (2), in the paragraph (ca) notionally inserted into paragraph 2(3) of Schedule 7, omit “or the trustees for an NHS trust”,
 - (b) in sub-paragraph (3), in the paragraph (ca) notionally inserted into paragraph 3(2) of Schedule 7, omit “or the trustees for an NHS trust”, and
 - (c) in sub-paragraph (4) omit the paragraph (e) notionally inserted into paragraph 4(8) of Schedule 7.
- (13) In paragraph 13(1), in the paragraph (c) notionally inserted into section 30(2), omit “or the trustees for an NHS trust”.

SCHEDULE 2

Section 3 10

SECTION 3: SUPPLEMENTARY PROVISIONS

General interpretation

- 1 In this Schedule –
- “GOSH Children’s Charity” means Great Ormond Street Hospital Children’s Charity (company registration number 9338724);
 - “the Hospital” means Great Ormond Street Hospital for Children;
 - “relevant charity merger” has the meaning given by section 306 of the Charities Act 2011;
 - “the transfer date” means the date on which section 3 and this Schedule come into force;
 - “transferor” and “transferee” have the meaning given by section 306 of the Charities Act 2011;
 - “the trustees” means the special trustees appointed for the Hospital under the National Health Service Act 1977 or the National Health Service Act 2006;
 - “the 1988 Act” means the Copyright, Designs and Patents Act 1988.

Transfer to GOSH Children’s Charity: transitional provisions

- 2 (1) Sub-paragraph (2) applies where immediately before the transfer date –
- (a) the trustees were entitled to a royalty by virtue of paragraph 2 of Schedule 6 to the 1988 Act, but
 - (b) the royalty or another form of remuneration agreed by the trustees (or part of it) has not been paid to the trustees.
- (2) The royalty or other form of remuneration (or part of it) is payable to GOSH Children’s Charity on and after the transfer date and is to be held by it for the purposes of the Hospital.
- 3 Where a royalty or other form of remuneration (or part of it) is payable to GOSH Children’s Charity by virtue of paragraph 2 it may agree another form of remuneration.
- 4 (1) Sub-paragraph (2) applies where immediately before the transfer date the trustees were entitled to a royalty or other remuneration by virtue of paragraph 2 of Schedule 6 to the 1988 Act (whether or not the royalty or remuneration (or part of it) has been paid).

- (2) Paragraph 5 of that Schedule applies on and after the transfer date as if GOSH Children’s Charity had been the trustees before the transfer date (and any application or order or other thing made or done before the transfer date has effect accordingly).

Transfer on merger of GOSH Children’s Charity 5

- 5 (1) This paragraph applies where GOSH Children’s Charity is the transferor (or one of the transferors) in a relevant charity merger.
- (2) The Secretary of State may by regulations made by statutory instrument –
- (a) amend paragraph 2 of Schedule 6 to the 1988 Act to transfer the right to a royalty by virtue of that paragraph to the transferee in relation to the merger, and 10
 - (b) make consequential amendments of the 1988 Act.
- 6 Regulations under paragraph 5 may make –
- (a) transitional, transitory or saving provision, and
 - (b) incidental or supplementary provision. 15
- 7 A statutory instrument containing regulations under paragraph 5 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

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To make provision for, and in connection with, the removal of the Secretary of State's powers under the National Health Service Act 2006 to appoint trustees; to make provision transferring to Great Ormond Street Hospital Children's Charity the right to a royalty conferred by Schedule 6 to the Copyright, Designs and Patents Act 1988; and for connected purposes.

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