



# Summary of the impact on NHS charities of the Government's review of the regulation and governance of NHS charities

## Briefing paper, October 2014

### Background

During 2011/12, a review of the regulation and governance of NHS charities<sup>1</sup> was carried out by the Department of Health (the Department). The results of that review were published in autumn 2012 and the Department consulted on proposals for changes to the regulation and governance of NHS charities in November 2012. In March 2014, the Department issued the Government's formal response<sup>2</sup> to that consultation. This paper has been developed by the HFMA's Charitable Funds Special Interest Group and summarises the findings of that response and identifies some of the issues that NHS charities should be considering as a result. It is intended to be a short summary that can be presented to trustees.

### Government's proposals

All NHS charities are permitted to transfer charitable property to another specifically established charity. The newly established charity would be regulated solely by the Charity Commission and would be free to set its own objectives and legal form. The charity would appoint individuals as trustees.

All assets transferred to the new charity from an existing NHS charity would retain the same designation for usage so protecting existing funds.

### Impact for existing charities that have independent trustees

The current provisions which allow the Secretary of State to appoint independent individuals as trustees of some NHS charities will be repealed as soon as primary legislation can be introduced. Once the legislation is repealed, these charities will have to decide whether to set up a new independent charity or revert to corporate trustee arrangements.

The key issue therefore relates to timing – do they want to set up an independent charity before the legislation is repealed or continue in their current form until the legislation actually changes?

To be able to reach a decision, independent trustees need to understand the proposals and their implications even if they decide not to take action until the legislation is repealed.

### Impact for charities with a corporate trustee

Organisations with a corporate trustee will not be forced to make any changes or take any decisions and the anticipated change in legislation will not affect them. However, the option to establish an independent charity and transfer property to it is open to them so they too need to understand the opportunities and implications.

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<sup>1</sup> The phrase 'NHS charities' is used to include those charities with corporate trustees which are clinical commissioning groups, NHS trusts or foundation trusts as well as those charities whose trustees are appointed by the Secretary of State for Health.

<sup>2</sup> [www.gov.uk/government/consultations/regulation-of-nhs-charities](http://www.gov.uk/government/consultations/regulation-of-nhs-charities)

## **Establishing an independent charity – FAQ**

The questions and answers that follow are designed to help NHS charities think through the issues.

### **When is the most appropriate time for us to make this decision, if we have to make it at all?**

Current NHS charities with independent trustees will ultimately have to make a decision and change either to a corporate trustee or to the new model. NHS charities with a corporate trustee can either do nothing or choose to move to the new model.

### **Early adopters are likely to change their governance arrangements during 2014/15 – is it worth waiting for them to pave the way?**

This is a decision for each charity to make. NHS charities which have pioneered this change are already well on their way to adopting the new charitable model; Barts is the first NHS charity to have completed the change.

### **How long will the process take?**

Approximately a year once the decision has been taken. This is because it is not only the charity's registration that has to change – Gift Aid and VAT registrations (amongst other things) also alter.

### **What would the charitable objects of the new charity be?**

Existing objects would continue but the potential exists to expand them to support wider health provision.

### **What does the change in governance achieve?**

The proposed change supports effective independence of the charity introducing a more transparent trusteeship model. Depending on the selection of trustees, consolidation of accounts with the associated NHS body would not be required.

### **Where would independent trustees come from?**

Appropriately experienced individuals from the local community with an interest in healthcare and who are willing to become independent trustees would have to be identified and recruited to oversee the new charity. NHS charities with independent trustees may already have these people in post; however, NHS charities with a corporate trustee would have to source individual trustees from scratch.

### **How would you go about identifying such individuals, bearing in mind that you are likely to be able to draw from a larger pool of people offering a wider range of skills?**

The Charity Commission provides some useful advice on this – the key documents are 'Finding new trustees' and 'Trustee recruitment, selection and induction'. Both are available via the 'gov.uk' website: <https://www.gov.uk/running-charity/trustee-role-board>

### **How will the relationship with the previous host NHS body work?**

As part of the transfer process a memorandum of understanding (MOU) is required to reflect the ongoing relationship between the NHS body and the charity. This will ensure that the wishes of current donors are followed and that future gifts are transferred.

### **What legal form would the new charity take? Would it be a charitable incorporated organisation (CIO) offering limited liability protection; a company limited by guarantee (CLG) or some other form of charity?**

This would be a decision for the charity and its trustees; all legal forms of charity are permitted.

### **What are the implications for staff currently employed by the NHS body? Should secondment arrangements remain in place?**

You will need to consult with staff and think about the implications – for example, does there need to be a formal transfer of staff or will a service level agreement be adequate? If you are considering a TUPE transfer, do you need to apply for 'direction employer status' so that pension rights are retained?

### **How would changing governance arrangements benefit the linked NHS body?**

By becoming independent the non-executive directors and senior managers of the NHS body can concentrate on core NHS business. However, a link to the charity would remain via the MOU.

### **If you decide to become independent how will the transition be managed?**

You would need to set up a project group with dedicated staff resource to make all the necessary changes. You are also likely to need professional support and advice – for example, from lawyers.

### **How will you report the demise of the existing charity?**

The HFMA issued guidance in November 2012 that will be helpful here – [Accounting for the Transfer of Charitable Funds](#) is available via the briefings and policy statements section of its website<sup>3</sup>.

### **Further information and support**

This paper is a short summary for trustees to consider at an early stage. The Association of NHS Charities is preparing detailed guidance notes and questions for NHS charities which will be available in autumn 2014.

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<sup>3</sup> <http://www.hfma.org.uk/publications-and-guidance/>