

HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Nhs Foundation Trusts

Authorisation

Section 6: Authorisation of NHS foundation trusts

58. This section provides the Independent Regulator with the power to authorise applicants under *sections 4 or 5*, whom the Independent Regulator is satisfied have met the necessary criteria set out in *subsection (2)*, to be NHS foundation trusts. The criteria are that the constitution and governance arrangements are in accordance with *Schedule 1*, that the applicant has taken steps to secure that the membership of its public and (if it has one) patients' constituencies will be representative of those eligible for such membership, that necessary steps to prepare for NHS foundation trust status have been taken, that the applicant will be able to provide the goods and services which it will be required to provide, and that any other requirements the Independent Regulator considers appropriate are met. Under *subsection (3)*, in deciding whether an applicant will be able to provide the goods and services required under its authorisation, the Independent Regulator must consider any Commission for Healthcare Audit and Inspection (CHAI) report or recommendation relating to the applicant, and must also consider the applicant's financial position.
59. *Subsection (5)* sets out that the Independent Regulator may not authorise an applicant as an NHS foundation trust unless satisfied that the applicant has sought the views of specified persons. The specified persons are: individuals who live in the applicant's proposed public and patient constituencies; the local authorities who it is proposed will appoint a member of the board of governors; and, if the applicant is an NHS trust, its staff and its Patients' Forum.
60. Under *subsection (5)(e)* the Secretary of State may make regulations setting out additional consultation requirements. Under *subsection (6)*, an authorisation may not be granted unless the Independent Regulator is satisfied that the applicant has complied with any regulations on consultation.