

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Nhs Foundation Trusts

Authorisation

Section 4: Applications by NHS trusts

55. This section allows NHS trusts to make applications to become NHS foundation trusts. They may only do so with the support of the Secretary of State. The section sets out the minimum information which must be included in an application by an NHS trust for NHS foundation trust status. In addition, once an application to be an NHS foundation trust has been made, *subsection (4)* gives an NHS trust that has made an application the shadow powers necessary to prepare for authorisation to be an NHS foundation trust.

Section 5: Other applications

56. This section allows persons other than NHS trusts to apply to set up an NHS foundation trust. They may only do so with the support of the Secretary of State. This allows organisations that are not currently part of the NHS such as charities and voluntary sector organisations to become involved in the establishment of a new NHS foundation trust.
57. *Subsection (2)* sets out the minimum information which must be included in such an application. In conjunction with this, *subsection (3)* imposes a test which requires the Independent Regulator to consider certain matters before an application made under this section may proceed, and a certificate of incorporation be issued. Once such a certificate is issued, the applicants are incorporated as a public benefit corporation and are given the shadow powers necessary to prepare for authorisation to be an NHS foundation trust.

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

These notes refer to the Health and Social Care (Community Health and Standards) Act 2003 (c.43) which received Royal Assent on 20 November 2003

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.

Section 7: Effect of authorisation

61. *Section 7* sets out the legal effect of an authorisation to be an NHS foundation trust. Under the section, where authorisation is granted to an NHS trust it ceases to be an NHS trust and becomes an NHS foundation trust. Where authorisation is granted to a public benefit corporation it becomes an NHS foundation trust.
62. *Subsection (5)* provides that the property, rights and liabilities of applicants continue with the NHS foundation trust.
63. *Subsection (7)* provides that, like NHS trusts, NHS foundation trusts are not Crown bodies: see paragraph 18 of Schedule 2 to the National Health Service and Community Care Act 1990 ("the 1990 Act").

Section 8: Amendments of constitution

64. This section sets out that an NHS foundation trust's constitution may only be amended with the Independent Regulator's consent, so that the Independent Regulator can ensure any alterations are appropriate.

Section 9: Variation of authorisation

65. This section allows the Independent Regulator to vary an NHS foundation trust's terms of authorisation. In deciding whether to vary an authorisation, the Independent Regulator must take into account any report or recommendation by an overview and scrutiny committee of a local authority made pursuant to the Local Government Act 2000, or by the Commission for Patient and Public Involvement in Health.

Section 10: Register of NHS foundation trusts

66. *Subsections (1) to (3)* require the Independent Regulator to keep a register of NHS foundation trusts, and set out the information that the register must contain.
67. *Subsections (4) and (5)* provide that the register must be available to the public for inspection, and that copies or extracts from the register must be available for a reasonable charge.