

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

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Nhs Foundation Trusts

Financial matters

Section 11: Power of Secretary of State to give financial assistance

68. This section provides for the Secretary of State to give loans, public dividend capital, grants or other payments to NHS foundation trusts.
69. *Subsection (3)* provides the necessary statutory cover for the Secretary of State to guarantee payments due under Private Finance Initiative (PFI) agreements entered into by NHS foundation trusts. Such agreements are currently entered into by NHS trusts. They are certified as “externally financed development agreements” within the meaning of the National Health Service (Private Finance) Act 1997. The section envisages that these certification arrangements will continue.

Section 12: Prudential borrowing code

70. This section provides for the Independent Regulator to set a code according to which the total borrowing limit of an NHS foundation trust will be determined. The code, and any revisions to it, must be laid before Parliament by the Independent Regulator.
71. The section requires that, in making and revising the code, the Independent Regulator must have regard to commercial best practice for determining the amount of loans to not-for-profit sector organisations. This would include taking into account the current and future ability of NHS foundation trusts to service debt. In addition, before making the code, the Independent Regulator must consult interested parties including the Secretary of State, NHS foundation trusts and any other persons the Independent Regulator considers appropriate. The Independent Regulator must also consult interested parties before revising the code.

Section 13: Public dividend capital

72. Under section 10 of the 1990 Act, each NHS trust is given an originating capital representing the excess of its assets over its liabilities when it is established. This originating capital is “public dividend capital” and the NHS trust must pay dividends on it at a set rate. It constitutes an asset of the Consolidated Fund.
73. *Subsection (1)* sets out that the public dividend capital of an NHS trust applicant immediately before authorisation is granted continues as public dividend capital under the same conditions for the NHS foundation trust. Under *subsection (2)* the capital remains an asset of the Consolidated Fund.

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74. *Subsection (3)* provides for the Secretary of State, with the consent of Treasury, to decide the terms on which any public dividend capital of an NHS foundation trust is issued. Under *subsection (4)* the dividend to be paid by an NHS foundation trust is the same as that payable by NHS trusts in England under section 9(7) of the 1990 Act.
75. *Subsection (5)* requires the Secretary of State to consult the Independent Regulator before deciding the terms on which any public dividend capital of an NHS foundation trust is to be issued.
76. *Subsection (6)* requires that any repayment of public dividend capital made to the Secretary of State must be paid into the Consolidated Fund, as it is for NHS trusts.