

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Nhs Foundation Trusts

Functions

Section 14: Authorised services

77. This section sets out the powers and functions of the Independent Regulator when authorising an NHS foundation trust to provide goods and services.
78. Under *subsection (1)* an authorisation must authorise an NHS foundation trust to provide goods and services for purposes related to the provision of health care. But *subsection (2)* provides that the authorisation must ensure that the principal purpose of the NHS foundation trust is the provision of goods and services for “the health service in England”, which, by virtue of *section 40* (the interpretation provision to Part 1) means the National Health Service provided by the Secretary of State pursuant to the 1977 Act.
79. *Subsection (3)* gives NHS foundation trusts powers to enter into other, non-health care related activities for the purposes of generating income to be used for the health service in England. Such activities may be subject to any restrictions set out in the authorisation.
80. *Paragraph 85(a)* of *Schedule 4* gives NHS foundation trusts the power to make accommodation or services or both available for patients who give undertakings to pay such charges as the trust may determine. The power is conferred in the same terms as it is conferred upon NHS trusts.
81. *Subsection (4)* allows the Independent Regulator, as part of an authorisation, to require an NHS foundation trust to provide particular NHS services. By exercising this power, the Independent Regulator can ensure that NHS foundation trusts are obliged to continue to provide certain goods and services to the NHS. *Subsection (6)* provides that an authorisation must authorise an NHS foundation trust to carry out health care research and to make facilities and staff available for education, training and research carried on by others. An authorisation may also require such services. *Subsection (7)* sets out the factors the Independent Regulator is to consider in deciding whether to require provision of particular services by an NHS foundation trust; and *subsection (8)* sets out the terms in which such a requirement may be framed.

Section 15: Private health care

82. This section gives the Independent Regulator power to restrict any goods or services provided by an NHS foundation trust that are not provided for the purposes of the health service in England.

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

83. *Subsection (2)* obliges the Independent Regulator to exercise this power to impose a cap on the total level of income derived from the provision of services to private patients, if the NHS foundation trust was an NHS trust. In the case of an NHS foundation trust that was an NHS trust in the financial year ending 31 March 2003, the cap must restrict the NHS foundation trust to the proportion of total income received from private patients in that year. For NHS foundation trusts that were not an NHS trust throughout this period, the cap must restrict the NHS foundation trust to the proportion of total income received from private patients in its first full financial year as an NHS trust.

Section 16: Protection of property

84. This section provides a ‘lock’ on any assets of an NHS foundation trust that are needed for the provision of goods or services required under its authorisation.
85. The section allows the Independent Regulator to designate property as “protected” if it considers that the property is needed for the provision of: goods or services that the NHS foundation trust must provide to the NHS in England; research the trust is required to carry out, or staff and facilities that the trust is required to make available for the purposes of education, training and research under its authorisation.
86. If property is designated as protected in this way, an NHS foundation trust may not dispose of it without the Independent Regulator’s approval.

Section 17: Financial powers

87. This section gives NHS foundation trusts powers to borrow money, subject to the prudential borrowing limit calculated according to the code set under [section 12](#).
88. *Subsections (4) and (5)* give NHS foundation trusts financial and investment powers for the purposes of their functions, including powers to invest money, form subsidiaries and enter into joint ventures.
89. In addition, *subsection (6)* allows NHS foundation trusts to give financial assistance to anyone in connection with their functions. The powers are however, potentially subject to any terms of the authorisation set by the Independent Regulator.

Section 18: General powers

90. This section gives an NHS foundation trust general powers to do anything it needs to in relation to its functions. In particular, *subsection (2)* sets out that this includes acquiring and disposing of property, entering into contracts, accepting gifts and employing staff.

Section 19: Information

91. This section sets out requirements for NHS foundation trusts and other health service bodies to provide information in certain circumstances.
92. Under *subsection (1)*, both the Secretary of State and the Independent Regulator are given the power to specify information which an NHS foundation trust is required to disclose. In each case, the provision of the information is included as a term of the NHS foundation trust’s authorisation.
93. *Subsection (2)* gives the Independent Regulator a power to require other health service bodies – defined in [section 40](#) as being Strategic Health Authorities, Special Health Authorities, NHS trusts, Primary Care Trusts and NHS foundation trusts - to provide any information the Independent Regulator requires for the purposes of its functions.

Section 20: Entry and inspection of premises

94. This section provides for the Independent Regulator to include right of entry and inspection of premises as a term of authorisation for NHS foundation trusts.

Section 21: Fees

95. This section allows the Independent Regulator to charge NHS foundation trusts a reasonable annual fee as a term of their authorisation.

Section 22: Trust funds and trustees

96. This section provides for the Secretary of State to appoint trustees for an NHS foundation trust to manage charitable assets on its behalf. The arrangements are analogous to those set out under the 1990 Act for NHS trusts.
97. *Subsection (2)(a)* allows for the Secretary of State to make provision as to the persons by whom trustees are to be appointed. It is anticipated that the appointment of trustees will be delegated to the NHS Appointments Commission, which is a Special Health Authority established under the 1977 Act.
98. *Subsection (3)* allows the Secretary of State to transfer property from an NHS foundation trust to the trustees of the NHS foundation trust where trustees have been appointed under this section.
99. *Subsection (4)* provides that trustees of an NHS trust that becomes an NHS foundation trust are to be treated as though they were appointed under this section.