

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Nhs Foundation Trusts

Failure

Section 25: Dissolution etc.

104. This section gives the Secretary of State the power in certain specified circumstances to dissolve an NHS foundation trust by order. The power may be exercised where an NHS foundation trust fails to comply with a notice under *sections 23* or *24*, or where an NHS foundation trust fails to implement a voluntary arrangement under *section 24*, and where the Independent Regulator considers that, despite the exercise of its powers under either of those sections, the goods and services of the NHS foundation trust remain at risk. Before an NHS foundation trust is dissolved, the Independent Regulator must consult those individuals specified by the Secretary of State. This provision is intended as a safeguard on the use of the power. Where an NHS foundation trust is dissolved under this section, the Secretary of State may transfer any of its property, rights and liabilities to the persons listed in *subsection (3)*. The transfer is made by order.
105. *Subsection (4)* makes provision for *Schedule 3* which sets out the legal effect of any transfer of employees of a dissolved NHS foundation trust. Under the Schedule, the contract of any employee that is transferred under *section 25(3)* is not terminated. Rather, it transfers to the transferee as if it were originally made between the employee and the transferee. The employee is however, given the right to object to such a transfer. Where an employee objects in this way, his contract of employment is terminated.
106. *Subsection (6)* gives the Secretary of State the powers to apply Part 4 of the Insolvency Act 1986, which relates to the winding up of companies, with modifications to the dissolution of NHS foundation trusts.
107. *Subsection (7)* allows the Secretary of State to exercise his powers under this section where the Independent Regulator refuses to give an authorisation to a public benefit corporation.