

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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 – Nhs Foundation Trusts

##### Mergers

##### *Section 27: Mergers*

111. This section provides a mechanism for mergers between two NHS foundation trusts or between an NHS foundation trust and an NHS trust.
112. Under *subsection (1)* an NHS foundation trust and another NHS foundation trust, or an NHS foundation trust and an NHS trust, may make a joint application to the regulator for authorisation as a new NHS foundation trust. *Subsection (2)(a)* provides that, as for new NHS foundation trusts, if the application involves an NHS trust, the application must be supported by the Secretary of State; and *subsection (2)(b)-(d)* sets out the matters that must form part of such an application.
113. *Subsection (4)* allows the Independent Regulator to issue a certificate incorporating the directors of the applicants as a public benefit corporation, and to authorise the corporation to become an NHS foundation trust, if the Independent Regulator is satisfied that the criteria set out in *subsection (5)* have been met. The criteria are that the constitution and governance arrangements are in accordance with *Schedule 1*, that the actual membership of the applicant's public constituency (and, if there is one, of its patients' constituency) will be representative of those eligible for such membership, that the new NHS foundation trust 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.
114. *Subsection (8)* sets out that the Independent Regulator may not issue an authorisation unless satisfied that the applicant has sought the views of specified persons.
115. Under *subsection (5)(f)*, the Secretary of State may make regulations setting out additional consultation requirements. Under *subsection (7)*, an authorisation may not be granted unless the Independent Regulator is satisfied that the applicant has complied with any such regulations.

##### *Section 28: Section 27: supplementary*

116. This section provides for the Secretary of State to make orders dissolving the applicants, and transferring their property, rights, liabilities and staff to the new NHS foundation trust authorised under *section 27*.