
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes supplementary and consequential provision in relation to Part 1 of the Health and Social Care (Community Health and Standards) Act 2003 (“the Act”). Part 1 of the Act makes provision for the establishment of NHS foundation trusts.

“NHS foundation trusts” are defined in section 1 of the Act. NHS foundation trusts will be corporate bodies constituted in accordance with Schedule 1 to the Act and authorised under Part 1 of the Act by the Independent Regulator of NHS Foundation Trusts (established under section 2 of the Act). NHS foundation trusts will be authorised to provide goods and services for purposes relating to the provision of health care and the authorisation must secure that the principal purpose of the trust is the provision of goods and services for the purposes of the health service in England. However subject to the terms of their authorisation NHS foundation trusts may also operate in other parts of the United Kingdom.

Article 1 provides that with the exception of the provisions in paragraph (2), the amendments in this Order are to come into force on 1st April 2004.

The provisions which are listed in paragraph (2) all provide for the chairman or another member of the Independent Regulator of NHS Foundation Trusts to be disqualified from specified appointments to other bodies. These provisions are to come into force on 5th July 2004. The later date for commencement of these provisions reflects that the process of making permanent appointments to the Independent Regulator of NHS Foundation Trusts will not be complete until July 2004.

Article 2 provides that the extent and application of all of the amendments made by the Order is the same as that of the provision being amended.

Article 3(1) and Schedule 1 make supplementary and consequential provision to the specified instruments.

Article 3(2) to 3(17) and Schedules 2 to 17 provide for amendments which are common to more than one instrument.

In particular articles 3(7) to 3(9) and Schedules 7 to 9, provide for inserting definitions of NHS foundation trusts into the specified statutory instruments.

Article 3(10) and Schedule 10 amend the definition of “health service body” in the specified regulations which make provision for the membership and procedure of other health bodies including Special Health Authorities. The effect is to include NHS foundation trusts and the Independent Regulator of NHS Foundation Trusts in the definition of “health service body”. As a consequence of this amendment the provisions of those regulations in respect of disqualification from appointment to specified positions (for example of a person who has been dismissed within the previous five years otherwise than by reason of redundancy from paid employment with a health service body), will apply to NHS foundation trusts and the Independent Regulator of NHS Foundation Trusts in the similar way as they do for example to NHS trusts.

Article 3(11) and Schedule 11 amend the definition of “health service body” in the specified regulations which also make provision for the membership and procedure of two other Special Health Authorities. The effect is to include NHS foundation trusts in the definition of “health service body”. Similarly as a consequence of this amendment provisions of those regulations in respect of disqualification from appointment to specified positions will apply to NHS foundation trusts in the similar way as they do in respect of other bodies within the health service such as NHS trusts.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Article 3(12) and Schedule 12 amend the provision in the specified regulations to the effect that the provisions in those regulations which provide for the disqualification from appointment where a person's tenure as the chairman, member or director of a health service body is terminated on the grounds set out in the regulation, will also apply where a person's tenure as the governor of a health service body is terminated on those grounds. This reflects in particular that the constitution of NHS foundation trusts will include a board of governors.

Article 3(13) to (15) and Schedules 13 to 15 provide for amendments in respect of NHS foundation trusts, to the qualifications in the specified regulations of the meaning of paid employment.

Article 3(16) and Schedule 16 provide together with specific amendments in article 3(1) and Schedule 1 for the disqualification of members of the Independent Regulator of NHS Foundation Trusts from other positions in health bodies.

Article 3(17) and Schedule 17 and article 3(1) and Schedule 1 paragraph 42, provide for amendments to regulations in respect of statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption pay. These amendments have the effect that an employee of an NHS trust is not disadvantaged in respect of these statutory benefits where that NHS trust is authorised as an NHS foundation trust.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.