



# Health and Social Care (Community Health and Standards) Act 2003

## 2003 CHAPTER 43

### PART 1 **E+W**

#### NHS FOUNDATION TRUSTS

##### *Introductory*

#### **1 NHS foundation trusts **E+W****

- (1) An NHS foundation trust is a public benefit corporation which is authorised under this Part to provide goods and services for the purposes of the health service in England.
- (2) A public benefit corporation is a body corporate which, in pursuance of an application under this Part, is constituted in accordance with Schedule 1.

##### **Commencement Information**

**11** [S. 1](#) in force at 1.4.2004 by [S.I. 2004/759](#), [art. 2](#)

#### **2 Independent Regulator of NHS Foundation Trusts **E+W****

- (1) There is to be a body corporate known as the Independent Regulator of NHS Foundation Trusts (referred to in this Part as “the regulator”).
- (2) Schedule 2 (which makes further provision about the regulator) has effect.

##### **Commencement Information**

**12** [S. 2](#) in force at 1.1.2004 by [S.I. 2003/3346](#), [art. 2](#)

*Status: Point in time view as at 01/04/2004. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Part 1. (See end of Document for details)*

### 3 General duty of regulator **E+W**

The regulator must exercise its functions in a manner that is consistent with the performance by the Secretary of State of the duties under sections 1, 3 and 51 of the National Health Service Act 1977 (c. 49) (duty as to health service and services generally and as to university clinical teaching and research).

#### Commencement Information

**I3** S. 3 in force at 1.1.2004 by S.I. 2003/3346, art. 2

#### *Authorisation*

### 4 Applications by NHS trusts **E+W**

- (1) An NHS trust may make an application to the regulator for authorisation to become an NHS foundation trust, if the application is supported by the Secretary of State.
- (2) The application must—
  - (a) describe the goods and services which the NHS trust proposes should be provided by the NHS foundation trust, and
  - (b) be accompanied by a copy of the proposed constitution of the trust;
 and must give any further information which the regulator requires the NHS trust to give.
- (3) The applicant may modify the application with the agreement of the regulator at any time before authorisation is given under section 6.
- (4) Once an NHS trust has made the application—
  - (a) the provisions of the proposed constitution which give effect to paragraphs 3 to 19 of Schedule 1 have effect, but only for the purpose of establishing the initial membership of the NHS foundation trust and of the board of governors, and the initial directors, and enabling the board of governors and board of directors to make preparations for the performance of their functions,
  - (b) the NHS trust may do anything (including the things mentioned in paragraph 16 of Schedule 2 to the National Health Service and Community Care Act 1990 (c. 19) (general powers)) which appears to it to be necessary or desirable for the purpose of preparing it for NHS foundation trust status.

#### Commencement Information

**I4** S. 4 in force at 1.1.2004 by S.I. 2003/3346, art. 2

### 5 Other applications **E+W**

- (1) An application may be made to the regulator by persons (other than an NHS trust) to be incorporated as a public benefit corporation and authorised to become an NHS foundation trust, if the application is supported by the Secretary of State.
- (2) The application must—

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- (a) describe the goods and services which the applicants propose should be provided by the trust, and
  - (b) be accompanied by a copy of the proposed constitution of the trust;
- and must give any further information which the regulator requires the applicants to give.
- (3) If it appears to the regulator that—
- (a) provision of the goods and services described in the application is likely to assist in the performance of the duties mentioned in section 3,
  - (b) the trust as proposed to be constituted will be able to provide those goods and services, and
  - (c) the proposed constitution accords with Schedule 1 and is otherwise appropriate,
- the regulator may issue a certificate of incorporation.
- (4) The applicants may modify the application with the agreement of the regulator at any time before the certificate is issued.
- (5) On the issue of the certificate, the applicants are incorporated as a public benefit corporation.
- (6) The certificate is conclusive evidence of incorporation.
- (7) Once the certificate has been issued—
- (a) the proposed constitution has effect, but the applicants may exercise the functions of the corporation on its behalf until a board of directors is appointed in accordance with the constitution,
  - (b) the corporation may do anything (including the things mentioned in section 18) which appears to it to be necessary or desirable for the purpose of preparing it for NHS foundation trust status.

#### Commencement Information

**I5** S. 5 in force at 1.4.2004 by S.I. 2004/759, art. 2

## 6 Authorisation of NHS foundation trusts **E+W**

- (1) The regulator may give an authorisation under this section—
- (a) to an NHS trust which has applied under section 4, or
  - (b) to a public benefit corporation,
- if the regulator is satisfied as to the following matters.
- (2) The matters are that—
- (a) the applicant's constitution will be in accordance with Schedule 1 and will otherwise be appropriate,
  - (b) the applicant has taken steps to secure that (taken as a whole) the actual membership of any public constituency, and (if there is one) of the patients' constituency, will be representative of those eligible for such membership,
  - (c) there will be a board of governors, and a board of directors, constituted in accordance with the constitution,
  - (d) the steps necessary to prepare for NHS foundation trust status have been taken,

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- (e) the applicant will be able to provide the goods and services which the authorisation is to require it to provide, and
  - (f) any other requirements which the regulator considers appropriate are met.
- (3) In deciding whether it is satisfied as to the matters referred to in subsection (2)(e), the regulator is to consider (among other things)—
- (a) any report or recommendation in respect of the applicant made by the Commission for Healthcare Audit and Inspection,
  - (b) the financial position of the applicant.
- (4) The authorisation may be given on any terms the regulator considers appropriate.
- (5) The regulator must not give an authorisation unless it is satisfied that the applicant has sought the views about the application of the following—
- (a) if the applicant is an NHS trust, the Patients' Forum for the trust and the staff employed by the trust,
  - (b) individuals who live in any area specified in the proposed constitution as the area for a public constituency,
  - (c) any local authority that would be authorised by the proposed constitution to appoint a member of the board of governors,
  - (d) if the proposed constitution provides for a patients' constituency, individuals who would be able apply to become members of that constituency,
  - (e) any persons prescribed by regulations.
- (6) If regulations make provision about consultation, the regulator may not give an authorisation unless it is satisfied that the applicant has complied with the regulations.
- (7) The generality of the power in subsection (4) is not affected by the following provisions of this Part.

#### Commencement Information

- I6** S. 6 partly in force; s. 6 in force at Royal Assent for certain purposes, see s. 199(1)(4)
- I7** S. 6 in force at 1.4.2004 in so far as not already in force by S.I. 2004/759, art. 2

## 7 Effect of authorisation **E+W**

- (1) On an authorisation being given to a body corporate which is an NHS trust—
- (a) it ceases to be an NHS trust and becomes an NHS foundation trust,
  - (b) the proposed constitution has effect.
- (2) In consequence of subsection (1)(a), any order made under section 5(1) of the 1990 Act (establishment of the NHS trust) is revoked.
- (3) On an authorisation being given to a body corporate which is a public benefit corporation, it becomes an NHS foundation trust.
- (4) The authorisation is conclusive evidence that the body in question is an NHS foundation trust.
- (5) Subsections (1) to (3) do not affect the continuity of the body or of its property or liabilities.

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*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Part 1. (See end of Document for details)*

- (6) The validity of any act of an NHS foundation trust is not affected by any vacancy among the directors or by any defect in the appointment of any director.
- (7) An NHS foundation trust is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the trust's property is not to be regarded as property of, or property held on behalf of, the Crown.

#### Commencement Information

**I8** S. 7 in force at 1.4.2004 by [S.I. 2004/759](#), [art. 2](#)

### 8 Amendments of constitution **E+W**

An NHS foundation trust may make amendments of its constitution with the approval of the regulator.

#### Commencement Information

**I9** S. 8 in force at 1.4.2004 by [S.I. 2004/759](#), [art. 2](#)

### 9 Variation of authorisation **E+W**

- (1) The regulator may vary an authorisation.
- (2) In deciding whether or not to vary an authorisation the regulator is to have regard (among other things) to—
  - (a) any report or recommendation made to it by virtue of section 21(2)(f) of the Local Government Act 2000 (c. 22) (overview and scrutiny committees),
  - (b) any report or recommendation made to it by the Commission for Patient and Public Involvement in Health under section 20(5)(b) or (6) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17).

#### Commencement Information

**I10** S. 9 in force at 1.4.2004 by [S.I. 2004/759](#), [art. 2](#)

### 10 Register of NHS foundation trusts **E+W**

- (1) The regulator must establish and maintain a register of NHS foundation trusts.
- (2) The register must contain in relation to each NHS foundation trust—
  - (a) a copy of the current constitution,
  - (b) a copy of the current authorisation,
  - (c) a copy of the latest annual accounts and of any report of the auditor on them,
  - (d) a copy of the latest annual report,
  - (e) a copy of the latest document sent to the regulator under paragraph 27 of Schedule 1 (forward planning),
  - (f) a copy of any notice given under section 23 (failing NHS foundation trusts).

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- (3) In relation to any time before an NHS foundation trust is first required to send an annual report to the regulator, the register must contain a list of the persons who were first elected or appointed as—
  - (a) the members of the board of governors,
  - (b) the directors.
- (4) Members of the public may inspect the register at any reasonable time.
- (5) Any person who requests it is to be provided with a copy of or extract from any document contained in the register on payment of a reasonable charge.

#### Commencement Information

**I11** S. 10 in force at 1.4.2004 by S.I. 2004/759, art. 2

### *Financial matters*

#### **11 Power of Secretary of State to give financial assistance** **E+W**

- (1) The Secretary of State may give financial assistance to any NHS foundation trust.
- (2) The financial assistance may be given by way of loan, public dividend capital, grant or other payment.
- (3) The Secretary of State may guarantee the payment of any amount payable by an NHS foundation trust under an externally financed development agreement.

“Externally financed development agreement” has the same meaning as in section 1 of the National Health Service (Private Finance) Act 1997 (c. 56), reading references in subsections (3) and (5) of that section to the trust as references to the NHS foundation trust.

#### Commencement Information

**I12** S. 11 in force at 1.4.2004 by S.I. 2004/759, art. 2

#### **12 Prudential borrowing code** **E+W**

- (1) The regulator must make a code for determining the limit on the total amount of the borrowing of any NHS foundation trust.
- (2) In making the code the regulator is to have regard (among other things) to any generally accepted principles used by financial institutions to determine the amounts of loans to non-profit making bodies.

A body is non-profit making if it does not carry on activities for the purpose of making profits for distribution to its members or others.

- (3) Before making the code, the regulator must consult—
  - (a) the Secretary of State,
  - (b) every NHS trust intending to make an application to become an NHS foundation trust,

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- (c) such other persons as the regulator considers appropriate.
- (4) The regulator must lay a copy of the code before Parliament.
- (5) The regulator may revise the code; and subsections (2) to (4) apply in relation to revising the code, but the regulator must also consult every NHS foundation trust.

#### Commencement Information

**I13** S. 12 in force at 1.4.2004 by S.I. 2004/759, art. 2

### 13 Public dividend capital **E+W**

- (1) Where an NHS trust becomes an NHS foundation trust, the amount which was the public dividend capital of the trust immediately before the giving of the authorisation continues as public dividend capital of the NHS foundation trust held on the same conditions (“initial public dividend capital”), but subject to this section.
- (2) Any amount issued to an NHS foundation trust as public dividend capital under section 11 is (like initial public dividend capital) an asset of the Consolidated Fund.
- (3) The Secretary of State may, with the consent of the Treasury, decide the terms on which any public dividend capital of an NHS foundation trust is to be treated as having been issued.
- (4) But the dividend to be paid by the trust is to be the same as that payable by NHS trusts in England in pursuance of section 9(7) of the 1990 Act (dividend on public dividend capital).
- (5) Before exercising the power in subsection (3), the Secretary of State must consult the regulator.
- (6) Any amount paid to the Secretary of State by an NHS foundation trust by way of repayment of public dividend capital is to be paid into the Consolidated Fund.

#### Commencement Information

**I14** S. 13 in force at 1.4.2004 by S.I. 2004/759, art. 2

### Functions

### 14 Authorised services **E+W**

- (1) An authorisation must authorise the NHS foundation trust to provide goods and services for purposes related to the provision of health care.
- (2) But 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.
- (3) The trust may also carry on activities other than those mentioned in subsection (1), subject to any restrictions in the authorisation, for the purpose of making additional income available in order to carry on its principal purpose better.

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- (4) The authorisation may require the provision, wholly or partly for the purposes of the health service in England, of goods and services by the trust.
- (5) References in this Part to goods and services include, in particular—
- (a) education and training,
  - (b) accommodation and other facilities.
- (6) The authorisation must authorise and may require the trust—
- (a) to carry out research in connection with the provision of health care,
  - (b) to make facilities and staff available for the purposes of education, training or research carried on by others;
- and, in deciding how to exercise its functions under this subsection in a case where any of the corporation's hospitals includes a medical or dental school provided by a university, the regulator is to have regard to the need to establish and maintain appropriate arrangements with the university.
- (7) In deciding whether or not to require the trust to provide, wholly or partly for the purposes of the health service in England, any goods or services the regulator is to have regard (among other things) to—
- (a) the need for the provision of goods or services in the area in question,
  - (b) any provision of goods or services by other health service bodies in the area in question,
  - (c) any other provision by the trust with which the provision of the goods or services is connected,
  - (d) any agreement or arrangement to which the body corporate which is the trust is or was a party.
- (8) Such a requirement as is mentioned in subsection (4) may be framed by reference (among other things) to—
- (a) goods or services in general or of a particular description,
  - (b) goods or services required to meet the needs of health service bodies in general or those of a particular description,
  - (c) goods or services required to meet the needs of other persons of a particular description,
  - (d) the volume of goods or services provided,
  - (e) the place where goods or services are provided,
  - (f) the period within which goods or services are provided.

#### Commencement Information

**I15** S. 14 in force at 1.4.2004 by S.I. 2004/759, art. 2

## 15 Private health care **E+W**

- (1) An authorisation may restrict the provision, for purposes other than those of the health service in England, of goods and services by an NHS foundation trust.
- (2) The power is to be exercised, in particular, with a view to securing that the proportion of the total income of an NHS foundation trust which was an NHS trust in any financial



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year derived from private charges is not greater than the proportion of the total income of the NHS trust derived from such charges in the base financial year.

- (3) The base financial year means the first financial year throughout which the body corporate was an NHS trust or, if it was an NHS trust throughout the financial year ending with 31st March 2003, that year.
- (4) Private charges means charges imposed in respect of goods and services provided to patients other than patients being provided with goods and services for the purposes of the health service.
- (5) Section 14(8) applies for the purposes of this section.

#### Commencement Information

**I16** S. 15 in force at 1.4.2004 by S.I. 2004/759, art. 2

## 16 Protection of property **E+W**

- (1) An NHS foundation trust may not dispose of any protected property without the approval of the regulator.

Disposing of property includes disposing of part of it or granting an interest in it.

- (2) Protected property is property of the trust designated as protected in its authorisation.
- (3) The regulator may designate property as protected if it considers it is needed—
  - (a) for the purposes of any goods or services which the authorisation requires the trust to provide wholly or partly for the purposes of the health service in England, or
  - (b) for the purpose of doing anything which the trust is required to do under section 14(6).
- (4) The regulator may give approval under subsection (1) on any terms it considers appropriate.
- (5) An NHS foundation trust may not create a floating charge on its property.

#### Commencement Information

**I17** S. 16 in force at 1.4.2004 by S.I. 2004/759, art. 2

## 17 Financial powers **E+W**

- (1) An NHS foundation trust may borrow money for the purposes of or in connection with its functions.
- (2) But the total amount of the trust's borrowing is subject to the limit imposed by its authorisation.
- (3) The limit must be reviewed annually by the regulator.
- (4) An NHS foundation trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions.

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- (5) The investment may include investment by—
- (a) forming, or participating in forming, bodies corporate,
  - (b) otherwise acquiring membership of bodies corporate.
- (6) An NHS foundation trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

**Commencement Information**

**I18** S. 17 in force at 1.4.2004 by S.I. 2004/759, art. 2

**18 General powers** **E+W**

- (1) An NHS foundation trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions.
- (2) In particular it may—
- (a) acquire and dispose of property,
  - (b) enter into contracts,
  - (c) accept gifts of property (including property to be held on trust for the purposes of the NHS foundation trust or for any purposes relating to the health service),
  - (d) employ staff.
- (3) Any power of the trust to pay remuneration and allowances to any person includes power to make arrangements for providing, or securing the provision of, pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).

**Commencement Information**

**I19** S. 18 in force at 1.4.2004 by S.I. 2004/759, art. 2

**19 Information** **E+W**

- (1) An authorisation—
- (a) must require an NHS foundation trust to disclose such information as the Secretary of State specifies to the regulator,
  - (b) may require an NHS foundation trust to disclose other information to the regulator.
- (2) The regulator may require any other health service body to disclose any information which the regulator requires for the purposes of its functions.

**Commencement Information**

**I20** S. 19 in force at 1.4.2004 by S.I. 2004/759, art. 2

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*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Part 1. (See end of Document for details)*

## 20 Entry and inspection of premises **E+W**

An authorisation may require an NHS foundation trust to allow the regulator to enter and inspect premises owned or controlled by the trust.

### Commencement Information

**I21** S. 20 in force at 1.4.2004 by S.I. 2004/759, art. 2

PROSPECTIVE

## <sup>F1</sup>21 Fees **E+W**

### Textual Amendments

**F1** Ss. 1-32 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6) of the amending Act) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), Sch. 4 (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

## 22 Trust funds and trustees **E+W**

- (1) The Secretary of State may by order provide for the appointment of trustees for an NHS foundation trust to hold property on trust—
  - (a) for the purposes of the NHS foundation trust, or
  - (b) for any purposes relating to the health service.
- (2) The order may—
  - (a) make provision as to the persons by whom trustees are to be appointed and generally as to the method of their appointment,
  - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),
  - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate,
  - (d) make provision with respect to the term of office of any trustee and his removal from office.
- (3) Where trustees have been appointed for an NHS foundation trust under this section, the Secretary of State may by order provide for the transfer of any trust property from the NHS foundation trust to the trustees.
- (4) Where an NHS trust for which trustees have been appointed under section 11 of the 1990 Act is given an authorisation, the order appointing the trustees is to have effect as an order under this section.

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*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Part 1. (See end of Document for details)*

#### Commencement Information

**I22** S. 22 partly in force; s. 22 in force at Royal Assent for certain purposes, see s. 199(1)(4)

**I23** S. 22 in force at 1.4.2004 in so far as not already in force by S.I. 2004/759, art. 2

### Failure

#### 23 Failing NHS foundation trusts **E+W**

- (1) If the regulator is satisfied—
- (a) that an NHS foundation trust is contravening, or failing to comply with, any term of its authorisation or any requirement imposed on it under any enactment and that the contravention or failure is significant, or
  - (b) that an NHS foundation trust has contravened, or failed to comply with, any such term or requirement and is likely to do so again and that the contravention or failure was significant,
- the regulator may by a notice to the trust exercise any one or more of the powers in subsections (3) and (4).
- (2) The regulator may also by a notice to the trust exercise any one or more of those powers if the regulator is satisfied that the trust has contravened or failed to comply with a previous notice.
- (3) The regulator may require the trust, the directors or the board of governors to do, or not to do, specified things or things of a specified description within a specified period.
- (4) The regulator may remove any or all of the directors or members of the board of governors and appoint interim directors or members of the board.
- (5) The regulator's power to remove a director, or member of the board of governors, of the trust includes power to suspend him from office, or to disqualify him from holding office, as a director or member of the board of governors of the trust for a specified period.

#### Commencement Information

**I24** S. 23 partly in force; s. 23 in force at Royal Assent for certain purposes, see s. 199(1)(4)

**I25** S. 23 in force at 1.4.2004 in so far as not already in force by S.I. 2004/759, art. 2

#### 24 Voluntary arrangements **E+W**

- (1) If the regulator is satisfied that it is necessary or desirable to do so, it may by a notice to an NHS foundation trust require the directors—
- (a) to take steps to obtain a moratorium, or
  - (b) to make a proposal for a voluntary arrangement.
- (2) An order may provide for Part 1 of the Insolvency Act 1986 (c. 45) (company voluntary arrangements), including any related provision of that Act, to apply with modifications in relation to NHS foundation trusts; and the references in this Part to a moratorium or voluntary arrangement are to a moratorium under section 1A, or a voluntary arrangement under Part 1, of that Act as modified by the order.

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*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Part 1. (See end of Document for details)*

#### Commencement Information

**I26** S. 24 partly in force; s. 24 in force at Royal Assent for certain purposes, see s. 199(1)(4)

**I27** S. 24 in force at 1.4.2004 in so far as not already in force by S.I. 2004/759, art. 2

## 25 Dissolution etc. **E+W**

- (1) The powers conferred by this section are exercisable where—
  - (a) an NHS foundation trust contravenes or fails to comply with a notice under section 23 or 24 or the trust’s compliance with a notice under section 24 does not result in the implementation of a voluntary arrangement, and
  - (b) the regulator considers that further exercise of any of the powers conferred by those sections would not be likely to secure the provision of the goods and services which the authorisation requires the trust to provide.
- (2) Before the powers conferred by this section are exercised, the regulator must consult prescribed persons about prescribed matters.

“Prescribed” means prescribed by an order.
- (3) An order may transfer, or provide for the transfer of, any property or liabilities of the trust to—
  - (a) another NHS foundation trust,
  - (b) a Primary Care Trust,
  - (c) an NHS trust,
  - (d) the Secretary of State.
- (4) Schedule 3 (which provides for the transfer of employees) has effect.
- (5) An order may provide for the dissolution of the trust.
- (6) An order may apply any provision of Part 4 of the Insolvency Act 1986 (winding up of companies), including any related provision of that Act, with modifications.
- (7) Where the regulator refuses to give an authorisation to a public benefit corporation—
  - (a) the powers conferred by this section are also exercisable,
  - (b) references in this section and Schedule 3 to an NHS foundation trust are to be read as references to the corporation.

#### Commencement Information

**I28** S. 25 partly in force; s. 25 in force at Royal Assent for certain purposes, see s. 199(1)(4)

**I29** S. 25 in force at 1.4.2004 in so far as not already in force by S.I. 2004/759, art. 2

## 26 Sections 24 and 25: supplementary **E+W**

- (1) In sections 24 and 25, an order means an order made by the Secretary of State.
- (2) The modifications of the Insolvency Act 1986 that may be made by an order under section 24(2) include (for example)—

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- (a) provision for securing that the goods and services which the trust is required by the authorisation to provide continue to be provided (whether by the trust or another),
  - (b) provision for securing the protection of property needed for the purposes of those goods and services.
- (3) The power conferred by section 25(3) is to be exercised with a view to securing the provision of the goods and services which the authorisation requires the trust to provide.
- (4) That power is also to be exercised (together, if required, with the power conferred by section 11(2)) with a view to securing that any transfer of property in pursuance of the power does not result in a net loss of value to the trust; and the question whether a transfer would result in a net loss of value is to be determined in accordance with regulations.
- (5) The Insolvency Act 1986 (c. 45) may not be modified under section 25(6) so as to alter the priority of debts or the ranking of debts between themselves.

#### Commencement Information

**I30** S. 26 partly in force; s. 26 in force at Royal Assent for certain purposes, see s. 199(1)(4)

**I31** S. 26 in force at 1.4.2004 in so far as not already in force by S.I. 2004/759, art. 2

### Mergers

#### 27 Mergers **E+W**

- (1) An application may be made jointly by—
- (a) an NHS foundation trust, and
  - (b) another NHS foundation trust or an NHS trust,
- to the regulator for authorisation of the dissolution of the trusts and the transfer of some or all of their property and liabilities to a new NHS foundation trust established under this section.
- (2) The application must—
- (a) be supported by the Secretary of State if one of the parties to it is an NHS trust,
  - (b) specify the property and liabilities proposed to be transferred to the new NHS foundation trust,
  - (c) describe the goods and services which it is proposed should be provided by the new trust, and
  - (d) be accompanied by a copy of the proposed constitution of the new trust;
- and must give any further information which the regulator requires the applicants to give.
- (3) The applicants may modify the application with the agreement of the regulator at any time before authorisation is given under this section.
- (4) The regulator may—
- (a) issue a certificate incorporating the directors of the applicants as a public benefit corporation, and

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*Status: Point in time view as at 01/04/2004. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Part 1. (See end of Document for details)*

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- (b) give an authorisation under this section to the corporation to become an NHS foundation trust,
- if the regulator is satisfied as to the following matters.
- (5) The matters are that—
- (a) the constitution of the new trust will be in accordance with Schedule 1 and will otherwise be appropriate,
  - (b) the applicant has taken steps to secure that (taken as a whole) the actual membership of any public constituency, and (if there is one) of the patients' constituency, will be representative of those eligible for such membership,
  - (c) the new trust will be able to provide the goods and services which the authorisation is to require it to provide, and
  - (d) any other requirements which the regulator considers appropriate are met.
- (6) In deciding whether it is satisfied as to the matters referred to in subsection (5)(c), the regulator is to consider (among other things)—
- (a) any report or recommendation in respect of either of the applicants made by the Commission for Healthcare Audit and Inspection,
  - (b) the financial position of the applicants.
- (7) The applicants must consult about the application in accordance with regulations.
- (8) In the course of the consultation the applicants must seek the views of—
- (a) any Patients' Forum for an applicant,
  - (b) the staff employed by the applicants,
  - (c) individuals who live in any area specified in the proposed constitution as the area for a public constituency,
  - (d) any local authority that would be authorised by the proposed constitution to appoint a member of the board of governors,
  - (e) if the proposed constitution provides for a patients' constituency, individuals who would be able apply to become members of that constituency,
  - (f) any persons prescribed by regulations.
- (9) The regulator may not give an authorisation under this section unless it is satisfied that the applicants have complied with the regulations.
- (10) The certificate is conclusive evidence of incorporation; and the authorisation is conclusive evidence that the corporation is an NHS foundation trust.
- (11) On an authorisation being given under this section, the proposed constitution of the NHS foundation trust has effect, but the directors of the applicants may exercise the functions of the trust on its behalf until a board of directors is appointed in accordance with the constitution.

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**Commencement Information**

**I32** S. 27 partly in force; s. 27 in force at Royal Assent for certain purposes, see s. 199(1)(4)

**I33** S. 27 in force at 1.4.2004 in so far as not already in force by S.I. 2004/759, art. 2

*Status: Point in time view as at 01/04/2004. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Part 1. (See end of Document for details)*

## 28 Section 27: supplementary **E+W**

- (1) Where an authorisation is given under section 27, the regulator is to specify the property and liabilities to be transferred to the new NHS foundation trust.
- (2) Where such an authorisation is given, the Secretary of State is to make an order—
  - (a) dissolving the trusts in question, and
  - (b) transferring, or providing for the transfer of, the property and liabilities specified by the regulator to the new NHS foundation trust.
- (3) The order may—
  - (a) transfer, or provide for the transfer of, any of the remaining property or liabilities to the persons mentioned in section 25(3),
  - (b) include provisions corresponding to those of Schedule 3.
- (4) Where one of the parties to an application under section 27 is an NHS trust, the powers conferred on the Secretary of State by Part 4 of Schedule 2 to the 1990 Act are not exercisable in relation to the trust.
- (5) Section 6(4) applies to an authorisation under section 27 as it does in relation to an authorisation under that section.

### Commencement Information

**I34** [S. 28](#) partly in force; [s. 28](#) in force at Royal Assent for certain purposes, see [s. 199\(1\)\(4\)](#)

**I35** [S. 28](#) in force at 1.4.2004 in so far as not already in force by [S.I. 2004/759](#), [art. 2](#)

### *Co-operation*

## 29 Co-operation between NHS bodies **E+W**

In section 26 of the Health Act 1999 (c. 8) (co-operation between NHS bodies), for “and NHS trusts” there is substituted “, NHS trusts and NHS foundation trusts”.

### Commencement Information

**I36** [S. 29](#) in force at 1.4.2004 by [S.I. 2004/759](#), [art. 2](#)

### *Patient and public involvement*

## 30 Public involvement and consultation **E+W**

In section 11(2) of the Health and Social Care Act 2001 (c. 15) (public involvement and consultation), at the end there is inserted—  
“(d) NHS foundation trusts”.

### Commencement Information

**I37** [S. 30](#) in force at 1.4.2004 by [S.I. 2004/759](#), [art. 2](#)



*Status: Point in time view as at 01/04/2004. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Part 1. (See end of Document for details)*

### 31 Patients' Forums **E+W**

- (1) The National Health Service Reform and Health Care Professions Act 2002 (c. 17) is amended as follows.
- (2) In section 15 (establishment of patients' forums)—
  - (a) in subsection (1), after paragraph (b) there is inserted “and
    - (c) for each NHS foundation trust.”, and
  - (b) in subsection (9), in the definition of “relevant overview and scrutiny committee”, for “or NHS trust” there is substituted “, NHS trust or NHS foundation trust”.
- (3) In section 17 (entry and inspection of premises), in subsection (1), after paragraph (f) there is inserted—
  - “(fa) NHS foundation trusts.”.
- (4) In section 18 (annual reports) in subsection (2)—
  - (a) in paragraph (c)(ii), after “NHS trust” there is inserted “ or NHS foundation trust ”,
  - (b) after paragraph (d) there is inserted—
    - “(e) where the report includes provision which relates to any NHS foundation trust, the Independent Regulator of NHS Foundation Trusts”.
- (5) In section 19 (supplementary) in subsection (2)—
  - (a) in paragraph (k), after “an NHS trust,” there is inserted “ an NHS foundation trust, ”,
  - (b) in paragraph (p), after “NHS trusts,” there is inserted “ NHS foundation trusts, ”,
    - and in subsection (4)(a), after “NHS trust” there is inserted “ or NHS foundation trust ”.

#### Commencement Information

**I38** S. 31 in force at 1.4.2004 by S.I. 2004/759, art. 2

### 32 Commission for Patient and Public Involvement in Health **E+W**

- (1) Section 20 of the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (Commission for Patient and Public Involvement in Health) is amended as follows.
- (2) In subsection (10), after “an NHS trust,” there is inserted “ an NHS foundation trust, ”.
- (3) In subsection (12), in the definition of “health service bodies”, for “and NHS trusts” there is substituted “, NHS trusts and NHS foundation trusts”.

#### Commencement Information

**I39** S. 32 in force at 1.4.2004 by S.I. 2004/759, art. 2

*Status: Point in time view as at 01/04/2004. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Part 1. (See end of Document for details)*

### Miscellaneous

#### 33 Taxation **E+W**

- (1) In section 519A of the Income and Corporation Taxes Act 1988 (c. 1) (taxation of health service bodies), in subsection (2), after paragraph (b) there is inserted—  
“(bb) an NHS foundation trust”.
- (2) Section 61(3) of the 1990 Act (health service bodies: stamp duty) applies to an NHS foundation trust as it applies to an NHS trust.
- (3) In section 41 of the Value Added Tax Act 1994 (c. 23) (application to the Crown), in subsection (7), after “1978” there is inserted “an NHS foundation trust”.

#### Commencement Information

**I40** S. 33 in force at 1.4.2004 by [S.I. 2004/759](#), [art. 2](#)

#### 34 Other amendments relating to NHS foundation trusts **E+W**

Schedule 4 (which makes amendments relating to NHS foundation trusts) has effect.

#### Commencement Information

**I41** S. 34 in force at 1.4.2004 by [S.I. 2004/759](#), [art. 2](#)

#### 35 Conduct of elections **E+W**

- (1) Regulations may make provision as to the conduct of elections for membership of the board of governors of an NHS foundation trust.
- (2) The regulations may in particular provide for—
  - (a) nomination of candidates and obligations to declare their interests,
  - (b) systems and methods of voting, and the allocation of places on the board of governors, at contested elections,
  - (c) filling of vacancies,
  - (d) supervision of elections,
  - (e) election expenses and publicity,
  - (f) questioning of elections and the consequences of irregularities.
- (3) Regulations under this section may create offences punishable on summary conviction with a maximum fine not exceeding level 4 on the standard scale.
- (4) An NHS foundation trust must secure that its constitution is in accordance with regulations under this section.
- (5) Pending the coming into force of regulations under this section, elections for membership of the board of governors of an NHS foundation trust, if contested, must be by secret ballot.

*Status: Point in time view as at 01/04/2004. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Part 1. (See end of Document for details)*

#### Commencement Information

**I42** S. 35 partly in force; s. 35 in force at Royal Assent for certain purposes, see s. 199(1)(4)

**I43** S. 35 in force at 1.4.2004 in so far as not already in force by S.I. 2004/759, art. 2

### 36 Offence **E+W**

- (1) A person may not vote at an election for the board of governors of an NHS foundation trust unless, within the specified period, he has made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held.
- (2) A person may not stand for election to the board unless, within the specified period, he has made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held and is not prevented from being a member of the board by paragraph 8 of Schedule 1.
- (3) A person elected to the board may not vote at a meeting of the board unless, within the specified period, he has made a declaration in the specified form of the particulars of his qualification to vote as a member of the trust and is not prevented from being a member of the board by paragraph 8 of Schedule 1.
- (4) This section does not apply to an election held for the staff constituency.
- (5) Specified means specified for the purpose in the trust's constitution.
- (6) A person is guilty of an offence if he—
  - (a) makes a declaration under this section which he knows to be false in a material particular, or
  - (b) recklessly makes such a declaration which is false in a material particular.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### Commencement Information

**I44** S. 36 in force at 1.1.2004 by S.I. 2003/3346, art. 2

### 37 Representative membership **E+W**

An authorisation may require an NHS foundation trust to take steps to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) of the patients' constituency is representative of those eligible for such membership.

#### Commencement Information

**I45** S. 37 in force at 1.4.2004 by S.I. 2004/759, art. 2

*Status: Point in time view as at 01/04/2004. This version of this part contains provisions that are prospective.*

**Changes to legislation:** There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Part 1. (See end of Document for details)

### 38 Audit **E+W**

Schedule 5 (which makes provision in relation to the audit of the accounts of NHS foundation trusts) has effect.

#### Commencement Information

**I46** [S. 38](#) in force at 1.4.2004 by [S.I. 2004/759](#), [art. 2](#)

### 39 General duty of NHS foundation trusts **E+W**

An NHS foundation trust must exercise its functions effectively, efficiently and economically.

#### Commencement Information

**I47** [S. 39](#) in force at 1.4.2004 by [S.I. 2004/759](#), [art. 2](#)

### Supplementary

### 40 Interpretation of Part 1 **E+W**

(1) In this Part—

“the 1990 Act” means the National Health Service and Community Care Act 1990 (c. 19),

“authorisation” means an authorisation under section 6 or 27,

“health service body” means a Strategic Health Authority, a Special Health Authority, an NHS trust, an NHS foundation trust or a Primary Care Trust,

“regulations” means regulations made by the Secretary of State.

(2) Other expressions used in this Part and in the 1977 Act have the same meaning in this Part as in that Act.

(3) Any references in this Part, in relation to property held on trust, to the purposes of an NHS foundation trust are to the general or any specific purposes of the NHS foundation trust (including the purposes of any specific hospital at or from which services are provided by the trust).

(4) Any references in this Part to goods and services are to be interpreted in accordance with section 14(5).

#### Commencement Information

**I48** [S. 40](#) partly in force; [s. 40](#) in force at Royal Assent for certain purposes, see [s. 199\(1\)\(4\)](#)

**I49** [S. 40](#) in force at 1.1.2004 by [S.I. 2003/3346](#), [art. 2](#)

**Status:**

Point in time view as at 01/04/2004. This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Part 1.