



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

2003 CHAPTER 43

PART 1

NHS FOUNDATION TRUSTS

Financial matters

11 Power of Secretary of State to give financial assistance

- (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.

12 Prudential borrowing code

- (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,
 - (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.

13 Public dividend capital

- (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.