



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

2003 CHAPTER 43

PART 1

NHS FOUNDATION TRUSTS

Mergers

27 Mergers

- (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—

Status: Point in time view as at 19/07/2006.

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

- (a) issue a certificate incorporating the directors of the applicants as a public benefit corporation, and
 - (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.

Commencement Information

- I1** S. 27 partly in force; s. 27 in force at Royal Assent for certain purposes, see s. 199(1)(4)
- I2** S. 27 in force at 1.4.2004 in so far as not already in force by S.I. 2004/759, art. 2

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28 Section 27: supplementary

- (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.
- [^{F1}(3A) In section 27(1) and (2), and subsections (1) and (2) above, “liabilities” includes criminal liabilities; and an order under subsection (3) above may transfer any remaining criminal liabilities to any of the bodies mentioned in section 25(3)(a) to (c).]
- (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.

Textual Amendments

F1 S. 28(3A) inserted (19.7.2006) by [Health Act 2006 \(c. 28\)](#), [ss. 74\(7\)](#), [83\(1\)\(a\)](#)

Commencement Information

I3 S. 28 partly in force; s. 28 in force at Royal Assent for certain purposes, see s. 199(1)(4)

I4 S. 28 in force at 1.4.2004 in so far as not already in force by [S.I. 2004/759](#), [art. 2](#)

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