



National Health Service Act 2006

2006 CHAPTER 41

PART 2 **E+W**

HEALTH SERVICE BODIES

CHAPTER 5 **E+W**

NHS FOUNDATION TRUSTS

Authorisation

33 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 applicant proposes should be provided by the NHS foundation trust, and
 - (b) be accompanied by a copy of the proposed constitution of the NHS foundation trust,and must give any further information which the regulator requires the applicant to give.
- (3) The applicant may modify the application with the agreement of the regulator at any time before authorisation is given under section 35.
- (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 7 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,

Status: Point in time view as at 01/03/2007.

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- (b) the NHS trust may do anything (including the things mentioned in paragraph 14 of Schedule 4) which appears to it to be necessary or expedient for the purpose of preparing it for NHS foundation trust status.

34 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—
 - (a) describe the goods and services which the applicants propose should be provided by the NHS foundation trust, and
 - (b) be accompanied by a copy of the proposed constitution of the NHS foundation 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 32,
 - (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 7 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 47) which appears to it to be necessary or expedient for the purpose of preparing it for NHS foundation trust status.

35 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 33, or
 - (b) to a public benefit corporation,
 if the regulator is satisfied as to the following matters.
- (2) The matters are that—

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- (a) the applicant's constitution will be in accordance with Schedule 7 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,
 - (e) the applicant will be able to provide the goods and services which the authorisation will 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 must 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 NHS trust and the staff employed by the NHS 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 to apply to become members of that constituency,
 - (e) any prescribed persons.
- (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 Chapter.

36 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, and
 - (c) any order under section 25(1) is revoked.
- (2) On an authorisation being given to a body corporate which is a public benefit corporation, it becomes an NHS foundation trust.
- (3) The authorisation is conclusive evidence that the body in question is an NHS foundation trust.
- (4) Subsections (1) to (3) do not affect the continuity of the body or of its property or liabilities (including its criminal liabilities).

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- (5) 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.
- (6) An NHS foundation trust must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and an NHS foundation trust's property must not be regarded as property of, or property held on behalf of, the Crown.

37 Amendments of constitution **E+W**

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

38 Variation of authorisation **E+W**

- (1) The regulator may vary an authorisation.
- (2) In deciding whether or not to vary an authorisation, the regulator must 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 243(5)(b) or (6).

39 Register of NHS foundation trusts **E+W**

- (1) The regulator must continue to 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 7 (forward planning),
 - (f) a copy of any notice given under section 52 (failing NHS foundation trusts).
- (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 must be provided with a copy of, or extract from, any document contained in the register on payment of a reasonable charge.

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