

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – NHS foundation trusts and NHS trusts

Foundation trust status

Section 159 – Authorisation

1022. This section changes the nature of foundation trust authorisation to a one-off test, ahead of the repeal of the provisions on authorisation under a later section. Prior to this Act, Monitor set terms of authorisation when authorising an NHS Trust to become a foundation trust, and those terms formed the basis of Monitor's foundation trust-specific regulatory regime. Under Part 3 of this Act, Monitor will issue licences to providers with conditions attached, and all providers will be regulated on the basis of such conditions. An NHS trust wanting to become a foundation trust after implementation of Monitor's licensing regime will still need to meet the standards necessary to be authorised by Monitor as a foundation trust, but rather than receiving ongoing terms of authorisation, would undergo a one-off test to gain authorisation.
1023. This section therefore amends the NHS Act to change the application process for NHS trusts wishing to become foundation trusts and to remove ongoing terms of authorisation. *Subsection (4)* places a new requirement on Monitor to seek confirmation from the Care Quality Commission that an applicant trust is currently complying with the requirements mentioned in section 12(2) of the Health and Social Care Act 2008 in relation to the regulated activity or activities carried out by the applicant trust, before Monitor authorises its foundation trust status. *Subsection (5)* removes Monitor's discretion to give an authorisation on particular terms, and *subsection (6)* removes Monitor's ability to vary those terms of authorisation. *Subsections (7) and (9)* make consequential changes which remove the requirement for a copy of the authorisation to be on the register and available for public inspection.
1024. *Subsection (2)* repeals the requirement in section 33(2)(a) of the NHS Act to describe the goods and services to be provided in an application for foundation trust status and for Monitor to be satisfied that an applicant can provide them. This information is currently required to set the terms of authorisation. Monitor as provider regulator will be able to use its licensing regime to require a provider to provide a particular service. The powers under which Monitor could use terms of authorisation to ensure the provision of a particular service are therefore no longer required. Monitor's previous foundation trust-specific powers to enter and inspect a foundation trust's premises are also no longer required given its proposed new functions as regulator of all providers of NHS services, so *subsection (8)* repeals section 49 of the NHS Act which enables Monitor to exercise such a power.