



Health and Social Care Act 2012

2012 CHAPTER 7

PART 4

NHS FOUNDATION TRUSTS & NHS TRUSTS

Foundation trust status

159 Authorisation

- (1) In section 30(1) of the National Health Service Act 2006 (definition of NHS foundation trust), for “which is authorised under this Chapter to provide” substitute “the function of which is to provide in accordance with this Chapter”.
- (2) Omit section 33(2)(a) of that Act (requirement for application for authorisation to describe goods and services to be provided).
- (3) In section 35(2) of that Act (matters as to which the regulator must be satisfied before giving authorisation), for paragraph (e) substitute—

“(e) the applicant will be able to provide goods and services for the purposes of the health service in England.”.
- (4) After section 35(3) of that Act (things the regulator must consider before deciding whether it is satisfied as to the matters in section 35(2)) insert—

“(3A) The regulator must not give an authorisation unless it is notified by the Care Quality Commission that it is satisfied that the applicant is complying with (so far as applicable) the requirements mentioned in section 12(2) of the Health and Social Care Act 2008 in relation to the regulated activity or activities the applicant carries on.

(3B) In subsection (3A), “regulated activity” has the same meaning as in section 8 of the Health and Social Care Act 2008.”
- (5) Omit section 35(4) and (7) of that Act (power to give authorisation on terms the regulator considers appropriate).

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- (6) Omit section 38 of that Act (variation of authorisation).
- (7) Omit section 39(2)(b) of that Act (requirement for copy of authorisation to be on register).
- (8) Omit section 49 of that Act (authorisation to require trust to allow regulator to enter and inspect trust’s premises).
- (9) Omit paragraph 22(1)(b) of Schedule 7 to that Act (requirement for copy of authorisation to be available for public inspection).

160 Bodies which may apply for foundation trust status

- (1) Omit section 34 of the National Health Service Act 2006 (application for authorisation by body other than NHS trust).
- (2) In section 35(1) of that Act (bodies which may be given authorisation), omit paragraph (b) (public benefit corporations) and the preceding “or”.
- (3) Omit section 36(2) of that Act (public benefit corporation to become NHS foundation trust on being given authorisation).
- (4) Despite subsection (1)—
 - (a) section 34(1) to (4) of that Act continues to have effect in the case of an application which, immediately before the commencement of that subsection, is pending determination, and
 - (b) section 34(5) to (7) of that Act continues to have effect in the case of an existing public benefit corporation.
- (5) Despite subsection (2), section 35(1)(b) of that Act continues to have effect in the case of an existing public benefit corporation which, immediately before the commencement of that subsection, has not been given an authorisation under section 35.
- (6) Despite subsection (3), section 36(2) of that Act continues to have effect in the case of an existing public benefit corporation.
- (7) In subsections (4) to (6), “existing public benefit corporation” means a public benefit corporation—
 - (a) incorporated under section 34 of that Act and in existence immediately before the commencement of this section, or
 - (b) incorporated under that section by virtue of subsection (4).

161 Amendment of constitution

- (1) In section 37 of the National Health Service Act 2006 (amendments of constitution), the existing text of which becomes subsection (1), for “with the approval of the regulator” substitute “only if—
 - (a) more than half of the members of the council of governors of the trust voting approve the amendments, and
 - (b) more than half of the members of the board of directors of the trust voting approve the amendments.”
- (2) After that subsection insert—

- “(2) Amendments made under this section take effect as soon as the conditions in subsection (1)(a) and (b) are satisfied.
- (3) But an amendment is of no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7.
- (4) The trust must inform the regulator of amendments made under this section; but the regulator’s functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7.”
- (3) Subsections (1) and (2) do not apply in the case of amendments in respect of which, immediately before the commencement of this section, Monitor has yet to decide whether or not to give approval under section 37 of the National Health Service Act 2006.

162 Panel for advising governors

After section 39 of the National Health Service Act 2006 insert—

“39A Panel for advising governors

- (1) The regulator may appoint a panel of persons to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—
- (a) to act in accordance with its constitution, or
 - (b) to act in accordance with provision made by or under this Chapter.
- (2) A governor may refer a question to the panel only if more than half of the members of the council of governors voting approve the referral.
- (3) The panel—
- (a) may regulate its own procedure, and
 - (b) may establish such procedures, and make such other arrangements, as it considers appropriate for the purpose of determining questions referred to it under this section.
- (4) The panel may decide whether, or to what extent, to carry out an investigation on a question referred to it under this section.
- (5) The panel may for that purpose, or for the purpose of carrying out such an investigation, request information or advice.
- (6) Where the panel has carried out such an investigation, it must publish a report of its determination of the question referred to it.
- (7) If a person refuses to comply with a request made under subsection (5), the report under subsection (6) may refer to the refusal.
- (8) On any proceedings before a court or tribunal relating to a question referred to the panel under this section, the court may take the panel’s report of its determination of the question into account.
- (9) The regulator—
- (a) must pay expenses properly incurred by the panel, and

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- (b) must make administrative support available to the panel.
- (10) Regulations may make provision as to—
- (a) eligibility for membership of the panel;
 - (b) the number of persons that may be appointed as members;
 - (c) the terms of appointment of members;
 - (d) circumstances in which a person ceases to be a member or may be suspended.”