

## **AUTISM ACT 2009**

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### **EXPLANATORY NOTES**

#### **COMMENTARY**

#### ***Section 3: Local authorities and NHS bodies: duty to act under guidance***

##### **NHS bodies**

26. For NHS bodies, there is no existing provision equivalent to section 7 of the LASS Act. In order to create the same obligation on NHS bodies to act in accordance with guidance issued under section 2 of the Act, subsection (3)(a) stipulates that, for the purposes of that guidance, an NHS body is to be treated as if it were a local authority within the meaning of the LASS Act, and subsection (3)(b) specifies that the functions of an NHS body concerned with the provision of relevant services are to be treated as if they were social services functions within the meaning of the LASS Act.
27. This means that NHS bodies will be bound by the guidance to the same extent as local authorities, and the case law that has established the status of section 7 guidance as being more than just advice to be taken into account will apply equally in relation to NHS bodies.
28. These provisions will not apply to NHS foundation trusts. Although the Secretary of State is required by section 2(1)(b) to issue guidance to NHS foundation trusts, they are not covered by section 3(1).
29. This means that NHS foundation trusts will be expected to take the guidance into account in planning and providing services for adults with autistic spectrum conditions, but they will not have the same duty to act under it as local authorities and NHS bodies (the definition of NHS bodies in section 4(1) does not include NHS foundation trusts). This reflects the greater autonomy of NHS foundation trusts.