



National Health Service Act 2006

2006 CHAPTER 41

PART 2 **E+W**

HEALTH SERVICE BODIES

[^{F1}CHAPTER A1 **E+W**

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD

Textual Amendments

- F1** Pt. 2 Ch. A1 inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012](#) (c. 7), ss. **23(1)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2) (with art. 4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Secretary of State's mandate to the Board

13A Mandate to Board **E+W**

- (1) Before the start of each financial year, the Secretary of State must publish and lay before Parliament a document to be known as “the mandate”.
- (2) The Secretary of State must specify in the mandate—
 - (a) the objectives that the Secretary of State considers the Board should seek to achieve in the exercise of its functions during that financial year and such subsequent financial years as the Secretary of State considers appropriate, and
 - (b) any requirements that the Secretary of State considers it necessary to impose on the Board for the purpose of ensuring that it achieves those objectives.

Status: Point in time view as at 27/03/2012.

Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) The Secretary of State must also specify in the mandate the amounts that the Secretary of State has decided to specify in relation to the financial year for the purposes of section 223D(2) and (3) (limits on capital and revenue resource use).
- (4) The Secretary of State may specify in the mandate any proposals that the Secretary of State has as to the amounts that the Secretary of State will specify in relation to subsequent financial years for the purposes of section 223D(2) and (3).
- (5) The Secretary of State may also specify in the mandate the matters by reference to which the Secretary of State proposes to assess the Board's performance in relation to the first financial year to which the mandate relates.
- (6) The Secretary of State may not specify in the mandate an objective or requirement about the exercise of the Board's functions in relation to only one clinical commissioning group.
- (7) The Board must—
 - (a) seek to achieve the objectives specified in the mandate, and
 - (b) comply with any requirements so specified.
- (8) Before specifying any objectives or requirements in the mandate, the Secretary of State must consult—
 - (a) the Board,
 - (b) the Healthwatch England committee of the Care Quality Commission, and
 - (c) such other persons as the Secretary of State considers appropriate.
- (9) Requirements included in the mandate have effect only if regulations so provide.

13B The mandate: supplemental provision E+W

- (1) The Secretary of State must keep the Board's performance in achieving any objectives or requirements specified in the mandate under review.
- (2) If the Secretary of State varies the amount specified for the purposes of section 223D(2) or (3), the Secretary of State must revise the mandate accordingly.
- (3) The Secretary of State may make any other revision to the mandate only if—
 - (a) the Board agrees to the revision,
 - (b) a parliamentary general election takes place, or
 - (c) the Secretary of State considers that there are exceptional circumstances that make the revision necessary.
- (4) Revisions to the mandate which consist of adding, omitting or modifying requirements have effect only if regulations so provide.
- (5) If the Secretary of State revises the mandate, the Secretary of State must—
 - (a) publish the mandate (as so revised), and
 - (b) lay it before Parliament, together with an explanation of the reasons for making the revision.

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General duties of the Board

13C Duty to promote NHS Constitution **E+W**

- (1) The Board must, in the exercise of its functions—
 - (a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and
 - (b) promote awareness of the NHS Constitution among patients, staff and members of the public.
- (2) In this section, “patients” and “staff” have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

13D Duty as to effectiveness, efficiency etc. **E+W**

The Board must exercise its functions effectively, efficiently and economically.

13E Duty as to improvement in quality of services **E+W**

- (1) The Board must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with—
 - (a) the prevention, diagnosis or treatment of illness, or
 - (b) the protection or improvement of public health.
- (2) In discharging its duty under subsection (1), the Board must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.
- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
 - (a) the effectiveness of the services,
 - (b) the safety of the services, and
 - (c) the quality of the experience undergone by patients.
- (4) In discharging its duty under subsection (1), the Board must have regard to—
 - (a) any document published by the Secretary of State for the purposes of this section, and
 - (b) the quality standards prepared by NICE under section 234 of the Health and Social Care Act 2012.

13F Duty as to promoting autonomy **E+W**

- (1) In exercising its functions, the Board must have regard to the desirability of securing, so far as consistent with the interests of the health service—
 - (a) that any other person exercising functions in relation to the health service or providing services for its purposes is free to exercise those functions or provide those services in the manner it considers most appropriate, and
 - (b) that unnecessary burdens are not imposed on any such person.
- (2) If, in the case of any exercise of functions, the Board considers that there is a conflict between the matters mentioned in subsection (1) and the discharge by the Board of its duties under sections 1(1) and 1H(3)(b), the Board must give priority to those duties.

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13G Duty as to reducing inequalities **E+W**

The Board must, in the exercise of its functions, have regard to the need to—

- (a) reduce inequalities between patients with respect to their ability to access health services, and
- (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

13H Duty to promote involvement of each patient **E+W**

The Board must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—

- (a) the prevention or diagnosis of illness in the patients, or
- (b) their care or treatment.

13I Duty as to patient choice **E+W**

The Board must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

13J Duty to obtain appropriate advice **E+W**

The Board must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

- (a) the prevention, diagnosis or treatment of illness, and
- (b) the protection or improvement of public health.

13K Duty to promote innovation **E+W**

- (1) The Board must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).
- (2) The Board may make payments as prizes to promote innovation in the provision of health services.
- (3) A prize may relate to—
 - (a) work at any stage of innovation (including research);
 - (b) work done at any time (including work before the commencement of section 23 of the Health and Social Care Act 2012).

13L Duty in respect of research **E+W**

The Board must, in the exercise of its functions, promote—

- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.

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13M Duty as to promoting education and training **E+W**

The Board must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

13N Duty as to promoting integration **E+W**

- (1) The Board must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—
 - (a) improve the quality of those services (including the outcomes that are achieved from their provision),
 - (b) reduce inequalities between persons with respect to their ability to access those services, or
 - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (2) The Board must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—
 - (a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),
 - (b) reduce inequalities between persons with respect to their ability to access those services, or
 - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (3) The Board must encourage clinical commissioning groups to enter into arrangements with local authorities in pursuance of regulations under section 75 where it considers that this would secure—
 - (a) that health services are provided in an integrated way and that this would have any of the effects mentioned in subsection (1)(a) to (c), or
 - (b) that the provision of health services is integrated with the provision of health-related services or social care services and that this would have any of the effects mentioned in subsection (2)(a) to (c).
- (4) In this section—

“health-related services” means services that may have an effect on the health of individuals but are not health services or social care services;

“social care services” means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

13O Duty to have regard to impact on services in certain areas **E+W**

- (1) In making commissioning decisions, the Board must have regard to the likely impact of those decisions on the provision of health services to persons who reside in an area of Wales or Scotland that is close to the border with England.
- (2) In this section, “commissioning decisions”, in relation to the Board, means decisions about the carrying out of its functions in arranging for the provision of health services.

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13P Duty as respects variation in provision of health services E+W

The Board must not exercise its functions for the purpose of causing a variation in the proportion of services provided as part of the health service that is provided by persons of a particular description if that description is by reference to—

- (a) whether the persons in question are in the public or (as the case may be) private sector, or
- (b) some other aspect of their status.

Public involvement

13Q Public involvement and consultation by the Board E+W

- (1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by the Board in the exercise of its functions (“commissioning arrangements”).
- (2) The Board must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—
 - (a) in the planning of the commissioning arrangements by the Board,
 - (b) in the development and consideration of proposals by the Board for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and
 - (c) in decisions of the Board affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.
- (3) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.

Functions in relation to information

13R Information on safety of services provided by the health service E+W

- (1) The Board must establish and operate systems for collecting and analysing information relating to the safety of the services provided by the health service.
- (2) The Board must make information collected by virtue of subsection (1), and any other information obtained by analysing it, available to such persons as the Board considers appropriate.
- (3) The Board may impose charges, calculated on such basis as it considers appropriate, in respect of information made available by it under subsection (2).
- (4) The Board must give advice and guidance, to such persons as it considers appropriate, for the purpose of maintaining and improving the safety of the services provided by the health service.
- (5) The Board must monitor the effectiveness of the advice and guidance given by it under subsection (4).

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- (6) A clinical commissioning group must have regard to any advice or guidance given to it under subsection (4).
- (7) The Board may arrange for any other person (including another NHS body) to exercise any of the Board's functions under this section.
- (8) Arrangements made under subsection (7) do not affect the liability of the Board for the exercise of any of its functions.

13S Guidance in relation to processing of information **E+W**

- (1) The Board must publish guidance for registered persons on the practice to be followed by them in relation to the processing of—
 - (a) patient information, and
 - (b) any other information obtained or generated in the course of the provision of the health service.
- (2) Registered persons who carry on an activity which involves, or is connected with, the provision of health care must have regard to any guidance published under this section.
- (3) In this section, “patient information”, “processing” and “registered person” have the same meaning as in section 20A of the Health and Social Care Act 2008.

Business plan and report

13T Business plan **E+W**

- (1) Before the start of each financial year, the Board must publish a business plan setting out how it proposes to exercise its functions in that year and each of the next two financial years.
- (2) The business plan must, in particular, explain how the Board proposes to discharge its duties under—
 - (a) sections 13E, 13G and 13Q, and
 - (b) sections 223C to 223E.
- (3) The business plan must, in particular, explain how the Board proposes to achieve the objectives, and comply with the requirements, specified in the mandate for the first financial year to which the plan relates.
- (4) The Board may revise the plan.
- (5) The Board must publish any revised plan.

13U Annual report **E+W**

- (1) As soon as practicable after the end of each financial year, the Board must publish an annual report on how it has exercised its functions during the year.
- (2) The annual report must, in particular, contain an assessment of—
 - (a) the extent to which it met any objectives or requirements specified in the mandate for that year,

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- (b) the extent to which it gave effect to the proposals for that year in its business plan, and
 - (c) how effectively it discharged its duties under sections 13E, 13G and 13Q.
- (3) The Board must—
- (a) lay the annual report before Parliament, and
 - (b) once it has done so, send a copy of it to the Secretary of State.
- (4) The Secretary of State must, having considered the annual report, set out in a letter to the Board the Secretary of State's assessment of the Board's performance of its functions in the financial year in question.
- (5) The letter must, in particular, contain the Secretary of State's assessment of the matters mentioned in subsection (2)(a) to (c).
- (6) The Secretary of State must—
- (a) publish the letter to the Board, and
 - (b) lay it before Parliament.

Additional powers

13V Establishment of pooled funds E+W

- (1) The Board and one or more clinical commissioning groups may establish and maintain a pooled fund.
- (2) A pooled fund is a fund—
- (a) which is made up of contributions by the bodies which established it, and
 - (b) out of which payments may be made, with the agreement of those bodies, towards expenditure incurred in the discharge of any of their commissioning functions.
- (3) In this section, “commissioning functions” means functions in arranging for the provision of services as part of the health service.

13W Board's power to generate income, etc. E+W

- (1) The Board has power to do anything specified in section 7(2) of the Health and Medicines Act 1988 (provision of goods, services, etc.) for the purpose of making additional income available for improving the health service.
- (2) The Board may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the Board of its functions.

13X Power to make grants etc. E+W

- (1) The Board may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the Board has functions.
- (2) The payments may be made subject to such terms and conditions as the Board considers appropriate.

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13Y Board's incidental powers: further provision **E+W**

The power conferred on the Board by section 2 includes, in particular, power to—

- (a) enter into agreements,
- (b) acquire and dispose of property, and
- (c) accept gifts (including property to be held on trust for the purposes of the Board).

Exercise of functions of Board

13Z Exercise of functions **E+W**

- (1) This section applies to functions exercisable by the Board under or by virtue of this Act or any prescribed provision of any other Act.
- (2) The Board may arrange for any such function to be exercised by or jointly with—
 - (a) a Special Health Authority,
 - (b) a clinical commissioning group, or
 - (c) such other body as may be prescribed.
- (3) Regulations may provide that the power in subsection (2) does not apply in relation to a function of a prescribed description.
- (4) Where any functions are (by virtue of subsection (2)) exercisable jointly by the Board and another body, they may be exercised by a joint committee of the Board and the other body.
- (5) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the other party to the arrangements.
- (6) Arrangements made under this section do not affect the liability of the Board for the exercise of any of its functions.

Power to confer additional functions

13Z1 Power to confer additional functions on the Board **E+W**

- (1) Regulations may provide that the Board is to have such additional functions in relation to the health service as may be specified in the regulations.
- (2) A function may be specified in regulations under subsection (1) only if the function is connected to another function of the Board.

Intervention powers

13Z2 Failure by the Board to discharge any of its functions **E+W**

- (1) The Secretary of State may give a direction to the Board if the Secretary of State considers that—
 - (a) the Board—
 - (i) is failing or has failed to discharge any of its functions, or

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- (ii) is failing or has failed properly to discharge any of its functions, and
 - (b) the failure is significant.
- (2) A direction under subsection (1) may direct the Board to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.
- (3) If the Board fails to comply with a direction under subsection (1), the Secretary of State may—
- (a) discharge the functions to which it relates, or
 - (b) make arrangements for any other person to discharge them on the Secretary of State's behalf.
- (4) Where the Secretary of State exercises a power under subsection (1) or (3), the Secretary of State must publish the reasons for doing so.
- (5) For the purposes of this section a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service.

Disclosure of information

13Z3 Permitted disclosures of information E+W

- (1) The Board may disclose information obtained by it in the exercise of its functions if—
- (a) the information has previously been lawfully disclosed to the public,
 - (b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),
 - (c) the disclosure is made in accordance with any enactment or court order,
 - (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,
 - (e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,
 - (f) the disclosure is made for the purpose of facilitating the exercise of any of the Board's functions,
 - (g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or
 - (h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

Interpretation

13Z4 Interpretation E+W

- (1) In this Chapter—
- “the health service” means the health service in England;

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“health services” means services provided as part of the health service and, in sections 13O and 13Q, also includes services that are to be provided as part of the health service.

- (2) Any reference (however expressed) in the following provisions of this Act to the functions of the Board includes a reference to the functions of the Secretary of State that are exercisable by the Board by virtue of arrangements under section 7A—
- section 6E(7) and (10)(b),
 - section 13A(2),
 - section 13C(1),
 - section 13D,
 - section 13E(1),
 - section 13F,
 - section 13G,
 - section 13H,
 - section 13I,
 - section 13J,
 - section 13K(1),
 - section 13L,
 - section 13M,
 - section 13N(1) and (2),
 - section 13O(2),
 - section 13Q(1),
 - section 13T(1),
 - section 13U(1) and (4),
 - section 13W(2),
 - section 13X(1),
 - section 13Z2(1),
 - section 13Z3(1),
 - section 72(1),
 - section 75(1)(a) and (2),
 - section 82,
 - section 223C(2)(a),
 - in Schedule A1, paragraph 13.
- (3) Any reference (however expressed) in the following provisions of other Acts to the functions of the Board includes a reference to the functions of the Secretary of State that are exercisable by the Board by virtue of arrangements under section 7A—
- sections 116 to 116B of the Local Government and Public Involvement in Health Act 2007 (joint strategic needs assessments etc.),
 - section 197(6) of the Health and Social Care Act 2012 (participation of the Board in work of Health and Wellbeing Boards),
 - section 199(4) of that Act (supply of information to Health and Wellbeing Boards),
 - section 290(1) and (2) of that Act (duties to co-operate),
 - section 291(2)(d) of that Act (breaches of duties to co-operate).

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- (4) The Secretary of State may by order amend the list of provisions specified in subsection (2) or (3).]

[^{F2}CHAPTER A2 E+W

CLINICAL COMMISSIONING GROUPS

Textual Amendments

- F2** Pt. 2 Ch. A2 inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. **25(1)**, 306(1)(d)(4) (with [Sch. 6 paras. 7-13](#)); [S.I. 2012/1831](#), art. 2(2) (with art. 5); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

Establishment of clinical commissioning groups

14A General duties of Board in relation to clinical commissioning groups E+W

- (1) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day specified by order of the Secretary of State for the purposes of this section each provider of primary medical services is a member of a clinical commissioning group.
- (2) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day so specified the areas specified in the constitutions of clinical commissioning groups—
 - (a) together cover the whole of England, and
 - (b) do not coincide or overlap.
- (3) For the purposes of this Chapter, “provider of primary medical services” means a person who is a party to an arrangement mentioned in subsection (4).
- (4) The arrangements mentioned in this subsection are—
 - (a) a general medical services contract to provide primary medical services of a prescribed description,
 - (b) arrangements under section 83(2) for the provision of primary medical services of a prescribed description,
 - (c) section 92 arrangements for the provision of primary medical services of a prescribed description.
- (5) Where a person who is a provider of primary medical services is a party to more than one arrangement mentioned in subsection (4), the person is to be treated for the purposes of this Chapter as a separate provider of primary medical services in respect of each of those arrangements.
- (6) Where two or more individuals practising in partnership are parties to an arrangement mentioned in subsection (4), the partnership is to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).
- (7) Where two or more individuals are parties to an arrangement mentioned in subsection (4) but are not practising in partnership, those persons collectively are to

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be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).

14B Applications for the establishment of clinical commissioning groups **E+W**

- (1) An application for the establishment of a clinical commissioning group may be made to the Board.
- (2) The application may be made by any two or more persons each of whom—
 - (a) is or wishes to be a provider of primary medical services, and
 - (b) wishes to be a member of the clinical commissioning group.
- (3) The application must be accompanied by—
 - (a) a copy of the proposed constitution of the clinical commissioning group,
 - (b) the name of the person whom the group wishes the Board to appoint as its accountable officer (as to which see paragraph 12 of Schedule 1A), and
 - (c) such other information as the Board may specify in a document published for the purposes of this section.
- (4) At any time before the Board determines the application—
 - (a) a person who is or wishes to be a provider of primary medical services (and wishes to be a member of the clinical commissioning group) may become a party to the application, with the agreement of the Board and the existing applicants;
 - (b) any of the applicants may withdraw.
- (5) At any time before the Board determines the application, the applicants may modify the proposed constitution with the agreement of the Board.
- (6) Part 1 of Schedule 1A makes provision about the constitution of a clinical commissioning group.

14C Determination of applications **E+W**

- (1) The Board must grant an application under section 14B if it is satisfied as to the following matters.
- (2) Those matters are—
 - (a) that the constitution complies with the requirements of Part 1 of Schedule 1A and is otherwise appropriate,
 - (b) that each of the members specified in the constitution will be a provider of primary medical services on the date the clinical commissioning group is established,
 - (c) that the area specified in the constitution is appropriate,
 - (d) that it would be appropriate for the Board to appoint, as the accountable officer of the group, the person named by the group under section 14B(3)(b),
 - (e) that the applicants have made appropriate arrangements to ensure that the clinical commissioning group will be able to discharge its functions,
 - (f) that the applicants have made appropriate arrangements to ensure that the group will have a governing body which satisfies any requirements imposed by or under this Act and is otherwise appropriate, and
 - (g) such other matters as may be prescribed.

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- (3) Regulations may make provision—
- (a) as to factors which the Board must or may take into account in deciding whether it is satisfied as to the matters mentioned in subsection (2);
 - (b) as to the procedure for the making and determination of applications under section 14B.

14D Effect of grant of application E+W

- (1) If the Board grants an application under section 14B—
 - (a) a clinical commissioning group is established, and
 - (b) the proposed constitution has effect as the clinical commissioning group's constitution.
- (2) Part 2 of Schedule 1A makes further provision about clinical commissioning groups.

Variation of constitution

14E Applications for variation of constitution E+W

- (1) A clinical commissioning group may apply to the Board to vary its constitution (including doing so by varying its area or its list of members).
- (2) If the Board grants the application, the constitution of the clinical commissioning group has effect subject to the variation.
- (3) Regulations may make provision—
 - (a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;
 - (b) as to factors which the Board must or may take into account in determining whether to grant such applications;
 - (c) as to the procedure for the making and determination of such applications.

14F Variation of constitution otherwise than on application E+W

- (1) The Board may vary the area specified in the constitution of a clinical commissioning group.
- (2) The Board may—
 - (a) add any person who is a provider of primary medical services to the list of members specified in the constitution of a clinical commissioning group;
 - (b) remove any person from such a list.
- (3) The power conferred by subsection (1) or (2) is exercisable if—
 - (a) the clinical commissioning group consents to the variation, or
 - (b) the Board considers that the variation is necessary for the purpose of discharging any of its duties under section 14A.
- (4) Before varying the constitution of a clinical commissioning group under subsection (1) or (2), the Board must consult—
 - (a) that group, and

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- (b) any other clinical commissioning group that the Board thinks might be affected by the variation.
- (5) Regulations may—
- (a) confer powers on the Board to vary the constitution of a clinical commissioning group;
 - (b) make provision as to the circumstances in which those powers are exercisable and the procedure to be followed before they are exercised.

Mergers, dissolution etc.

14G Mergers E+W

- (1) Two or more clinical commissioning groups may apply to the Board for—
 - (a) those groups to be dissolved, and
 - (b) another clinical commissioning group to be established under this section.
- (2) An application under this section must be accompanied by—
 - (a) a copy of the proposed constitution of the clinical commissioning group,
 - (b) the name of the person whom the group wishes the Board to appoint as its accountable officer, and
 - (c) such other information as the Board may specify in a document published for the purposes of this section.
- (3) The applicants may, with the agreement of the Board, modify the application or the proposed constitution at any time before the Board determines the application.
- (4) Sections 14C and 14D(1) apply in relation to an application under this section as they apply in relation to an application under section 14B.

14H Dissolution E+W

- (1) A clinical commissioning group may apply to the Board for the group to be dissolved.
- (2) Regulations may make provision—
 - (a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;
 - (b) as to factors which the Board must or may take into account in determining whether to grant such applications;
 - (c) as to the procedure for the making and determination of such applications.

Supplemental provision about applications, variation, mergers etc.

14I Transfers in connection with variation, merger, dissolution etc. E+W

- (1) The Board may make a property transfer scheme or a staff transfer scheme in connection with—
 - (a) the variation of the constitution of a clinical commissioning group under section 14E or 14F, or
 - (b) the dissolution of a clinical commissioning group under section 14G or 14H.

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- (2) A property transfer scheme is a scheme for the transfer from the clinical commissioning group of any property, rights or liabilities, other than rights or liabilities under or in connection with a contract of employment, to the Board or another clinical commissioning group.
- (3) A staff transfer scheme is a scheme for the transfer from the clinical commissioning group of any rights or liabilities under or in connection with a contract of employment to the Board or another clinical commissioning group.
- (4) Part 3 of Schedule 1A makes further provision about property transfer schemes and staff transfer schemes.

14J Publication of constitution of clinical commissioning groups E+W

- (1) A clinical commissioning group must publish its constitution.
- (2) If the constitution of a clinical commissioning group is varied under section 14E or 14F, the group must publish the constitution as so varied.

14K Guidance about the establishment of clinical commissioning groups etc. E+W

The Board may publish guidance as to—

- (a) the making of applications under section 14B for the establishment of a clinical commissioning group, including guidance on the form, content or publication of the proposed constitution;
- (b) the making of applications under section 14E, 14G or 14H;
- (c) the publication of the constitutions of clinical commissioning groups under section 14J.

Governing bodies of clinical commissioning groups

14L Governing bodies of clinical commissioning groups E+W

- (1) A clinical commissioning group must have a governing body.
- (2) The main function of the governing body is to ensure that the group has made appropriate arrangements for ensuring that it complies with—
 - (a) its obligations under section 14Q, and
 - (b) such generally accepted principles of good governance as are relevant to it.
- (3) The governing body also has—
 - (a) the function of determining the remuneration, fees and allowances payable to the employees of the clinical commissioning group or to other persons providing services to it,
 - (b) the function of determining the allowances payable under a pension scheme established under paragraph 11(4) of Schedule 1A, and
 - (c) such other functions connected with the exercise of its main function as may be specified in the group's constitution or by regulations.
- (4) Only the following may be members of the governing body—
 - (a) a member of the group who is an individual;

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- (b) an individual appointed by virtue of regulations under section 14N(2);
 - (c) an individual of a description specified in the constitution of the group.
- (5) Regulations may make provision requiring a clinical commissioning group to obtain the approval of its governing body before exercising any functions specified in the regulations.
- (6) Regulations may make provision requiring governing bodies of clinical commissioning groups to publish, in accordance with the regulations, prescribed information relating to determinations made under subsection (3)(a) or (b).
- (7) The Board may publish guidance for governing bodies on the exercise of their functions under subsection (3)(a) or (b).

14M Audit and remuneration committees of governing bodies **E+W**

- (1) The governing body of a clinical commissioning group must have an audit committee and a remuneration committee.
- (2) The audit committee has—
- (a) such functions in relation to the financial duties of the clinical commissioning group as the governing body considers appropriate for the purpose of assisting it in discharging its function under section 14L(2), and
 - (b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.
- (3) The remuneration committee has—
- (a) the function of making recommendations to the governing body as to the discharge of its functions under section 14L(3)(a) and (b), and
 - (b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.

14N Regulations as to governing bodies of clinical commissioning groups **E+W**

- (1) Regulations may make provision specifying the minimum number of members of governing bodies of clinical commissioning groups.
- (2) Regulations may—
- (a) provide that the members of governing bodies must include the accountable officer of the clinical commissioning group;
 - (b) provide that the members of governing bodies, or their audit or remuneration committees, must include—
 - (i) individuals who are health care professionals of a prescribed description;
 - (ii) individuals who are lay persons;
 - (iii) individuals of any other description which is prescribed;
 - (c) in relation to any description of individuals mentioned in regulations by virtue of paragraph (b), specify—
 - (i) the minimum number of individuals of that description who must be appointed;

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- (ii) the maximum number of such individuals who may be appointed;
 - (d) provide that the descriptions specified for the purposes of section 14L(4)(c) may not include prescribed descriptions.
- (3) Regulations may make provision as to—
- (a) qualification and disqualification for membership of governing bodies or their audit or remuneration committees;
 - (b) how members are to be appointed;
 - (c) the tenure of members (including the circumstances in which a member ceases to hold office or may be removed or suspended from office);
 - (d) eligibility for re-appointment.
- (4) Regulations may make provision for the appointment of chairs and deputy chairs of governing bodies or their audit or remuneration committees, including provision as to—
- (a) qualification and disqualification for appointment;
 - (b) tenure of office (including the circumstances in which the chair or deputy chair ceases to hold office or may be removed or suspended from office);
 - (c) eligibility for re-appointment.
- (5) Regulations may—
- (a) make provision as to the matters which must be included in the constitutions of clinical commissioning groups under paragraph 8 of Schedule 1A;
 - (b) make such other provision about the procedure of governing bodies or their audit or remuneration committees as the Secretary of State considers appropriate, including provision about the frequency of meetings.
- (6) In this section—
- “health care professional” means an individual who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002;
 - “lay person” means an individual who is not—
 - (a) a member of the clinical commissioning group,
 - (b) a health care professional, or
 - (c) an individual of a prescribed description.

Conflicts of interest

140 Registers of interests and management of conflicts of interest E+W

- (1) Each clinical commissioning group must maintain one or more registers of the interests of—
- (a) the members of the group,
 - (b) the members of its governing body,
 - (c) the members of its committees or sub-committees or of committees or sub-committees of its governing body, and
 - (d) its employees.

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- (2) Each clinical commissioning group must publish the registers maintained under subsection (1) or make arrangements to ensure that members of the public have access to the registers on request.
- (3) Each clinical commissioning group must make arrangements to ensure—
 - (a) that a person mentioned in subsection (1) declares any conflict or potential conflict of interest that the person has in relation to a decision to be made in the exercise of the commissioning functions of the group,
 - (b) that any such declaration is made as soon as practicable after the person becomes aware of the conflict or potential conflict and, in any event, within 28 days, and
 - (c) that any such declaration is included in the registers maintained under subsection (1).
- (4) Each clinical commissioning group must make arrangements for managing conflicts and potential conflicts of interest in such a way as to ensure that they do not, and do not appear to, affect the integrity of the group's decision-making processes.
- (5) The Board must publish guidance for clinical commissioning groups on the discharge of their functions under this section.
- (6) Each clinical commissioning group must have regard to guidance published under subsection (5).
- (7) For the purposes of this section, the commissioning functions of a clinical commissioning group are the functions of the group in arranging for the provision of services as part of the health service.]

[^{F3}General duties of clinical commissioning groups

Textual Amendments

- F3** Ss. 14P-14Z24 inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 26, 306\(1\)\(d\)\(4\)](#); [S.I. 2012/1831](#), [art. 2\(2\)](#) (with [art. 6](#)); [S.I. 2012/2657](#), [art. 2\(4\)](#); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

14P Duty to promote NHS Constitution E+W

- (1) Each clinical commissioning group must, in the exercise of its functions—
 - (a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and
 - (b) promote awareness of the NHS Constitution among patients, staff and members of the public.
- (2) In this section, “patients” and “staff” have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

14Q Duty as to effectiveness, efficiency etc. E+W

Each clinical commissioning group must exercise its functions effectively, efficiently and economically.

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14R Duty as to improvement in quality of services **E+W**

- (1) Each clinical commissioning group must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness.
- (2) In discharging its duty under subsection (1), a clinical commissioning group must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.
- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
 - (a) the effectiveness of the services,
 - (b) the safety of the services, and
 - (c) the quality of the experience undergone by patients.
- (4) In discharging its duty under subsection (1), a clinical commissioning group must have regard to any guidance published under section 14Z8.

14S Duty in relation to quality of primary medical services **E+W**

Each clinical commissioning group must assist and support the Board in discharging its duty under section 13E so far as relating to securing continuous improvement in the quality of primary medical services.

14T Duties as to reducing inequalities **E+W**

Each clinical commissioning group must, in the exercise of its functions, have regard to the need to—

- (a) reduce inequalities between patients with respect to their ability to access health services, and
- (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

14U Duty to promote involvement of each patient **E+W**

- (1) Each clinical commissioning group must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—
 - (a) the prevention or diagnosis of illness in the patients, or
 - (b) their care or treatment.
- (2) The Board must publish guidance for clinical commissioning groups on the discharge of their duties under this section.
- (3) A clinical commissioning group must have regard to any guidance published by the Board under subsection (2).

14V Duty as to patient choice **E+W**

Each clinical commissioning group must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

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14W Duty to obtain appropriate advice **E+W**

- (1) Each clinical commissioning group must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—
 - (a) the prevention, diagnosis or treatment of illness, and
 - (b) the protection or improvement of public health.
- (2) The Board may publish guidance for clinical commissioning groups on the discharge of their duties under subsection (1).
- (3) A clinical commissioning group must have regard to any guidance published by the Board under subsection (2).

14X Duty to promote innovation **E+W**

Each clinical commissioning group must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).

14Y Duty in respect of research **E+W**

Each clinical commissioning group must, in the exercise of its functions, promote—

- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.

14Z Duty as to promoting education and training **E+W**

Each clinical commissioning group must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

14Z1 Duty as to promoting integration **E+W**

- (1) Each clinical commissioning group must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—
 - (a) improve the quality of those services (including the outcomes that are achieved from their provision),
 - (b) reduce inequalities between persons with respect to their ability to access those services, or
 - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (2) Each clinical commissioning group must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—
 - (a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),
 - (b) reduce inequalities between persons with respect to their ability to access those services, or

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- (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(3) In this section—

“health-related services” means services that may have an effect on the health of individuals but are not health services or social care services;

“social care services” means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

Public involvement

14Z2 Public involvement and consultation by clinical commissioning groups E+W

- (1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by a clinical commissioning group in the exercise of its functions (“commissioning arrangements”).
- (2) The clinical commissioning group must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—
 - (a) in the planning of the commissioning arrangements by the group,
 - (b) in the development and consideration of proposals by the group for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and
 - (c) in decisions of the group affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.
- (3) The clinical commissioning group must include in its constitution—
 - (a) a description of the arrangements made by it under subsection (2), and
 - (b) a statement of the principles which it will follow in implementing those arrangements.
- (4) The Board may publish guidance for clinical commissioning groups on the discharge of their functions under this section.
- (5) A clinical commissioning group must have regard to any guidance published by the Board under subsection (4).
- (6) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.

Arrangements with others

14Z3 Arrangements by clinical commissioning groups in respect of the exercise of functions E+W

- (1) Any two or more clinical commissioning groups may make arrangements under this section.

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- (2) The arrangements may provide for—
 - (a) one of the clinical commissioning groups to exercise any of the commissioning functions of another on its behalf, or
 - (b) all the clinical commissioning groups to exercise any of their commissioning functions jointly.
- (3) For the purposes of the arrangements a clinical commissioning group may—
 - (a) make payments to another clinical commissioning group, or
 - (b) make the services of its employees or any other resources available to another clinical commissioning group.
- (4) For the purposes of the arrangements, all the clinical commissioning groups may establish and maintain a pooled fund.
- (5) A pooled fund is a fund—
 - (a) which is made up of contributions by all the groups, and
 - (b) out of which payments may be made towards expenditure incurred in the discharge of any of the commissioning functions in respect of which the arrangements are made.
- (6) Arrangements made under this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.
- (7) In this section, “commissioning functions” means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service (including the function of making a request to the Board for the purposes of section 14Z9).

14Z4 Joint exercise of functions with Local Health Boards E+W

- (1) Regulations may provide for any prescribed functions of a clinical commissioning group to be exercised jointly with a Local Health Board.
- (2) Regulations may provide for any functions that are (by virtue of subsection (1)) exercisable jointly by a clinical commissioning group and a Local Health Board to be exercised by a joint committee of the group and the Local Health Board.
- (3) Arrangements made by virtue of this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

Additional powers of clinical commissioning groups

14Z5 Raising additional income E+W

- (1) A clinical commissioning group has power to do anything specified in section 7(2)(a), (b) and (e) to (h) of the Health and Medicines Act 1988 (provision of goods etc.) for the purpose of making additional income available for improving the health service.
- (2) A clinical commissioning group may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the group of its functions.

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14Z6 Power to make grants **E+W**

- (1) A clinical commissioning group may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the group has functions.
- (2) The payments may be made subject to such terms and conditions as the group considers appropriate.

Board's functions in relation to clinical commissioning groups

14Z7 Responsibility for payments to providers **E+W**

- (1) The Board may publish a document specifying—
 - (a) circumstances in which a clinical commissioning group is liable to make a payment to a person in respect of services provided by that person in pursuance of arrangements made by another clinical commissioning group in the discharge of its commissioning functions, and
 - (b) how the amount of any such payment is to be determined.
- (2) A clinical commissioning group is required to make payments in accordance with any document published under subsection (1).
- (3) Where a clinical commissioning group is required to make a payment by virtue of subsection (2), no other clinical commissioning group is liable to make it.
- (4) Accordingly, any obligation of another clinical commissioning group to make the payment ceases to have effect.
- (5) Any sums payable by virtue of subsection (2) may be recovered summarily as a civil debt (but this does not affect any other method of recovery).
- (6) The Board may publish guidance for clinical commissioning groups for the purpose of assisting them in understanding and applying any document published under subsection (1).
- (7) In this section and section 14Z8, “commissioning functions” means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service.

14Z8 Guidance on commissioning by the Board **E+W**

- (1) The Board must publish guidance for clinical commissioning groups on the discharge of their commissioning functions.
- (2) Each clinical commissioning group must have regard to guidance under this section.
- (3) The Board must consult the Healthwatch England committee of the Care Quality Commission—
 - (a) before it first publishes guidance under this section, and
 - (b) before it publishes any revised guidance containing changes that are, in the opinion of the Board, significant.

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14Z9 Exercise of functions by the Board **E+W**

- (1) The Board may, at the request of a clinical commissioning group, exercise on behalf of the group—
 - (a) any of its functions under section 3 or 3A which are specified in the request, and
 - (b) any other functions of the group which are related to the exercise of those functions.
- (2) Regulations may provide that the power in subsection (1) does not apply in relation to functions of a prescribed description.
- (3) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the clinical commissioning group.
- (4) Arrangements made under this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

14Z10 Power of Board to provide assistance or support **E+W**

- (1) The Board may provide assistance or support to a clinical commissioning group.
- (2) The assistance that may be provided includes—
 - (a) financial assistance, and
 - (b) making the services of the Board's employees or any other resources of the Board available to the clinical commissioning group.
- (3) Assistance or support provided under this section may be provided on such terms and conditions, including terms as to payment, as the Board considers appropriate.
- (4) The Board may, in particular, impose restrictions on the use of any financial or other assistance or support provided under this section.
- (5) A clinical commissioning group must comply with any restrictions imposed under subsection (4).

Commissioning plans and reports

14Z11 Commissioning plan **E+W**

- (1) Before the start of each relevant period, a clinical commissioning group must prepare a plan setting out how it proposes to exercise its functions in that period.
- (2) In subsection (1), “relevant period”, in relation to a clinical commissioning group, means—
 - (a) the period which —
 - (i) begins on such day during the first financial year of the group as the Board may direct, and
 - (ii) ends at the end of that financial year, and
 - (b) each subsequent financial year.
- (3) The plan must, in particular, explain how the group proposes to discharge its duties under—

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- (a) sections 14R, 14T and 14Z2, and
 - (b) sections 223H to 223J.
- (4) The clinical commissioning group must publish the plan.
 - (5) The clinical commissioning group must give a copy of the plan to the Board before the date specified by the Board in a direction.
 - (6) The clinical commissioning group must give a copy of the plan to each relevant Health and Wellbeing Board.
 - (7) The Board may publish guidance for clinical commissioning groups on the discharge of their functions by virtue of this section and sections 14Z12 and 14Z13.
 - (8) A clinical commissioning group must have regard to any guidance published by the Board under subsection (7).
 - (9) In this Chapter, “relevant Health and Wellbeing Board”, in relation to a clinical commissioning group, means a Health and Wellbeing Board established by a local authority whose area coincides with, or includes the whole or any part of, the area of the group.

14Z12 Revision of commissioning plans E+W

- (1) A clinical commissioning group may revise a plan published by it under section 14Z11.
- (2) If the clinical commissioning group revises the plan in a way which it considers to be significant—
 - (a) the group must publish the revised plan, and
 - (b) subsections (5) and (6) of section 14Z11 apply in relation to the revised plan as they apply in relation to the original plan.
- (3) If the clinical commissioning group revises the plan in any other way, the group must—
 - (a) publish a document setting out the changes it has made to the plan, and
 - (b) give a copy of the document to the Board and each relevant Health and Wellbeing Board.

14Z13 Consultation about commissioning plans E+W

- (1) This section applies where a clinical commissioning group is—
 - (a) preparing a plan under section 14Z11, or
 - (b) revising a plan under section 14Z12 in a way which it considers to be significant.
- (2) The clinical commissioning group must consult individuals for whom it has responsibility for the purposes of section 3.
- (3) The clinical commissioning group must involve each relevant Health and Wellbeing Board in preparing or revising the plan.
- (4) The clinical commissioning group must, in particular—
 - (a) give each relevant Health and Wellbeing Board a draft of the plan or (as the case may be) the plan as revised, and

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- (b) consult each such Board on whether the draft takes proper account of each joint health and wellbeing strategy published by it which relates to the period (or any part of the period) to which the plan relates.
- (5) Where a Health and Wellbeing Board is consulted under subsection (4)(b), the Health and Wellbeing Board must give the clinical commissioning group its opinion on the matter mentioned in that subsection.
- (6) Where a Health and Wellbeing Board is consulted under subsection (4)(b)—
 - (a) it may also give the Board its opinion on the matter mentioned in that subsection, and
 - (b) if it does so, it must give the clinical commissioning group a copy of its opinion.
- (7) If a clinical commissioning group revises or further revises a draft after it has been given to each relevant Health and Wellbeing Board under subsection (4), subsections (4) to (6) apply in relation to the revised draft as they apply in relation to the original draft.
- (8) A clinical commissioning group must include in a plan published under section 14Z11(4) or 14Z12(2)—
 - (a) a summary of the views expressed by individuals consulted under subsection (2),
 - (b) an explanation of how the group took account of those views, and
 - (c) a statement of the final opinion of each relevant Health and Wellbeing Board consulted in relation to the plan under subsection (4).
- (9) In this section, “joint health and wellbeing strategy” means a strategy under section 116A of the Local Government and Public Involvement in Health Act 2007 which is prepared and published by a Health and Wellbeing Board by virtue of section 196 of the Health and Social Care Act 2012.

14Z14 Opinion of Health and Wellbeing Boards on commissioning plans **E+W**

- (1) A relevant Health and Wellbeing Board—
 - (a) may give the Board its opinion on whether a plan published by a clinical commissioning group under section 14Z11(4) or 14Z12(2) takes proper account of each joint health and wellbeing strategy published by the Health and Wellbeing Board which relates to the period (or any part of the period) to which the plan relates, and
 - (b) if it does so, must give the clinical commissioning group a copy of its opinion.
- (2) In this section, “joint health and wellbeing strategy” has the same meaning as in section 14Z13.

14Z15 Reports by clinical commissioning groups **E+W**

- (1) In each financial year other than its first financial year, a clinical commissioning group must prepare a report (an “annual report”) on how it has discharged its functions in the previous financial year.
- (2) An annual report must, in particular—

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- (a) explain how the clinical commissioning group has discharged its duties under sections 14R, 14T and 14Z2, and
 - (b) review the extent to which the group has contributed to the delivery of any joint health and wellbeing strategy to which it was required to have regard under section 116B(1)(b) of the Local Government and Public Involvement in Health Act 2007.
- (3) In preparing the review required by subsection (2)(b), the clinical commissioning group must consult each relevant Health and Wellbeing Board.
- (4) The Board may give directions to clinical commissioning groups as to the form and content of an annual report.
- (5) A clinical commissioning group must give a copy of its annual report to the Board before the date specified by the Board in a direction.
- (6) A clinical commissioning group must—
- (a) publish its annual report, and
 - (b) hold a meeting for the purpose of presenting the report to members of the public.

Performance assessment of clinical commissioning groups

14Z16 Performance assessment of clinical commissioning groups E+W

- (1) The Board must conduct a performance assessment of each clinical commissioning group in respect of each financial year.
- (2) A performance assessment is an assessment of how well the clinical commissioning group has discharged its functions during that year.
- (3) The assessment must, in particular, include an assessment of how well the group has discharged its duties under—
 - (a) sections 14R, 14T, 14W and 14Z2,
 - (b) sections 223H to 223J, and
 - (c) section 116B(1) of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessments and strategies).
- (4) In conducting a performance assessment, the Board must consult each relevant Health and Wellbeing Board as to its views on the clinical commissioning group's contribution to the delivery of any joint health and wellbeing strategy to which the group was required to have regard under section 116B(1)(b) of that Act of 2007.
- (5) The Board must, in particular, have regard to—
 - (a) any document published by the Secretary of State for the purposes of this section, and
 - (b) any guidance published under section 14Z8.
- (6) The Board must publish a report in respect of each financial year containing a summary of the results of each performance assessment conducted by the Board in respect of that year.

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Powers to require information etc.

14Z17 Circumstances in which powers in sections 14Z18 and 14Z19 apply **E+W**

- (1) Sections 14Z18 and 14Z19 apply where the Board has reason to believe—
 - (a) that the area of a clinical commissioning group is no longer appropriate, or
 - (b) that a clinical commissioning group might have failed, might be failing or might fail to discharge any of its functions.
- (2) For the purposes of this section—
 - (a) a failure to discharge a function includes a failure to discharge it properly, and
 - (b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Board considers to be the interests of the health service.

14Z18 Power to require documents and information etc. **E+W**

- (1) Where this section applies, the Board may require a person mentioned in subsection (2) to provide to the Board any information, documents, records or other items that the Board considers it necessary or expedient to have for the purposes of any of its functions in relation to the clinical commissioning group.
- (2) The persons mentioned in this subsection are—
 - (a) the clinical commissioning group if it has possession or control of the item in question;
 - (b) any member or employee of the group who has possession or control of the item in question.
- (3) A person must comply with a requirement imposed under subsection (1).
- (4) The power conferred by subsection (1) includes power to require that any information, documents or records kept by means of a computer be provided in legible form.
- (5) The power conferred by subsection (1) does not include power to require the provision of personal records.
- (6) In subsection (5), “personal records” has the meaning given by section 12 of the Police and Criminal Evidence Act 1984.

14Z19 Power to require explanation **E+W**

- (1) Where this section applies, the Board may require the clinical commissioning group to provide it with an explanation of any matter which relates to the exercise by the group of any of its functions, including an explanation of how the group is proposing to exercise any of its functions.
- (2) The Board may require the explanation to be given—
 - (a) orally at such time and place as the Board may specify, or
 - (b) in writing.
- (3) The clinical commissioning group must comply with a requirement imposed under subsection (1).

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14Z20 Use of information E+W

Any information, documents, records or other items that are obtained by the Board in pursuance of section 14Z18 or 14Z19 may be used by the Board in connection with any of its functions in relation to clinical commissioning groups.

Intervention powers

14Z21 Power to give directions, dissolve clinical commissioning groups etc. E+W

- (1) This section applies if the Board is satisfied that—
 - (a) a clinical commissioning group is failing or has failed to discharge any of its functions, or
 - (b) there is a significant risk that a clinical commissioning group will fail to do so.
- (2) The Board may direct the clinical commissioning group to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.
- (3) The Board may direct—
 - (a) the clinical commissioning group, or
 - (b) the accountable officer of the group,
 to cease to perform any functions for such period or periods as may be specified in the direction.
- (4) The Board may—
 - (a) terminate the appointment of the clinical commissioning group's accountable officer, and
 - (b) appoint another person to be its accountable officer.
- (5) Paragraph 12(4) of Schedule 1A does not apply to an appointment under subsection (4)(b).
- (6) The Board may vary the constitution of the clinical commissioning group, including doing so by—
 - (a) varying its area,
 - (b) adding any person who is a provider of primary medical services to the list of members, or
 - (c) removing any person from that list.
- (7) The Board may dissolve the clinical commissioning group.
- (8) Where a direction is given under subsection (3) the Board may—
 - (a) exercise any of the functions that are the subject of the direction on behalf of the clinical commissioning group or (as the case may be) the accountable officer;
 - (b) direct another clinical commissioning group or (as the case may be) the accountable officer of another clinical commissioning group to perform any of those functions on behalf of the group or (as the case may be) the accountable officer, in such manner and within such period or periods as may be specified in the directions.

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- (9) A clinical commissioning group to which a direction is given under subsection (3) must—
 - (a) where the Board exercises a function of the group under subsection (8)(a), co-operate with the Board, and
 - (b) where a direction is given under subsection (8)(b) to another clinical commissioning group or to the accountable officer of another clinical commissioning group, co-operate with the other group or (as the case may be) the accountable officer.
- (10) Before exercising the power conferred by subsection (8)(b) the Board must consult the clinical commissioning group to which it is proposing to give the direction.
- (11) Where the Board exercises a power conferred by subsection (6) or (7), the Board may make a property transfer scheme or a staff transfer scheme.
- (12) In subsection (11), “property transfer scheme” and “staff transfer scheme” have the same meaning as in section 14I.
- (13) Part 3 of Schedule 1A applies in relation to a property transfer scheme or a staff transfer scheme under subsection (11) as it applies in relation to a property transfer scheme or (as the case may be) a staff transfer scheme under section 14I(1).
- (14) For the purposes of this section—
 - (a) a failure to discharge a function includes a failure to discharge it properly, and
 - (b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Board considers to be the interests of the health service.

Procedural requirements in connection with certain powers

14Z22 Procedural requirements in connection with certain powers E+W

- (1) Before exercising the power to dissolve a clinical commissioning group under section 14Z21(7) the Board must consult the following persons—
 - (a) the clinical commissioning group,
 - (b) relevant local authorities, and
 - (c) any other persons the Board considers it appropriate to consult.
- (2) For that purpose, the Board must provide those persons with a statement—
 - (a) explaining that it is proposing to exercise the power, and
 - (b) giving its reasons for doing so.
- (3) After consulting those persons (and before exercising the power), the Board must publish a report containing its response to the consultation.
- (4) If the Board decides to exercise the power, the report must, in particular, explain its reasons for doing so.
- (5) Regulations may make provision as to the procedure to be followed by the Board before the exercise of the powers conferred by sections 14Z18, 14Z19 and 14Z21.
- (6) The Board must publish guidance as to how it proposes to exercise the powers conferred by those sections.

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- (7) For the purposes of subsection (1) a local authority is a relevant local authority if its area coincides with, or includes the whole or any part of, the area of the clinical commissioning group.

Disclosure of information

14Z23 Permitted disclosures of information E+W

- (1) A clinical commissioning group may disclose information obtained by it in the exercise of its functions if—
- (a) the information has previously been lawfully disclosed to the public,
 - (b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),
 - (c) the disclosure is made in accordance with any enactment or court order,
 - (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,
 - (e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,
 - (f) the disclosure is made for the purpose of facilitating the exercise of any of the clinical commissioning group's functions,
 - (g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or
 - (h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

Interpretation

14Z24 Interpretation E+W

- (1) In this Chapter—
- “financial year”, in relation to a clinical commissioning group, includes the period which begins on the day the group is established and ends on the following 31 March;
 - “the health service” means the health service in England;
 - “health services” means services provided as part of the health service and, in section 14Z2, also includes services that are to be provided as part of the health service;
 - “relevant Health and Wellbeing Board”, in relation to a clinical commissioning group, has the meaning given by section 14Z11(9).
- (2) Any reference (however expressed) in the following provisions of this Act to the functions of a clinical commissioning group includes a reference to the functions of the Secretary of State that are exercisable by the group by virtue of arrangements under section 7A—

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section 6E(7) and (10)(b),
section 14C(2)(e),
section 14P,
section 14Q,
section 14T,
section 14U(1),
section 14V,
section 14W(1),
section 14X,
section 14Y,
section 14Z,
section 14Z1(1) and (2),
section 14Z2(1),
section 14Z4(1),
section 14Z5(2),
section 14Z6(1),
section 14Z7(7),
section 14Z11(1),
section 14Z15(1),
section 14Z16(2),
sections 14Z17(1), 14Z19(1) and 14Z21(1) and (3),
section 14Z23(1),
section 72(1),
section 75(1)(a) and (2),
section 77(1)(b),
section 82,
section 89(1A)(d),
section 94(3A)(d),
section 223C(2)(b),
section 223H(1),
in Schedule 1A, paragraphs 3(1) and (3), 6, 12(9)(b) and 16(3).

- (3) Any reference (however expressed) in the following provisions of other Acts to the functions of a clinical commissioning group includes a reference to the functions of the Secretary of State that are exercisable by the group by virtue of arrangements under section 7A—
- sections 116 to 116B of the Local Government and Public Involvement in Health Act 2007 (joint strategic needs assessments etc.),
 - section 199(4) of the Health and Social Care Act 2012 (supply of information to Health and Wellbeing Boards),
 - section 291(2)(d) of that Act (breaches of duties to co-operate),
 - in Schedule 6 to that Act, paragraph 8(4).
- (4) The Secretary of State may by order amend the list of provisions specified in subsection (2) or (3).]

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CHAPTER 1 **E+W**

STRATEGIC HEALTH AUTHORITIES

13 Strategic Health Authorities **E+W**

- (1) The Strategic Health Authorities established by the Secretary of State continue in existence.
- (2) But the Secretary of State may by order—
 - (a) vary the area in England for which a Strategic Health Authority is established,
 - (b) abolish a Strategic Health Authority,
 - (c) establish a new Strategic Health Authority for an area in England,
 - (d) change the name by which a Strategic Health Authority is known.
- (3) A Strategic Health Authority is called such name, in addition to the title “Strategic Health Authority”, as—
 - (a) appears to the Secretary of State appropriately to signify the connection of the authority with the area for which it is established, and
 - (b) is specified in the order establishing the authority or in an order changing the name by which the authority is known.
- (4) No order may be made under this section until after the completion of such consultation as may be prescribed.
- (5) Consultation requirements in regulations under subsection (4) are in addition to, and not in substitution for, any other consultation requirements which may apply.
- (6) The Secretary of State must act under this section so as to ensure that the areas for which Strategic Health Authorities are at any time established together comprise the whole of England.
- (7) The power under section 272(8) to make incidental or supplemental provision includes, in particular, in its application to orders made under this section, power to make provision for the transfer of staff, property and liabilities.
- (8) The liabilities which may be transferred by virtue of this section and section 272(8) to a relevant transferee on the abolition of a Strategic Health Authority include criminal liabilities.
- (9) “Relevant transferee” means—
 - (a) another Strategic Health Authority,
 - (b) a Primary Care Trust,
 - (c) an NHS trust,
 - (d) a Special Health Authority, or
 - (e) an NHS foundation trust.
- (10) Schedule 2 makes further provision about Strategic Health Authorities.

14 Exercise of Strategic Health Authority functions **E+W**

- (1) This section applies to functions exercisable by a Strategic Health Authority under or by virtue of this Act (including this section) or any prescribed provision of any other Act.

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- (2) Regulations may provide for any of the functions to be exercised—
 - (a) by another Strategic Health Authority,
 - (b) by a Special Health Authority, or
 - (c) jointly with any one or more of the bodies mentioned in subsection (3).
- (3) The bodies are—
 - (a) Primary Care Trusts,
 - (b) Local Health Boards,
 - (c) other Strategic Health Authorities.
- (4) Regulations may provide—
 - (a) for any functions to which this section applies to be exercised, on behalf of the Strategic Health Authority by whom they are exercisable, by a committee, sub-committee or officer of the Strategic Health Authority,
 - (b) for any functions exercisable jointly under subsection (2)(c) to be exercised, on behalf of the health service bodies in question, by a joint committee or joint sub-committee.

15 Strategic Health Authorities' directions **E+W**

- (1) A Strategic Health Authority may, in relation to any specified function of the Strategic Health Authority, direct a Primary Care Trust any part of whose area falls within the Strategic Health Authority's area to exercise the function.
- (2) But a Strategic Health Authority may not so direct a Primary Care Trust in relation to any functions of the Strategic Health Authority arising under section 92 arrangements or section 107 arrangements if the Primary Care Trust is providing any services in accordance with those arrangements.
- (3) The Secretary of State may direct Strategic Health Authorities that specified functions of theirs—
 - (a) are exercisable, or exercisable to (or only to) any specified extent, by Primary Care Trusts, or
 - (b) are not exercisable by Primary Care Trusts,and that the power in subsection (1) must be exercised accordingly.
- (4) Directions under subsection (3)(a) may include directions that any of the specified functions must be exercised (or exercised to, or only to, any specified extent) jointly with the Strategic Health Authority, or jointly by two or more Primary Care Trusts.
- (5) But such directions may be given only if regulations providing for the joint exercise of those functions have been made under section 14 or 19.
- (6) “Specified” means specified in the directions.

16 Section 92 arrangements and section 107 arrangements **E+W**

- (1) Each Strategic Health Authority must, in accordance with regulations, perform such functions in relation to section 92 arrangements and section 107 arrangements as may be prescribed.
- (2) The regulations may, in particular—

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- (a) prescribe functions in relation to training,
- (b) provide for appeals to the Secretary of State or a prescribed body in relation to prescribed functions.

17 Advice for Strategic Health Authorities **E+W**

Each Strategic Health Authority must make arrangements with a view to securing that it receives advice appropriate for enabling it effectively to exercise the functions exercisable by it from persons with professional expertise relating to the physical or mental health of individuals.

[^{F4}17A Reports on consultation **E+W**

- (1) Each Strategic Health Authority must, at such times as the Secretary of State may direct, prepare a report—
 - (a) on the consultation it has carried out, or proposes to carry out, before making commissioning decisions, and
 - (b) on the influence that the results of consultation have on its commissioning decisions.
- (2) In subsection (1) “commissioning decisions”, in relation to a Strategic Health Authority, means (subject to any directions under subsection (5)(e)) decisions as to the carrying-out of functions exercisable by it for the purpose of securing, by arrangement with any person or body, the provision of services as part of the health service.
- (3) Each Strategic Health Authority must also, at such times as the Secretary of State may direct, prepare a report—
 - (a) on any relevant consultation carried out by the authority, and
 - (b) on the influence that the results of any relevant consultation have had on such matters as may be specified in the direction.
- (4) In subsection (3) “relevant consultation” means consultation in relation to matters specified by the direction under that subsection.
- (5) The Secretary of State may give directions as to—
 - (a) the periods to be covered by reports under this section;
 - (b) the matters to be dealt with by reports under this section;
 - (c) the form and content of reports under this section;
 - (d) the publication of reports under this section;
 - (e) decisions that are to be treated as being, or that are to be treated as not being, commissioning decisions for the purposes of subsection (1).]

Textual Amendments

- F4** S. 17A inserted (3.11.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), ss. [234\(1\)](#), [245\(5\)](#); S.I. 2008/2434, art. 2(2)(c)

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CHAPTER 2 **E+W**

PRIMARY CARE TRUSTS

18 **Primary Care Trusts** **E+W**

- (1) The Primary Care Trusts established by the Secretary of State continue in existence.
- (2) But the Secretary of State may by order (a “PCT order”)—
 - (a) vary the area in England for which a Primary Care Trust is established,
 - (b) abolish a Primary Care Trust,
 - (c) establish a new Primary Care Trust for the area in England specified in the order with a view to it exercising functions in relation to the health service.
- (3) The Secretary of State must act under this section so as to ensure that the areas for which Primary Care Trusts are at any time established together comprise the whole of England.
- (4) A Primary Care Trust must exercise its functions in accordance with any prohibitions or restrictions in a PCT order relating to it.
- (5) If any consultation requirements apply, they must be complied with before a PCT order is made.
- (6) “Consultation requirements” means requirements about consultation contained in regulations.
- (7) Regulations must impose requirements about consultation where a PCT order establishes a Primary Care Trust.
- (8) Schedule 3 makes further provision about Primary Care Trusts.

19 **Exercise of Primary Care Trust functions** **E+W**

- (1) This section applies to functions exercisable by a Primary Care Trust under or by virtue of this Act (including this section) or any prescribed provision of any other Act.
- (2) Regulations may provide for any functions to which this section applies to be exercised—
 - (a) by another Primary Care Trust,
 - (b) by a Special Health Authority, or
 - (c) jointly with any one or more of the bodies mentioned in subsection (3).
- (3) The bodies are—
 - (a) Strategic Health Authorities,
 - (b) NHS trusts,
 - (c) Local Health Boards, and
 - (d) other Primary Care Trusts.
- (4) Regulations may provide—
 - (a) for any functions to which this section applies to be exercised, on behalf of the Primary Care Trust by whom they are exercisable, by a committee, sub-committee or officer of the Primary Care Trust,

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- (b) for any functions which, under this section, are exercisable by a Primary Care Trust jointly with one or more Strategic Health Authorities or other Primary Care Trusts (but not with any NHS trusts) to be exercised, on behalf of the health service bodies in question, by a joint committee or joint sub-committee.
- (5) Subsection (6) applies where, by virtue of subsection (2)(b), a Special Health Authority exercises functions of a Primary Care Trust in relation to a general dental services contract.
- (6) The Secretary of State may by order make provision for the transfer to the Special Health Authority of the rights and liabilities of the Primary Care Trust under the contract (and for their transfer back to the Primary Care Trust where the Special Health Authority ceases to exercise the functions).

20 Strategic Health Authority directions to Primary Care Trusts **E+W**

- (1) A Strategic Health Authority may give directions to a Primary Care Trust about its exercise of any function.
- (2) Directions under this section are subject to any directions given under section 8.

21 Provision of services etc **E+W**

- (1) A Primary Care Trust may provide services under an agreement under—
 - (a) section 92 (primary medical services), or
 - (b) section 107 (primary dental services),
 and may do so as a member of a qualifying body (within the meaning given by section 93 or section 108).
- (2) A Primary Care Trust may arrange for the provision by it to another health service body of goods or services which are of the same description as those which, at the time of making the arrangement, the Primary Care Trust has power to provide in carrying out its other functions.
- (3) A Primary Care Trust may provide premises for the use of persons—
 - (a) providing pharmaceutical services, or
 - (b) providing or performing primary medical services, primary dental services or primary ophthalmic services,
 on any terms it considers appropriate.
- (4) A Primary Care Trust which manages any health service hospital may make accommodation or services available there for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the Primary Care Trust in respect of the accommodation or services.
- (5) A Primary Care Trust has power to do anything specified in section 7(2) of the Health and Medicines Act 1988 (c. 49) (provision of goods, services etc), other than make accommodation or services available for patients at any health service hospital it manages, for the purpose of making additional income available for improving the health service.
- (6) A Primary Care Trust may exercise a power conferred by subsection (4) or (5) only—
 - (a) to the extent that its exercise does not to any significant extent interfere with the performance by the Primary Care Trust of its functions or of its obligations

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under NHS contracts or under agreements or arrangements made with NHS foundation trusts, and

- (b) in circumstances specified in directions under section 8, with the Secretary of State's consent.

(7) In this section—

“health service body” means a body which is a health service body for the purposes of section 9,

“hospital” includes any establishment or facility managed for the purposes of the health service.

22 Administration and management of services **E+W**

Each Primary Care Trust must, in accordance with regulations—

- (a) administer the arrangements made in pursuance of this Act for the provision for its area of primary medical services, primary dental services, primary ophthalmic services, pharmaceutical services and local pharmaceutical services, and
- (b) perform such management and other functions relating to those services as may be prescribed.

23 Advice for Primary Care Trusts **E+W**

Each Primary Care Trust must make arrangements with a view to securing that it receives advice appropriate for enabling it effectively to exercise the functions exercisable by it from persons with professional expertise relating to the physical or mental health of individuals.

[^{F5}23A Arrangements for improving quality of health care **E+W**

- (1) Each Primary Care Trust must make arrangements to secure continuous improvement in the quality of health care provided by it and by other persons pursuant to arrangements made by it.
- (2) In discharging its duty under subsection (1) a Primary Care Trust must have regard to the standards set out in statements under section 45 of the Health and Social Care Act 2008.
- (3) “Health care” means—
- (a) services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
- (b) the promotion and protection of public health.]

Textual Amendments

- F5** S. 23A inserted (1.4.2010) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 139, 170(3)(4); S.I. 2010/708, art. 13(c)

Status: Point in time view as at 27/03/2012.

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24 Plans for improving health etc **E+W**

- (1) Each Primary Care Trust must, at such times as the Secretary of State may direct, prepare a plan which sets out a strategy for improving—
 - (a) the health of the people for whom it is responsible, and
 - (b) the provision of health care to such people.
- (2) Each Primary Care Trust must keep under review any plan prepared by it under this section.
- (3) Each local authority whose area falls wholly or partly within the area of a Primary Care Trust must participate in the preparation or review by the Primary Care Trust of any plan under this section.
- (4) In preparing or reviewing any plan under this section, a Primary Care Trust—
 - (a) must consult, or seek the participation of, such persons as the Secretary of State may direct, and
 - (b) may consult, or seek the participation of, such other persons as it considers appropriate.
- (5) The Secretary of State may give directions as to—
 - (a) the periods to be covered by plans under this section,
 - (b) the action to be taken by Strategic Health Authorities, Primary Care Trusts and local authorities in connection with the preparation or review of plans under this section,
 - (c) the matters to be taken into account in connection with the preparation or review of plans under this section,
 - (d) the matters to be dealt with by plans under this section,
 - (e) the form and content of plans under this section,
 - (f) the publication of plans prepared or reviewed under this section,
 - (g) the sharing of information between Strategic Health Authorities, Primary Care Trusts, Local Health Boards and local authorities in connection with the preparation or review of plans under this section or section 17 of the National Health Service (Wales) Act 2006 (c. 42),
 - (h) the provision by Strategic Health Authorities, Primary Care Trusts and Local Health Boards of reports or other information to the Secretary of State in connection with plans under this section or section 17 of the National Health Service (Wales) Act 2006 (c. 42).
- (6) In exercising its functions—
 - (a) a Primary Care Trust must have regard to any plan prepared or reviewed by it, and to any plan in relation to which it has participated by virtue of subsection (4).
 - (b) a Strategic Health Authority must have regard to any plan prepared or reviewed by a Primary Care Trust any part of whose area falls within its area, and
 - (c) a local authority must have regard to any plan in relation to which it has participated.
- (7) For the purposes of this section, the persons for whom a Primary Care Trust is responsible are—
 - (a) the people in the area of the Primary Care Trust, and

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- (b) such of the people outside the area as may be specified in directions given by the Secretary of State.
- (8) “Health care” means—
 - (a) services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - (b) the promotion and protection of public health.

[^{F6}24A Report on consultation **E+W**

- (1) Each Primary Care Trust must, at such times as the Secretary of State may direct, prepare a report—
 - (a) on the consultation carried out, or proposed to be carried out, before the making by the Primary Care Trust of commissioning decisions, and
 - (b) on the influence that the results of consultation have on its commissioning decisions.
- (2) In subsection (1) “commissioning decisions”, in relation to a Primary Care Trust, means (subject to any directions under subsection (3)(e)) decisions as to the carrying out of its functions under Parts 4 to 7.
- (3) The Secretary of State may give directions as to—
 - (a) the periods to be covered by reports under this section;
 - (b) the matters to be dealt with by reports under this section;
 - (c) the form and content of reports under this section;
 - (d) the publication of reports under this section;
 - (e) decisions that are to be treated as being, or that are to be treated as not being, commissioning decisions for the purposes of subsection (1).]

Textual Amendments

- F6** S. 24A inserted (3.11.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), ss. [234\(2\)](#), [245\(5\)](#); S.I. 2008/2434, art. [2\(2\)\(c\)](#)

CHAPTER 3 **E+W**

NHS TRUSTS

25 NHS trusts **E+W**

- (1) The Secretary of State may by order establish bodies, called National Health Service trusts (“NHS trusts”), to provide goods and services for the purposes of the health service.
- (2) An order under subsection (1) is referred to in this Act as “an NHS trust order”.
- (3) No NHS trust order may be made until after the completion of such consultation as may be prescribed.
- (4) Schedule 4 makes further provision about NHS trusts.

Status: Point in time view as at 27/03/2012.

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26 **General duty of NHS trusts** **E+W**

An NHS trust must exercise its functions effectively, efficiently and economically.

27 **Financial provisions relating to NHS trusts** **E+W**

Schedule 5 makes provision about the financing of NHS trusts.

CHAPTER 4 **E+W**

SPECIAL HEALTH AUTHORITIES

28 **Special Health Authorities** **E+W**

- (1) The Secretary of State may by order establish special bodies for the purpose of exercising any functions which may be conferred on them by or under this Act.
- (2) The Secretary of State may make such further provision relating to a body established under subsection (1) as he considers appropriate.
- (3) A body established under this section is called a Special Health Authority.
- (4) An order may, in particular, contain provisions as to—
 - (a) the membership of the body established by the order,
 - (b) the transfer to the body of officers, property and liabilities, and
 - (c) the name of the body.
- (5) The liabilities which may be transferred by virtue of this section, section 272(8) and section 273(1) to an NHS body on the abolition of a Special Health Authority include criminal liabilities.
- (6) In this Act (apart from in Schedule 15) “NHS body” means—
 - (a) a Strategic Health Authority,
 - (b) a Primary Care Trust,
 - (c) an NHS trust,
 - (d) a Special Health Authority,
 - (e) an NHS foundation trust, and
 - (f) a Local Health Board.
- (7) The Secretary of State must, before he makes an order under this section, consult with respect to the order such bodies as he may recognise as representing officers who in his opinion are likely to be transferred or affected by transfers in pursuance of the order.
- (8) Schedule 6 makes further provision about Special Health Authorities.

[^{F7}28A **Special Health Authorities: further provision** **E+W**

- (1) This section applies in relation to an order under section 28 which is made after the coming into force of section 48 of the Health and Social Care Act 2012.
- (2) The order must include—
 - (a) provision for the abolition of the Special Health Authority on a day specified in the order, and

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- (b) provision as to the transfer of officers, property and liabilities of the Authority on its abolition.
- (3) The day specified in accordance with subsection (2)(a) must be within the period of 3 years beginning with the day on which the Special Health Authority is established.
- (4) The power (by virtue of section 273(1)) to vary an order under section 28 includes power to vary the provision mentioned in subsection (2) by—
 - (a) providing for the abolition of the Special Health Authority on a day which is earlier or later than the day for the time being specified in the order;
 - (b) making different provision as to the matters mentioned in subsection (2)(b).
- (5) If an order is varied to provide for the abolition of the Special Health Authority on a later day, that day must be within the period of 3 years beginning with the day on which the Special Health Authority would (but for the variation) have been abolished.]

Textual Amendments

- F7** S. 28A inserted (27.3.2012 for specified purposes) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 48(1), 306(1)(d)(4)**

29 Exercise of Special Health Authority functions **E+W**

- (1) Regulations may provide for any functions which are exercisable by a Special Health Authority under section 7 to be exercised—
 - (a) by another Special Health Authority, or
 - (b) jointly with one or more other Special Health Authorities.
- (2) Regulations may provide—
 - (a) for any functions which are exercisable by a Special Health Authority under section 7, section 14, section 19 or this section to be exercised on behalf of that Special Health Authority by a committee, sub-committee or officer of the Special Health Authority,
 - (b) for any functions exercisable jointly under subsection (1)(b) to be exercised, on behalf of the Special Health Authorities in question, by a joint committee or joint sub-committee.

CHAPTER 5 **E+W**

NHS FOUNDATION TRUSTS

Introductory

30 NHS foundation trusts **E+W**

- (1) An NHS foundation trust is a public benefit corporation which is authorised under this Chapter to provide goods and services for the purposes of the health service in England.
- (2) A public benefit corporation is a body corporate which, in pursuance of an application under this Chapter, is constituted in accordance with Schedule 7.

Status: Point in time view as at 27/03/2012.

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31 Independent Regulator of NHS Foundation Trusts **E+W**

- (1) There continues to be a body corporate known as the Independent Regulator of NHS Foundation Trusts (referred to in this Act as “the regulator”).
- (2) Schedule 8 makes further provision about the regulator.

32 General duty of regulator **E+W**

The regulator must exercise its functions in a manner consistent with the performance by the Secretary of State of his duties under sections 1, 3 and 258.

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,
 - (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,

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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—
 - (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 [^{F8}the Care Quality Commission],

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- (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—
- ^{F9}(a)
- (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.

Textual Amendments

- F8** Words in s. 35(3)(a) substituted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\), s. 170\(3\)\(4\), Sch. 5 para. 83](#); S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)
- F9** S. 35(5)(a) repealed (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\), s. 245\(5\), Sch. 18 Pt. 18](#); S.I. 2008/461, art. 2(3), Sch.

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).
- (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.

Status: Point in time view as at 27/03/2012.

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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),
 - ^{F10}(b)

Textual Amendments

F10 S. 38(2)(b) repealed (30.6.2008) by [Local Government and Public Involvement in Health Act 2007](#) (c. 28), s. 245(5), [Sch. 18 Pt. 18](#); S.I. 2008/461, art. 4(b)(c)

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) [^{F11}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.

Textual Amendments

F11 S. 39(2)(e) omitted (27.3.2012 for specified purposes) by virtue of [Health and Social Care Act 2012](#) (c. 7), [ss. 156\(5\)](#), [306\(1\)\(d\)\(4\)](#)

Status: Point in time view as at 27/03/2012.

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[^{F12}39A Panel for advising governors **E+W**

- (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
 - (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.]

Textual Amendments

F12 S. 39A inserted (27.3.2012 for specified purposes) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 162, 306(1)(d)(4)**

Financial matters

40 Power of Secretary of State to give financial assistance **E+W**

- (1) The Secretary of State may give financial assistance to any NHS foundation trust.

Status: Point in time view as at 27/03/2012.

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- (2) The financial assistance may be given by way of loan, public dividend capital, grant or other payment.
- (3) The Secretary of State may guarantee the payment of any amount payable by an NHS foundation trust under an externally financed development agreement.
- (4) “Externally financed development agreement” has the same meaning as in paragraph 23 of Schedule 4, reading references in sub-paragraphs (3) and (5) of that paragraph to the NHS trust as references to the NHS foundation trust.

41 Prudential borrowing code **E+W**

- (1) The regulator may revise the code made under section 12(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) for determining the limit on the total amount of the borrowing of any NHS foundation trust.
- (2) In revising the code the regulator must have regard (among other things) to any generally accepted principles used by financial institutions to determine the amounts of loans to non profit making bodies.
- (3) A body is non profit making if it does not carry on activities for the purpose of making profits for distribution to its members or others.
- (4) Before revising the code, the regulator must consult—
 - (a) the Secretary of State,
 - (b) each NHS foundation trust,
 - (c) each NHS trust intending to make an application to become an NHS foundation trust,
 - (d) such other persons as the regulator considers appropriate.
- (5) The regulator must lay a copy of the revised code before Parliament.

42 Public dividend capital **E+W**

- (1) Where an NHS trust becomes an NHS foundation trust, the amount which was the public dividend capital of the NHS trust immediately before the giving of the authorisation continues as public dividend capital of the NHS foundation trust held on the same conditions (“initial public dividend capital”), but subject to this section.
- (2) Any amount issued to an NHS foundation trust as public dividend capital under section 40 is (like initial public dividend capital) an asset of the Consolidated Fund.
- (3) The Secretary of State may, with the consent of the Treasury, decide the terms on which any public dividend capital of an NHS foundation trust must be treated as having been issued.
- (4) But the dividend to be paid by the trust must be the same as that payable by NHS trusts in England under paragraph 1(6) of Schedule 5.
- (5) Before exercising the power in subsection (3), the Secretary of State must consult the regulator.
- (6) Any amount paid to the Secretary of State by an NHS foundation trust by way of repayment of public dividend capital must be paid into the Consolidated Fund.

Status: Point in time view as at 27/03/2012.

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Functions

43 Authorised services **E+W**

- (1) An authorisation must authorise the NHS foundation trust to provide goods and services for purposes related to the provision of health care.
- (2) But the authorisation must secure that the principal purpose of the NHS foundation trust is the provision of goods and services for the purposes of the health service in England.
- (3) The NHS foundation trust may also carry on activities other than those mentioned in subsection (1), subject to any restrictions in the authorisation, for the purpose of making additional income available in order better to carry on its principal purpose.
- (4) The authorisation may require the provision, wholly or partly for the purposes of the health service in England, of goods and services by the NHS foundation trust.
- (5) The authorisation must authorise and may require the NHS foundation trust—
 - (a) to carry out research in connection with the provision of health care,
 - (b) to make facilities and staff available for the purposes of education, training or research carried on by others,

and, in deciding how to exercise its functions under this subsection in a case where any of the corporation's hospitals includes a medical or dental school provided by a university, the regulator must have regard to the need to establish and maintain appropriate arrangements within the university.
- (6) In deciding whether or not to require the NHS foundation trust to provide, wholly or partly for the purposes of the health service in England, any goods or services the regulator must have regard (among other things) to—
 - (a) the need for the provision of goods or services in the area in question,
 - (b) any provision of goods or services by other health service bodies in the area in question,
 - (c) any other provision by the NHS foundation trust with which the provision of the goods or services is connected,
 - (d) any agreement or arrangement to which the body corporate which is the NHS foundation trust is or was a party.
- (7) Such a requirement as is mentioned in subsection (4) may be framed by reference (among other things) to—
 - (a) goods or services in general or of a particular description,
 - (b) goods or services required to meet the needs of health service bodies in general or those of a particular description,
 - (c) goods or services required to meet the needs of other persons of a particular description,
 - (d) the volume of goods or services provided,
 - (e) the place where goods or services are provided,
 - (f) the period within which goods or services are provided.

Status: Point in time view as at 27/03/2012.

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44 Private health care **E+W**

- (1) An authorisation may restrict the provision, for purposes other than those of the health service in England, of goods and services by an NHS foundation trust.
- (2) The power must be exercised, in particular, with a view to securing that the proportion of the total income of an NHS foundation trust which was an NHS trust in any financial year derived from private charges is not greater than ^{F13} —
 - (a) the proportion of the total income of the NHS trust derived from such charges in the base financial year^{F14}, or
 - (b) in the case of a mental health foundation trust designated under subsection (2A), that proportion or 1.5% if greater.]

^{F15}(2A) An authorisation of an NHS foundation trust which was an NHS trust must designate it as a mental health foundation trust for the purposes of this section if it appears to the regulator that it provides goods or services only or mainly for the prevention, diagnosis or treatment of any disorder or disability of the mind or for the benefit in any other way of people suffering from a disorder or disability of the mind.]

- (3) “Base financial year” means the first financial year throughout which the body corporate was an NHS trust or, if it was an NHS trust throughout the financial year ending with 31st March 2003, that year.
- (4) “Private charges” means charges imposed in respect of goods and services provided to patients other than patients being provided with goods and services for the purposes of the health service.
- (5) Section 43(7) applies for the purposes of this section.
- (6) According to the nature of its functions, an NHS foundation trust may, in the case of patients being provided with goods and services for the purposes of the health service, make accommodation or further services available for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the NHS foundation trust in respect of the accommodation or services.
- (7) An NHS foundation trust may exercise the power conferred by subsection (6) only to the extent that its exercise does not to any significant extent interfere with the performance by the NHS foundation trust of its functions.

Textual Amendments

- F13** Word in s. 44(2) inserted (19.1.2010) by [Health Act 2009 \(c. 21\)](#), [ss. 33\(2\)\(a\)](#), 40(1); S.I. 2010/30, art. 2(g)
- F14** S. 44(2)(b) and word inserted (19.1.2010) by [Health Act 2009 \(c. 21\)](#), [ss. 33\(2\)\(b\)](#), 40(1); S.I. 2010/30, art. 2(g)
- F15** S. 44(2A) inserted (19.1.2010) by [Health Act 2009 \(c. 21\)](#), [ss. 33\(3\)](#), 40(1); S.I. 2010/30, art. 2(g)

45 Protection of property **E+W**

- (1) An NHS foundation trust may not dispose of any protected property without the approval of the regulator.
- (2) Disposing of property includes disposing of part of it or granting an interest in it.
- (3) Protected property is property of the trust designated as protected in its authorisation.

Status: Point in time view as at 27/03/2012.

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- (4) The regulator may designate property as protected if it considers it is needed—
 - (a) for the purposes of any goods or services which the authorisation requires the trust to provide wholly or partly for the purposes of the health service in England, or
 - (b) for the purpose of doing anything which the trust is required to do under section 43(5).
- (5) The regulator may give approval under subsection (1) on any terms it considers appropriate.
- (6) An NHS foundation trust may not create a floating charge on its property.

46 Financial powers **E+W**

- (1) An NHS foundation trust may borrow money for the purposes of or in connection with its functions.
- (2) But the total amount of the NHS foundation trust's borrowing is subject to the limit imposed by its authorisation.
- (3) The limit must be reviewed annually by the regulator.
- (4) An NHS foundation trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions.
- (5) The investment may include investment by—
 - (a) forming, or participating in forming, bodies corporate,
 - (b) otherwise acquiring membership of bodies corporate.
- (6) An NHS foundation trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

47 General powers **E+W**

- (1) An NHS foundation trust may do anything which appears to it to be necessary or expedient for the purpose of or in connection with its functions.
- (2) In particular it may—
 - (a) acquire and dispose of property,
 - (b) enter into contracts,
 - (c) accept gifts of property (including property to be held on trust for the purposes of the NHS foundation trust or for any purposes relating to the health service),
 - (d) employ staff.
- (3) Any power of the NHS foundation trust to pay remuneration and allowances to any person includes power to make arrangements for providing, or securing the provision of, pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).
- (4) “The purposes of the NHS foundation trust” means the general or any specific purposes of the trust (including the purposes of any specific hospital at or from which services are provided by the trust).

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48 Information **E+W**

- (1) An authorisation—
 - (a) must require an NHS foundation trust to disclose such information to the regulator as the Secretary of State specifies,
 - (b) may require an NHS foundation trust to disclose other information to the regulator.
- (2) The regulator may require any other health service body to disclose any information which the regulator requires for the purposes of its functions.

49 Entry and inspection of premises **E+W**

An authorisation may require an NHS foundation trust to allow the regulator to enter and inspect premises owned or controlled by the trust.

50 Fees **E+W**

An authorisation may require an NHS foundation trust to pay a reasonable annual fee to the regulator.

51 Trust funds and trustees **E+W**

- (1) The Secretary of State may by order provide for the appointment of trustees for an NHS foundation trust to hold property on trust—
 - (a) for the purposes of the NHS foundation trust, or
 - (b) for any purposes relating to the health service.
- (2) The order may—
 - (a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,
 - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),
 - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate,
 - (d) make provision with respect to the term of office of any trustee and his removal from office.
- (3) Where trustees have been appointed for an NHS foundation trust under this section, the Secretary of State may by order provide for the transfer of any trust property from the NHS foundation trust to the trustees.
- (4) Where an NHS trust for which trustees have been appointed under paragraph 10 of Schedule 4 is given an authorisation, the order appointing the trustees has effect as an order under this section.
- (5) “The purposes of the NHS foundation trust” means the general or any specific purposes of the trust (including the purposes of any specific hospital at or from which services are provided by the trust).

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Failure

52 Failing NHS foundation trusts **E+W**

- (1) If the regulator is satisfied—
- (a) that an NHS foundation trust is contravening, or failing to comply with, any term of its authorisation or any requirement imposed on it under any enactment and that the contravention or failure is significant, or
 - (b) that an NHS foundation trust has contravened, or failed to comply with, any such term or requirement and is likely to do so again and that the contravention or failure was significant,
- the regulator may by a notice to the trust exercise one or more of the powers in subsections (3) and (4).
- (2) The regulator may also by a notice to the trust exercise one or more of those powers if the regulator is satisfied that the trust has contravened or failed to comply with a previous notice.
- (3) The regulator may require the trust, the directors or the board of governors to do, or not to do, specified things or things of a specified description within a specified period.
- (4) The regulator may remove any or all of the directors or members of the board of governors and appoint interim directors or members of the board.
- (5) The regulator's power to remove a director, or member of the board of governors, of the trust includes power to suspend him from office, or to disqualify him from holding office, as a director or member of the board of governors of the trust for a specified period.

[^{F16}52A Application of sections 52B to 52E **E+W**

- (1) Sections 52B to 52E apply to—
- (a) an NHS foundation trust authorised under section 35 on an application under section 33;
 - (b) an NHS foundation trust established under section 56 to which subsection (2) applies.
- (2) This subsection applies to an NHS foundation trust if—
- (a) at least one of the trusts on whose application the NHS foundation trust was established was an NHS foundation trust within subsection (1)(a), or was an NHS trust all or most of whose hospitals, establishments and facilities were in England, or
 - (b) the NHS foundation trust is the result of a succession of mergers under section 56, any of which involved an NHS foundation trust within subsection (1)(a) or an NHS trust all or most of whose hospitals, establishments and facilities were in England.

Textual Amendments

F16 Ss. 52A-52E inserted (19.1.2010 for specified purposes) by [Health Act 2009 \(c. 21\)](#), ss. 15, 40(1); S.I. 2010/30, art. 2(c)

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52B De-authorisation: regulator's notice **E+W**

- (1) The regulator may give the Secretary of State a notice under this section if it is satisfied that—
 - (a) an NHS foundation trust to which this section applies is contravening or failing to comply with, or has contravened or failed to comply with, any term of its authorisation or any requirement imposed on it under any enactment, and
 - (b) the seriousness of the contravention or failure, or, if there has been more than one, of any of them taken together, is such that it would justify the Secretary of State making an order under section 52D.
- (2) The notice must be in writing.
- (3) With the notice the regulator must give the Secretary of State a report stating the reasons why it is satisfied as mentioned in subsection (1).
- (4) Before giving a notice under this section, the regulator must consult first the Secretary of State (unless the notice follows a request by the Secretary of State under section 52E) and then—
 - (a) the trust,
 - (b) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and
 - (c) any other person to which the trust provides goods or services under this Act and which the regulator considers it appropriate to consult.

Textual Amendments

F16 Ss. 52A-52E inserted (19.1.2010 for specified purposes) by [Health Act 2009 \(c. 21\)](#), [ss. 15, 40\(1\)](#); [S.I. 2010/30](#), [art. 2\(c\)](#)

52C Grounds for de-authorisation notice **E+W**

- (1) In determining under section 52B(1)(b) whether the making of an order would be justified, and in determining whether to give a notice under that section, the regulator must consider these matters (among others)—
 - (a) the health and safety of patients;
 - (b) the quality of the provision by the trust of goods and services;
 - (c) the financial position of the trust;
 - (d) the way it is being run.
- (2) The regulator must publish guidance as to the matters (including those mentioned in subsection (1)) that it proposes to consider in making those determinations.
- (3) Before publishing any guidance under this section, including any revised guidance, the regulator must consult—
 - (a) the Secretary of State,
 - (b) each NHS foundation trust to which this section applies,
 - (c) each NHS trust intending to make an application to become an NHS foundation trust, and
 - (d) such other persons as the regulator considers appropriate.

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Textual Amendments

F16 Ss. 52A-52E inserted (19.1.2010 for specified purposes) by [Health Act 2009 \(c. 21\)](#), **ss. 15, 40(1)**; [S.I. 2010/30](#), **art. 2(c)**

52D De-authorisation **E+W**

- (1) If the regulator gives notice under section 52B in relation to a trust, the Secretary of State must make an order for it to cease to be an NHS foundation trust.
- (2) An order made under subsection (1) must specify the date when it is to take effect, which must be within the period of 5 working days beginning with the day on which it is made.
- (3) On an order under subsection (1) taking effect in relation to a body, it ceases to be an NHS foundation trust and a public benefit corporation and becomes a National Health Service trust.
- (4) The order must specify, in relation to the trust, the matters mentioned in paragraph 5(1)(a) to (c) of Schedule 4 and, where the trust has a significant teaching commitment, the matters mentioned in paragraph 5(1)(d).
- (5) The order may provide for any provision under subsection (4) specifying the number of executive directors and non-executive directors to take effect at the end of a period specified in the order.
- (6) Schedule 8A makes further provision about trusts in respect of which an order is made under subsection (1).
- (7) If it appears to the Secretary of State to be necessary in order to comply with provision made under subsection (4), or made by regulations under paragraph 4 of Schedule 4, the Secretary of State may by order—
 - (a) terminate the office of any executive or non-executive director of the trust;
 - (b) appoint a person to be an executive or non-executive director of the trust.
- (8) Within seven days after the day on which the Secretary of State makes an order under subsection (1) the regulator must publish its report under section 52B(3).
- (9) In this section “working day” means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

Textual Amendments

F16 Ss. 52A-52E inserted (19.1.2010 for specified purposes) by [Health Act 2009 \(c. 21\)](#), **ss. 15, 40(1)**; [S.I. 2010/30](#), **art. 2(c)**

52E Secretary of State's request **E+W**

- (1) If it appears to the Secretary of State that there are grounds for the regulator to be satisfied as mentioned in section 52B(1), the Secretary of State may request the regulator in writing to consider exercising its power to give a notice under that section.

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- (2) A request under this section must—
 - (a) specify the NHS foundation trust to which it relates, and
 - (b) state the grounds relied on by the Secretary of State.
- (3) The Secretary of State must lay before Parliament any request under this section.
- (4) If within the required period the regulator does not give a notice under section 52B in response to a request under this section, it must, within that period, publish its reasons for not doing so with a statement as to how it has complied with section 52C(1).
- (5) The required period is—
 - (a) 14 days beginning with the day after the regulator receives the request, or
 - (b) any longer period specified in the request.
- (6) The Secretary of State may by order extend or further extend the required period.]

Textual Amendments

F16 Ss. 52A-52E inserted (19.1.2010 for specified purposes) by [Health Act 2009 \(c. 21\)](#), **ss. 15**, 40(1); S.I. 2010/30, art. 2(c)

53 Voluntary arrangements **E+W**

- (1) If the regulator is satisfied that it is necessary or expedient to do so, it may by a notice to an NHS foundation trust [^{F17}to which this section applies] require the directors—
 - (a) to take steps to obtain a moratorium, or
 - (b) to make a proposal for a voluntary arrangement.
 - (2) An order may provide for Part 1 of the Insolvency Act 1986 (c. 45) (company voluntary arrangements), including any related provision of that Act, to apply with modifications in relation to NHS foundation trusts [^{F18}to which this section applies] .
 - (3) References in this Chapter to a moratorium are to a moratorium under section 1A of that Act as modified by the order.
 - (4) References in this Chapter to a voluntary arrangement are to a voluntary arrangement under Part 1 of that Act as modified by the order.
- [^{F19}(4A) This section applies to an NHS foundation trust to which sections 52B to 52E and Chapter 5A do not apply.]

Textual Amendments

F17 Words in s. 53(1) inserted (15.2.2010) by [Health Act 2009 \(c. 21\)](#), **ss. 18(3)**, 40(1); S.I. 2010/30, art. 3(b)

F18 Words in s. 53(2) inserted (15.2.2010) by [Health Act 2009 \(c. 21\)](#), **ss. 18(4)**, 40(1); S.I. 2010/30, art. 3(b)

F19 S. 53(4A) inserted (15.2.2010 for specified purposes) by [Health Act 2009 \(c. 21\)](#), **ss. 18(5)**, 40(1); S.I. 2010/30, art. 3(b)

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54 Dissolution etc **E+W**

- (1) The powers conferred by this section are exercisable where—
 - (a) an NHS foundation trust [^{F20}to which section 53 applies] contravenes or fails to comply with a notice under section 52 or 53 or the trust's compliance with a notice under section 53 does not result in the implementation of a voluntary arrangement, and
 - (b) the regulator considers that further exercise of any of the powers conferred by those sections would not be likely to secure the provision of the goods and services which the authorisation requires the trust to provide.
- (2) Before the powers conferred by this section are exercised, the regulator must consult specified persons about specified matters.
- (3) “Specified” means specified in an order.
- (4) An order may transfer, or provide for the transfer of, any property or liabilities of the trust to—
 - (a) another NHS foundation trust,
 - (b) a Primary Care Trust,
 - (c) an NHS trust,
 - (d) the Secretary of State.
- (5) The liabilities which may be transferred by virtue of subsection (4) to any of the bodies mentioned in paragraphs (a) to (c) of that subsection include criminal liabilities.
- (6) Schedule 9 makes provision for the transfer of employees.
- (7) An order may provide for the dissolution of the trust.
- (8) An order may apply any provision of Part 4 of the Insolvency Act 1986 (c. 45) (winding up of companies), including any related provision of that Act, with modifications.
- (9) Where the regulator refuses to give an authorisation to a public benefit corporation—
 - (a) the powers conferred by this section are also exercisable, and
 - (b) references in this section and Schedule 9 to an NHS foundation trust are references to the corporation.

Textual Amendments

F20 Words in s. 54(1)(a) inserted (15.2.2010) by [Health Act 2009 \(c. 21\)](#), **ss. 18(6), 40(1)**; [S.I. 2010/30](#), [art. 3\(b\)](#)

55 Sections 53 and 54: supplementary **E+W**

- (1) In sections 53 and 54, an order means an order made by the Secretary of State.
- (2) The modifications of the Insolvency Act 1986 that may be made by an order include—
 - (a) provision for securing that the goods and services which the trust is required by the authorisation to provide continue to be provided (whether by the trust or another),

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- (b) provision for securing the protection of property needed for the purposes of those goods and services.
- (3) The power conferred by section 54(3) must be exercised with a view to securing the provision of the goods and services which the authorisation requires the trust to provide.
- (4) That power must also be exercised (together, if required, with the power conferred by section 40(2)) with a view to securing that any transfer of property in pursuance of the exercise of the power does not result in a net loss of value to the trust; and the question whether a transfer would result in a net loss of value must be determined in accordance with regulations.
- (5) The Insolvency Act 1986 may not be modified under section 54(8) so as to alter the priority of debts or the ranking of debts between themselves.

Mergers

56 Mergers **E+W**

- (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—
 - (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 7 and will otherwise be appropriate,

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- (b) the applicants have 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 will 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 must consider (among other things)—
- (a) any report or recommendation in respect of either of the applicants made by [^{F21}the Care Quality Commission] ,
 - (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—
- ^{F22}(a)
 - (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 to apply to become members of that constituency,
 - (f) any prescribed persons.
- (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.

Textual Amendments

F21 Words in s. 56(6)(a) substituted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\), s. 170\(3\)\(4\), Sch. 5 para. 84](#); S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)

F22 S. 56(8)(a) repealed (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\), s. 245\(5\), Sch. 18 Pt. 18](#); S.I. 2008/461, art. 2(3), Sch.

57 Section 56: supplementary **E+W**

- (1) Where an authorisation is given under section 56, the regulator must 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 must make an order—
 - (a) dissolving the trusts in question, and

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- (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 54(3),
 - (b) include provisions corresponding to those of Schedule 9.
- (4) In section 56(1) and (2), and subsections (1) and (2) of this section, “liabilities” includes criminal liabilities; and an order under subsection (3) of this section may transfer any remaining criminal liabilities to any of the bodies mentioned in section 54(4)(a) to (c).
- (5) Where one of the parties to an application under section 56 is an NHS trust, the powers conferred on the Secretary of State by Part 3 of Schedule 4 are not exercisable in relation to the trust.
- (6) Section 35(4) applies to an authorisation under section 56 as it does in relation to an authorisation under that section.

Miscellaneous

58 Taxation **E+W**

Section 61(3) of the National Health Service and Community Care Act 1990 (c. 19) (health service bodies: stamp duty) applies to an NHS foundation trust as it applies to an NHS trust.

59 Conduct of elections **E+W**

- (1) Regulations may make provision as to the conduct of elections for membership of the board of governors of an NHS foundation trust.
- (2) The regulations may in particular provide for—
 - (a) nomination of candidates and obligations to declare their interests,
 - (b) systems and methods of voting, and the allocation of places on the board of governors, at contested elections,
 - (c) filling of vacancies,
 - (d) supervision of elections,
 - (e) elections expenses and publicity,
 - (f) questioning of elections and the consequences of irregularities.
- (3) Regulations under this section may create offences punishable on summary conviction with a maximum fine not exceeding level 4 on the standard scale.
- (4) An NHS foundation trust must secure that its constitution is in accordance with regulations under this section.
- (5) Pending the coming into force of regulations under this section, elections for membership of the board of governors of an NHS foundation trust, if contested, must be by secret ballot.

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60 Voting and standing for election **E+W**

- (1) A person may not vote at an election for the board of governors of an NHS foundation trust unless, within the specified period, he has made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held.
- (2) A person may not stand for election to the board unless—
 - (a) he has within the specified period made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held, and
 - (b) he is not prevented from being a member of the board by paragraph 8 of Schedule 7.
- (3) A person elected to the board may not vote at a meeting of the board unless—
 - (a) he has within the specified period made a declaration in the specified form of the particulars of his qualification to vote as a member of the trust, and
 - (b) he is not prevented from being a member of the board by paragraph 8 of Schedule 7.
- (4) This section does not apply to an election held for the staff constituency.
- (5) “Specified” means specified in the trust's constitution.
- (6) A person is guilty of an offence if he—
 - (a) makes a declaration under this section which he knows to be false in a material particular, or
 - (b) recklessly makes such a declaration which is false in a material particular.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

61 Representative membership **E+W**

An authorisation may require an NHS foundation trust to take steps to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) of the patients' constituency is representative of those eligible for such membership.

62 Audit **E+W**

Schedule 10 makes provision in relation to the audit of accounts of NHS foundation trusts.

63 General duty of NHS foundation trusts **E+W**

An NHS foundation trust must exercise its functions effectively, efficiently and economically.

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Supplementary

64 Orders and regulations under this Chapter **E+W**

- (1) Any power under this Chapter to make an order or regulations is exercisable by statutory instrument.
- (2) Subject to subsections (3) and (4), a statutory instrument made by virtue of this Chapter is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument containing—
 - (a) the first regulations under section 55(4) or 59,
 - ^{F23}(aa) regulations under paragraph 30(1) of Schedule 7,] or
 - (b) an order or regulations under this Chapter making, by virtue of subsection (5) (b), provision which amends or repeals any part of the text of an Act,may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (4) Subsection (2) does not apply to a statutory instrument containing an order under—
 - (a) section 51,
 - (b) section 54(4), or
 - (c) section 57.
- (5) Any order or regulations under this Chapter—
 - (a) may make different provision for different purposes, and
 - (b) may make incidental, supplementary, consequential, transitory or transitional or saving provision.
- (6) Any power under this Chapter to make an order or regulations (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case.

Textual Amendments

F23 S. 64(3)(aa) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\), ss. 158\(2\), 306\(1\)\(d\)\(4\); S.I. 2012/1831, art. 2\(2\)](#)

65 Interpretation of this Chapter **E+W**

- (1) In this Chapter—
 - “authorisation” means an authorisation under section 35 or 56,
 - “health service body” means a Strategic Health Authority, a Primary Care Trust, an NHS trust, a Special Health Authority or an NHS foundation trust.
- (2) Any references in this Chapter to goods and services include, in particular, facilities, education and training.

Status: Point in time view as at 27/03/2012.

Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F24}CHAPTER 5A E+W

TRUST SPECIAL ADMINISTRATORS: NHS TRUSTS AND NHS FOUNDATION TRUSTS

Textual Amendments

F24 Pt. 2 Ch. 5A inserted (15.2.2010) by [Health Act 2009 \(c. 21\)](#), ss. 16, 40(1); S.I. 2010/30, art. 3(a)

Application

65A Application E+W

- (1) This Chapter applies to—
- (a) an NHS trust all or most of whose hospitals, establishments and facilities are in England;
 - (b) an NHS foundation trust authorised under section 35 on an application under section 33;
 - (c) an NHS foundation trust established under section 56 to which subsection (2) applies.
- (2) This subsection applies to an NHS foundation trust if—
- (a) at least one of the trusts on whose application the NHS foundation trust was established was an NHS trust within subsection (1)(a) or an NHS foundation trust within subsection (1)(b), or
 - (b) the NHS foundation trust is the result of a succession of mergers under section 56, any of which involved an NHS trust within subsection (1)(a) or an NHS foundation trust within subsection (1)(b).

Appointment

65B Appointment of trust special administrator E+W

- (1) The Secretary of State may make an order authorising the appointment of a trust special administrator to exercise the functions of the chairman and directors of an NHS trust to which this Chapter applies.
- (2) An order may be made under subsection (1) only if the Secretary of State considers it appropriate in the interests of the health service.
- (3) The order must specify the date when the appointment is to take effect, which must be within the period of 5 working days beginning with the day on which the order is made.
- (4) Before making the order the Secretary of State must consult—
 - (a) the trust,
 - (b) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and
 - (c) any other person to which the trust provides goods or services under this Act and which the Secretary of State considers it appropriate to consult.
- (5) The Secretary of State must lay before Parliament (with the statutory instrument containing the order) a report stating the reasons for making the order.

Status: Point in time view as at 27/03/2012.

Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) If an order is made under subsection (1), the Secretary of State must—
 - (a) appoint a person as the trust special administrator with effect from the day specified in the order, and
 - (b) publish the name of the person appointed.
- (7) A person appointed as a trust special administrator holds and vacates office in accordance with the terms of the appointment.
- (8) The Secretary of State may pay remuneration and expenses to a trust special administrator.

65C Suspension of directors E+W

- (1) When the appointment of a trust special administrator takes effect, the trust's chairman and executive and non-executive directors are suspended from office.
- (2) Subsection (1) does not affect the employment of the executive directors or their membership of any committee or sub-committee of the trust.

De-authorisation of NHS foundation trusts

65D NHS foundation trusts: regulator's notice E+W

- (1) The regulator may give the Secretary of State a notice under this section if it is satisfied that—
 - (a) an NHS foundation trust to which this Chapter applies is failing to comply with a notice under section 52, and
 - (b) further exercise of the powers conferred by section 52 would not be likely to secure the provision of the goods and services which the trust's authorisation requires it to provide.
- (2) The notice must be in writing.
- (3) With the notice the regulator must give the Secretary of State a report stating the reasons why it is satisfied as mentioned in subsection (1).
- (4) Before giving a notice under this section, the regulator must consult first the Secretary of State and then—
 - (a) the trust,
 - (b) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and
 - (c) any other person to which the trust provides goods or services under this Act and which the regulator considers it appropriate to consult.

65E NHS foundation trusts: de-authorisation and appointment of trust special administrator E+W

- (1) If the regulator gives notice under section 65D in relation to a trust, the Secretary of State must make an order for it to cease to be an NHS foundation trust.

Status: Point in time view as at 27/03/2012.

Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) An order made under subsection (1) must specify the date when it is to take effect, which must be within the period of 5 working days beginning with the day on which it is made.
- (3) The Secretary of State must lay before Parliament (with the statutory instrument containing the order) the regulator's report under section 65D(3).
- (4) On an order under subsection (1) taking effect in relation to a body, it ceases to be an NHS foundation trust and a public benefit corporation and becomes a National Health Service trust.
- (5) Schedule 8A makes further provision about trusts in respect of which an order is made under subsection (1).
- (6) Where an order is made under subsection (1) in relation to a trust, the Secretary of State must also make an order under section 65B(1) authorising the appointment of a trust special administrator in relation to the trust.
- (7) The order under section 65B(1) must provide for the appointment to take effect at the same time as the order under this section.
- (8) Section 65B(2), (4) and (5) do not apply in relation to the order under section 65B(1).

Consultation and report

65F **Draft report** E+W

- (1) Within the period of 45 working days beginning with the day on which a trust special administrator's appointment takes effect, the administrator must provide to the Secretary of State and publish a draft report stating the action which the administrator recommends the Secretary of State should take in relation to the trust.
 - (2) When preparing the draft report, the administrator must consult—
 - ^{F25}(za) [the Board,]
 - (a) [^{F26}any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities,] and
 - (b) any other person to which the trust provides goods or services under this Act and which the Secretary of State directs the administrator to consult.
 - (3) After receiving the draft report, the Secretary of State must lay it before Parliament.
- [For the purposes of this section in its application to the case of an NHS foundation ^{F27}(4) trust, the references to the Secretary of State are to be read as references to the regulator.
- (5) In the case of an NHS foundation trust, the administrator may not provide the draft report to the regulator under subsection (1)—
 - (a) without having obtained from each commissioner a statement that the commissioner considers that the recommendation in the draft report would achieve the objective set out in section 65DA, or
 - (b) where the administrator does not obtain a statement to that effect from one or more commissioners (other than the Board), without having obtained a statement to that effect from the Board.

Status: Point in time view as at 27/03/2012.

Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) Where the Board decides not to provide to the administrator a statement to that effect, the Board must—
- (a) give a notice of the reasons for its decision to the administrator and to the regulator;
 - (b) publish the notice;
 - (c) lay a copy of it before Parliament.
- (7) In subsection (5), “commissioner” means a person to which the trust provides services under this Act.]

Textual Amendments

- F25** S. 65F(2)(za) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\), ss. 176\(1\)\(a\), 306\(1\)\(d\)\(4\); S.I. 2012/2657, art. 2\(2\)](#)
- F26** S. 65F(2)(a) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 176\(1\)\(b\), 306\(1\)\(d\)\(4\); S.I. 2012/2657, art. 2\(2\)](#)
- F27** S. 65F(4)-(7) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\), ss. 176\(2\), 306\(1\)\(d\)\(4\); S.I. 2012/2657, art. 2\(2\)](#)

65G Consultation plan **E+W**

- (1) At the same time as publishing a draft report under section 65F, a trust special administrator must publish a statement setting out the means by which the administrator will seek responses to the draft report.
 - (2) The statement must specify a period of 30 working days within which the administrator seeks responses (the “consultation period”).
 - (3) The first day of the consultation period must be within the period of 5 working days beginning with the day on which the draft report is published.
- [In the case of an NHS foundation trust, the administrator may not make a variation to
- ^{F28}(4) the draft report following the consultation period—
- (a) without having obtained from each commissioner a statement that the commissioner considers that the recommendation in the draft report as so varied would achieve the objective set out in section 65DA, or
 - (b) where the administrator does not obtain a statement to that effect from one or more commissioners (other than the Board), without having obtained a statement to that effect from the Board.
- (5) Where the Board decides not to provide to the administrator a statement to that effect, the Board must—
- (a) give a notice of the reasons for its decision to the administrator and to the regulator;
 - (b) publish the notice;
 - (c) lay a copy of it before Parliament.
- (6) In subsection (4), “commissioner” means a person to which the trust provides services under this Act.]

Status: Point in time view as at 27/03/2012.

Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F28 S. 65G(4)-(6) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 176\(3\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

65H Consultation requirements **E+W**

- (1) The following duties apply during the consultation period.
- (2) The trust special administrator must publish a notice stating that the administrator is seeking responses to the draft report and describing how people can give their responses.
- (3) A notice under subsection (2) must include details of how responses can be given in writing.
- (4) The trust special administrator must hold at least one meeting to seek responses from staff of the trust and from such persons as the trust special administrator may recognise as representing staff of the trust.
- (5) The trust special administrator must hold at least one other meeting to seek responses from any person who wishes to attend, after publishing notice of the date, time and place of the meeting.
- (6) Notices under subsections (2) and (5) must be published at least once in the first 5 working days of the consultation period.
- (7) The trust special administrator must request a written response from—
 - [the Board,]
 - ^{F29}(za)
 - (a) [^{F30}any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities;]
 - (b) any other person to which the trust provides goods or services under this Act [^{F31}, if required by directions given by the Secretary of State];
 - (c) any person within subsection (8), if required by directions given by the Secretary of State [^{F32};
 - (d) any other person specified in a direction given by the Secretary of State].
- (8) The persons within this subsection are—
 - (a) [^{F33}an overview and scrutiny committee of any authority to which section 244 applies;]
 - (b) [^{F33}a committee of a local authority operating alternative arrangements under Part 2 of the Local Government Act 2000 which exercises functions corresponding to those of an overview and scrutiny committee under section 21(2)(f) of that Act;]
 - (c) [^{F33}a joint overview and scrutiny committee;]
 - (d) [^{F33}a committee established under section 247(1);]
 - (e) a person carrying on, in pursuance of arrangements made by any local authority under subsection (1) of section 221 of the Local Government and Public Involvement in Health Act 2007, activities specified in subsection (2) of that section (local involvement networks);
 - (f) the member of Parliament for any constituency.

Status: Point in time view as at 27/03/2012.

Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (9) The trust special administrator must hold at least one meeting to seek responses from representatives of [^{F34}the Board and] each of the persons from whom the administrator must request a written response under subsection [^{F35}(7)(a) or (b)][^{F35}(7)(b), (c) or (d)].
- (10) The Secretary of State may direct an administrator to—
- (a) request a written response from any person;
 - (b) hold a meeting to seek a response from any person.
- (11) In subsection (4) “staff of the trust” means persons employed by the trust or otherwise working for the trust (whether as or on behalf of a contractor, as a volunteer or otherwise).
- [For the purposes of this section in its application to the case of an NHS foundation trust—
- ^{F36}(12) trust—
- (a) in subsection (7)(b), the words “goods or” are to be ignored, and
 - (b) in subsections (7)(c) and (d) and (10), the references to the Secretary of State are to be read as references to the regulator.
- (13) In the case of an NHS foundation trust, the Secretary of State may direct the regulator as to persons from whom it should direct the administrator under subsection (10) to request or seek a response.]

Textual Amendments

- F29** S. 65H(7)(za) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(4)(a)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F30** S. 65H(7)(a) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(4)(b)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F31** Words in s. 65H(7)(b) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(4)(c)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F32** S. 65H(7)(d) and punctuation inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(4)(d)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F33** S. 65H(8)(a)-(d) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(5)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F34** Words in s. 65H(9) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(6)(a)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F35** Words in s. 65H(9) substituted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(6)(b)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F36** S. 65H(12)(13) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(7)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

65I Final report **E+W**

- (1) Within the period of 15 working days beginning with the end of the consultation period, the trust special administrator must provide to the Secretary of State a final report stating the action which the administrator recommends that the Secretary of State should take in relation to the trust.

Status: Point in time view as at 27/03/2012.

Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) The administrator must attach to the final report a summary of all responses to the draft report which were received by the administrator in the period beginning with the publication of the draft report and ending with the last day of the consultation period.
 - (3) After receiving the administrator's final report, the Secretary of State must publish it and lay it before Parliament.
- [For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.]

Textual Amendments

F37 S. 65I(4) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 176\(8\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

65J Power to extend time E+W

- (1) This section applies to—
 - (a) the duty of a trust special administrator to provide a draft report within the period specified in section 65F(1);
 - (b) the duty of a trust special administrator to consult in the consultation period specified under section 65G(2);
 - (c) the duty of a trust special administrator to provide a final report within the period specified in section 65I(1).
 - (2) If the Secretary of State thinks it is not reasonable in the circumstances for the administrator to be required to carry out the duty within the specified period, the Secretary of State may by order extend the period.
 - (3) If an order is made extending the period mentioned in subsection (1)(a) or (c) the trust special administrator must publish a notice stating the new date on which the period will expire.
 - (4) If an order is made extending the period mentioned in subsection (1)(b) the trust special administrator must—
 - (a) publish a notice stating the new date on which the period will expire, and
 - (b) publish a statement setting out the means by which the administrator will seek responses to the draft report during the extended consultation period.
- [For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.]

Textual Amendments

F38 S. 65J(5) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 176\(9\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

Status: Point in time view as at 27/03/2012.

Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F39}Action by the Secretary of State and the regulator]

Textual Amendments

F39 S. 65K cross-heading substituted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 177(7), 306(1)(d)(4); [S.I. 2012/2657, art. 2\(2\)](#)

65K [^{F40}Secretary of State's decision][^{F40}Secretary of State's decision in case of NHS trust] **E+W**

- (1) Within the period of 20 working days beginning with the day on which the Secretary of State receives a final report under section 65I [^{F41}relating to an NHS trust], the Secretary of State must decide what action to take in relation to the trust.
- (2) The Secretary of State must as soon as reasonably practicable—
 - (a) publish a notice of the decision and of the reasons for it;
 - (b) lay a copy of the notice before Parliament.

Textual Amendments

F40 S. 65K heading substituted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 177(1), 306(1)(d)(4); [S.I. 2012/2657, art. 2\(2\)](#)

F41 Words in s. 65K(1) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 177(1), 306(1)(d)(4); [S.I. 2012/2657, art. 2\(2\)](#)

I ^{F42}**65KA** **Regulator's decision in case of NHS foundation trust** **E+W**

- (1) Within the period of 20 working days beginning with the day on which the regulator receives a final report under section 65I relating to an NHS foundation trust, the regulator must decide whether it is satisfied—
 - (a) that the action recommended in the final report would achieve the objective set out in section 65DA, and
 - (b) that the trust special administrator has carried out the administration duties.
- (2) In subsection (1)(b), “administration duties” means the duties imposed on the administrator by—
 - (a) this Chapter,
 - (b) a direction under this Chapter, or
 - (c) the administrator's terms of appointment.
- (3) If the regulator is satisfied as mentioned in subsection (1), it must as soon as reasonably practicable provide to the Secretary of State—
 - (a) the final report, and
 - (b) the report provided to the regulator by the Care Quality Commission under section 65D(3).
- (4) If the regulator is not satisfied as mentioned in subsection (1), it must as soon as reasonably practicable give a notice of that decision to the administrator.

Status: Point in time view as at 27/03/2012.

Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) Where the regulator gives a notice under subsection (4), sections 65F to 65J apply in relation to the trust to such extent, and with such modifications, as the regulator may specify in the notice.
- (6) The regulator must as soon as reasonably practicable after giving a notice under subsection (4)—
- (a) publish the notice;
 - (b) lay a copy of it before Parliament.

Textual Amendments

F42 Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 177(2)**, 306(1)(d)(4); [S.I. 2012/2657](#), art. 2(2)

65KB Secretary of State's response to regulator's decision E+W

- (1) Within the period of 30 working days beginning with the day on which the Secretary of State receives the reports referred to in section 65KA(3), the Secretary of State must decide whether the Secretary of State is satisfied—
- (a) that the persons to which the NHS foundation trust in question provides services under this Act have discharged their functions for the purposes of this Chapter,
 - (b) that the trust special administrator has carried out the administration duties (within the meaning of section 65KA(1)(b)),
 - (c) that the regulator has discharged its functions for the purposes of this Chapter,
 - (d) that the action recommended in the final report would secure the continued provision of the services provided by the trust to which the objective set out in section 65DA applies,
 - (e) that the recommended action would secure the provision of services that are of sufficient safety and quality to be provided under this Act, and
 - (f) that the recommended action would provide good value for money.
- (2) If the Secretary of State is not satisfied as mentioned in subsection (1), the Secretary of State must as soon as reasonably practicable—
- (a) give the trust special administrator a notice of the decision and of the reasons for it;
 - (b) give a copy of the notice to the regulator;
 - (c) publish the notice;
 - (d) lay a copy of it before Parliament.

Textual Amendments

F42 Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 177(2)**, 306(1)(d)(4); [S.I. 2012/2657](#), art. 2(2)

65KC Action following Secretary of State's rejection of final report E+W

- (1) Within the period of 20 working days beginning with the day on which the trust special administrator receives a notice under section 65KB(2), the administrator must provide

Status: Point in time view as at 27/03/2012.

Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

to the regulator the final report varied so far as the administrator considers necessary to secure that the Secretary of State is satisfied as mentioned in section 65KB(1).

- (2) Where the administrator provides to the regulator a final report under subsection (1), section 65KA applies in relation to the report as it applies in relation to a final report under section 65I; and for that purpose, that section has effect as if—
 - (a) in subsection (1), for “20 working days” there were substituted “10 working days”, and
 - (b) subsection (3)(b) were omitted.
- (3) If the Secretary of State thinks that, in the circumstances, it is not reasonable for the administrator to be required to carry out the duty under subsection (1) within the period mentioned in that subsection, the Secretary of State may by order extend the period.
- (4) If an order is made under subsection (3), the administrator must—
 - (a) publish a notice stating the date on which the period will expire, and
 - (b) where the administrator is proposing to carry out consultation in response to the notice under section 65KB(2), publish a statement setting out the means by which the administrator will consult during the extended period.

Textual Amendments

F42 Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(2\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), art. 2(2)

65KD Secretary of State's response to re-submitted final report E+W

- (1) Within the period of 30 working days beginning with the day on which the Secretary of State receives a final report under section 65KA(3) as applied by section 65KC(2), the Secretary of State must decide whether the Secretary of State is, in relation to the report, satisfied as to the matters in section 65KB(1)(a) to (f).
- (2) If the Secretary of State is not satisfied as mentioned in subsection (1), the Secretary of State must as soon as reasonably practicable—
 - (a) publish a notice of the decision and the reasons for it;
 - (b) lay a copy of the notice before Parliament.
- (3) Where the Secretary of State publishes a notice under subsection (2)(a), subsections (4) to (8) apply.
- (4) If the notice states that the Board has failed to discharge a function—
 - (a) the Board is to be treated for the purposes of this Act as having failed to discharge the function, and
 - (b) the failure is to be treated for those purposes as significant (and section 13Z2 applies accordingly).
- (5) If the notice states that a clinical commissioning group has failed to discharge a function—
 - (a) the group is to be treated for the purposes of this Act as having failed to discharge the function,
 - (b) the Secretary of State may exercise the functions of the Board under section 14Z21(2), (3)(a) and (8)(a), and

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- (c) the Board may not exercise any of its functions under section 14Z21.
- (6) Where, by virtue of subsection (5)(b), the Secretary of State exercises the function of the Board under subsection (3)(a) of section 14Z21, subsection (9)(a) of that section applies but with the substitution for the references to the Board of references to the Secretary of State.
- (7) If the notice states that the trust special administrator has failed to discharge the administration duties (within the meaning of section 65KA(1)(b))—
- (a) the administration duties are to be treated for the purposes of this Act as functions of the regulator,
 - (b) the regulator is to be treated for the purposes of this Act as having failed to discharge those functions, and
 - (c) the failure is to be treated for those purposes as significant (and section 71 of the Health and Social Care Act 2012 applies accordingly, but with the omission of subsection (3)).
- (8) If the notice states that the regulator has failed to discharge a function—
- (a) the regulator is to be treated for the purposes of this Act as having failed to discharge the function, and
 - (b) the failure is to be treated for those purposes as significant (and section 71 of the Health and Social Care Act 2012 applies accordingly, but with the omission of subsection (3)).
- (9) Within the period of 60 working days beginning with the day on which the Secretary of State publishes a notice under subsection (2)(a), the Secretary of State must decide what action to take in relation to the trust.
- (10) The Secretary of State must as soon as reasonably practicable—
- (a) publish a notice of the decision and the reasons for it;
 - (b) lay a copy of the notice before Parliament.]

Textual Amendments

F42 Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(2\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

65L Trusts coming out of administration E+W

- (1) This section applies if the Secretary of State decides under section 65K not to dissolve the trust.
 - (2) The Secretary of State must make an order specifying a date when the appointment of the trust special administrator and the suspension of the chairman and directors of the trust come to an end.
- [For the purposes of subsection (1) in its application to the case of an NHS foundation
- ^{F43}(2A) trust, the reference to section 65K is to be read as a reference to section 65KD(9); and this section also applies in the case of an NHS foundation trust if—
- (a) the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1) in relation to the trust, and

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- (b) the action recommended in the final report is to do something other than dissolve the trust.
- (2B) For the purposes of subsection (2) in its application to the case of an NHS foundation trust—
- (a) the reference to the Secretary of State is to be read as a reference to the regulator, and
 - (b) the reference to the chairman and directors of the trust is to be read as including a reference to the governors.]
- (3) ^{F44}Subsections (4) and (5) apply in the case of a trust which is an NHS trust by virtue of an order made under section 65E(1).]
- (4) ^{F44}The Secretary of State must make an order specifying, in relation to the trust, the matters mentioned in paragraph 5(1)(a) to (c) of Schedule 4 and, where the trust has a significant teaching commitment, the matters mentioned in paragraph 5(1)(d).]
- (5) ^{F44}If it appears to the Secretary of State to be necessary in order to comply with provision made under subsection (4), or made by regulations under paragraph 4 of Schedule 4, the Secretary of State may by order—
- (a) terminate the office of any executive or non-executive director of the trust;
 - (b) appoint a person to be an executive or non-executive director of the trust.]
- [Subsection (7) applies in the case of an NHS foundation trust.
- ^{F45}(6)
- (7) If it appears to the regulator to be necessary in order to comply with Schedule 7, the regulator may by order—
- (a) terminate the office of any governor or of any executive or non-executive director of the trust;
 - (b) appoint a person to be a governor or an executive or non-executive director of the trust.]

Textual Amendments

- F43** S. 65L(2A)(2B) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(3\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)
- F44** S. 65L(3)-(5) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(4\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)
- F45** S. 65L(6)(7) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(5\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

^{F46}65LA Trusts to be dissolved **E+W**

- (1) This section applies if—
- (a) the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1), and
 - (b) the action recommended in the final report is to dissolve the NHS foundation trust in question.
- (2) This section also applies if the Secretary of State decides under section 65KD(9) to dissolve the NHS foundation trust in question.

Status: Point in time view as at 27/03/2012.

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- (3) The regulator may make an order—
- (a) dissolving the trust, and
 - (b) transferring, or providing for the transfer of, the property and liabilities of the trust—
 - (i) to another NHS foundation trust or the Secretary of State, or
 - (ii) between another NHS foundation trust and the Secretary of State.
- (4) An order under subsection (3) may include provision for the transfer of employees of the trust.
- (5) The liabilities that may be transferred to an NHS foundation trust by virtue of subsection (3)(b) include criminal liabilities.]

Textual Amendments

F46 S. 65LA inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(6\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

Supplementary

65M Replacement of trust special administrator E+W

- (1) If a trust special administrator ceases to hold office for any reason before the Secretary of State has made either an order under section 65L(2) or an order dissolving the trust, the Secretary of State must—
- (a) appoint another person as the trust special administrator, and
 - (b) publish the name of the person appointed.
- (2) Where a person is appointed under subsection (1) in relation to a trust, anything done by or in relation to a previous trust special administrator has effect as if done by or in relation to that person, unless the Secretary of State directs otherwise.

65N Guidance E+W

- (1) The Secretary of State must publish guidance for trust special administrators.
- (2) It must include guidance about the publication of notices under sections 65H and 65J.
- (3) It must include guidance about the preparation of draft reports, as to—
- (a) persons to be consulted;
 - (b) factors to be taken into account;
 - (c) relevant publications.

65O Interpretation of this Chapter E+W

In this Chapter—

- “trust special administrator” means a person appointed under section 65B(6) (a) or section 65M(1)(a);

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“working day” means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.]

[^{F47}CHAPTER 5B **E+W**

TRUST SPECIAL ADMINISTRATORS: PRIMARY CARE TRUSTS

Textual Amendments

F47 Pt. 2 Ch. 5B inserted (15.2.2010) by [Health Act 2009 \(c. 21\)](#), ss. 17, 40(1); S.I. 2010/30, art. 3(a)

Appointment

65P Appointment of trust special administrator **E+W**

- (1) The Secretary of State may give directions to a Primary Care Trust requiring the Primary Care Trust to appoint a trust special administrator to exercise on its behalf, to the extent, and subject to any conditions, specified in the directions, such provider functions of the Primary Care Trust as are specified in the directions.
- (2) Directions may be given under subsection (1) only if the Secretary of State considers it appropriate in the interests of the health service.
- (3) The directions must specify—
 - (a) the date when the appointment is to take effect, which must be within the period of 5 working days beginning with the day on which the directions are given, and
 - (b) the name of the person to be appointed.
- (4) Before giving directions under subsection (1) the Secretary of State must consult—
 - (a) the Primary Care Trust,
 - (b) any Strategic Health Authority whose area includes any part of the Primary Care Trust's area, and
 - (c) any other person to which the Primary Care Trust provides goods or services under this Act and which the Secretary of State considers it appropriate to consult.
- (5) The Secretary of State must lay before Parliament (with the instrument containing the directions) a report stating the reasons for giving the directions.
- (6) Where a person is appointed pursuant to directions under subsection (1), the Secretary of State must publish the name of the person appointed.
- (7) A person appointed as a trust special administrator holds and vacates office in accordance with the terms of the appointment.
- (8) Directions under subsection (1) may require the appointment to be on terms specified in the directions.
- (9) The Primary Care Trust may pay the trust special administrator remuneration and expenses in accordance with the terms of the appointment.

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- (10) In this section “provider function” means—
- (a) any function of providing goods or services except to the extent that at the time of the appointment there are arrangements between the Primary Care Trust and another person or body under which the goods or services are, or are to be, provided by that person or body, and
 - (b) any function that is not a function of providing goods or services but that may be exercised for the purposes of a function within paragraph (a).

65Q Displacement of functions **E+W**

- (1) When the appointment of a trust special administrator takes effect, the relevant functions cease to be exercisable by any committee, sub-committee or officer of the Primary Care Trust by whom they were previously exercisable.
- (2) Subsection (1) does not affect the employment of any officer of the Primary Care Trust.
- (3) In this Chapter “relevant functions” means the functions of the Primary Care Trust exercisable by the trust special administrator.]

CHAPTER 6 **E+W**

MISCELLANEOUS

Intervention orders and default powers

66 Intervention orders **E+W**

- (1) This section applies to NHS bodies other than NHS foundation trusts.
- (2) If the Secretary of State—
 - (a) considers that a body to which this section applies is not performing one or more of its functions adequately or at all, or that there are significant failings in the way the body is being run, and
 - (b) is satisfied that it is appropriate for him to intervene under this section,
 he may make an order under this section in respect of the body (an “intervention order”).
- (3) An intervention order may make any provision authorised by section 67 (including any combination of such provisions).

67 Effect of intervention orders **E+W**

- (1) In this section—
 - (a) “member” means a member of a Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board, or a member of the board of directors of an NHS trust,
 - (b) “employee member” means a member of a Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board who is an officer of the body, or an executive director of an NHS trust.
- (2) An intervention order may provide for the removal from office of—

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- (a) all the members, or
 - (b) those specified in the order,and for their replacement with individuals specified in or determined in accordance with the order (who need not be the same in number as the removed individuals).
- (3) An intervention order may provide for the suspension (either wholly, or in respect only of powers and duties specified in or determined in accordance with the order) of—
 - (a) all the members, or
 - (b) those specified in the order,and for the powers of the suspended members to be exercised, and their duties performed, during their suspension by individuals specified in or determined in accordance with the order (who need not be the same in number as the suspended individuals).
- (4) The powers and duties referred to in subsection (3) are, in the case of an employee member, only those which he has in his capacity as a member.
- (5) An intervention order may contain directions to the body to which it relates to secure that a function of the body specified in the directions—
 - (a) is performed, to the extent specified in the directions, on behalf of the body and at its expense, by such person as is specified in the directions, and
 - (b) is so performed in such a way as to achieve such objectives as are so specified, and the directions may require that any contract or other arrangement made by the body with that person contains such terms and conditions as may be so specified.
- (6) If the person referred to in subsection (5)(a) is a body to which section 66 applies, the functions of that body include the performance of the functions specified in the directions under subsection (5).
- (7) Subsection (8) applies in relation to any provision in this Act, or in any order or regulations made, or directions given, under this Act, relating to—
 - (a) the membership of the body to which an intervention order relates (or in the case of an NHS trust to the membership of its board of directors), or
 - (b) the procedure of the body.
- (8) The intervention order may provide in relation to any provision specified in the order—
 - (a) that it does not apply in relation to the body while the order remains in force, or
 - (b) that it applies in relation to the body, while the order remains in force, with modifications specified in the order.
- (9) An intervention order may contain such supplementary directions to the body to which it relates as the Secretary of State considers appropriate for the purpose of giving full effect to the order.

68 **Default powers** **E+W**

- (1) This section applies to NHS bodies other than NHS foundation trusts.
- (2) If the Secretary of State considers that a body to which this section applies—
 - (a) has failed to carry out any functions conferred or imposed on it by or under this Act, or

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- (b) has in carrying out those functions failed to comply with any regulations or directions relating to those functions,
he may after such inquiry as he considers appropriate make an order declaring it to be in default.
- (3) The members of the body in default must immediately vacate their office, and the order—
 - (a) must provide for the appointment, in accordance with the provisions of this Act, of new members of the body, and
 - (b) may contain such provisions as seem to the Secretary of State expedient for authorising any person to act in the place of the body pending the appointment of new members.
- (4) An order under this section may contain such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient, including—
 - (a) provision for the transfer to the Secretary of State of property and liabilities of the body in default, and
 - (b) where any such order is varied or revoked by a subsequent order, provision in the subsequent order for the transfer to the body in default of any property or liabilities acquired or incurred by the Secretary of State in discharging any of the functions transferred to him.

Protection of members and officers of health service bodies

69 Protection from personal liability E+W

- (1) Section 265 of the Public Health Act 1875 (c. 55) (which relates to the protection of members and officers of certain authorities) has effect as if there were included in the authorities referred to in that section a reference to an NHS body.
- (2) Any reference in that section to the Public Health Act 1875 has effect as if it included a reference to this Act and the National Health Service (Wales) Act 2006 (c. 42).

Transfer of residual liabilities

70 Transfer of residual liabilities E+W

- (1) If a Strategic Health Authority, a Primary Care Trust, an NHS trust or a Special Health Authority ceases to exist, the Secretary of State must exercise his functions so as to secure that all of the body's liabilities (other than any criminal liabilities) are dealt with.
- (2) A liability is dealt with by being transferred to an NHS body, the Secretary of State or the Welsh Ministers.

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Losses and liabilities of certain health service bodies

71 Schemes for meeting losses and liabilities etc of certain health service bodies E

+W

- (1) The Secretary of State may by regulations made with the consent of the Treasury establish a scheme whereby any of the bodies [^{F48}or other persons] specified in subsection (2) may make provision to meet—
- (a) expenses arising from any loss of or damage to their property, and
 - (b) liabilities to third parties for loss, damage or injury arising out of the carrying out of the functions of the bodies [^{F48}or other persons] concerned.

- (2) The bodies [^{F49} and other persons] referred to in subsection (1) are—
- (a) Strategic Health Authorities,
 - (b) Primary Care Trusts,
 - (c) NHS trusts,
 - (d) Special Health Authorities,
 - (e) NHS foundation trusts,
 - (f) [^{F50}the Care Quality Commission] , and
 - (g) the Health Protection Agency,
 - ^{F51}(h) the Secretary of State, and
 - (i) a body or other person (other than a body or other person within any of paragraphs (a) to (h)) providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within any of paragraphs (a) to (h),]

but a scheme under this section may limit the class or description of bodies which [^{F52}, or other persons who,] are eligible to participate in it.

^{F53}(2A) In subsection (1)(b) “functions”—

- (a) in relation to the Secretary of State, means the Secretary of State's functions in connection with the health service;
- (b) in relation to a body or other person within paragraph (i) of subsection (2), means the body's or person's functions of providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within any of paragraphs (a) to (h) of that subsection.]

- (3) A scheme under this section may, in particular—
- (a) provide for the scheme to be administered by the Secretary of State or by a Strategic Health Authority, Primary Care Trust, NHS trust, Special Health Authority or NHS foundation trust specified in the scheme,
 - (b) require any body which [^{F54}, or other person who,] participates in the scheme to make payments in accordance with the scheme, and
 - (c) provide for the making of payments for the purposes of the scheme by the Secretary of State [^{F55} (whether or not a participator in the scheme and, if a participator, whether or not required to make payments as a participator)].

- (4) If the Secretary of State so directs, a body which is eligible to participate in a scheme must do so.

^{F56}(5) The Secretary of State may make a direction under subsection (4) in respect of a body only if the body is within any of paragraphs (a) to (d), (f) and (g) of subsection (2).]

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- (6) Where a scheme provides for the scheme to be administered by the Secretary of State, a Strategic Health Authority, Primary Care Trust, NHS trust, Special Health Authority or NHS foundation trust must carry out such functions in connection with the administration of the scheme by the Secretary of State as he may direct.
- (7) Subsections (4) and (6) do not affect any other power of direction of the Secretary of State.
- (8) A person or body administering a scheme under this section does not require permission under any provision of the Financial Services and Markets Act 2000 (c. 8) as respects activities carried out under the scheme.
- [^{F57}(9) In subsection (2)(i), the reference to a person providing health services does not include a person providing health services under a contract of employment.
- (10) In this section “health services” means services provided as part of the health service.]

Textual Amendments

- F48** Words in s. 71(1) inserted (1.10.2008) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 142(2)**, 170(3)(4); S.I. 2008/2497, art. 5
- F49** Words in s. 71(2) inserted (1.10.2008) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 142(3)(a)**, 170(3)(4); S.I. 2008/2497, art. 5
- F50** Words in s. 71(2)(f) substituted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), s. 170(3)(4), **Sch. 5 para. 85**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)
- F51** S. 71(2)(h)(i) inserted (1.10.2008) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 142(3)(b)**, 170(3)(4); S.I. 2008/2497, art. 5
- F52** Words in s. 71(2) inserted (1.10.2008) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 142(3)(c)**, 170(3)(4); S.I. 2008/2497, art. 5
- F53** S. 71(2A) inserted (1.10.2008) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 142(4)**, 170(3)(4); S.I. 2008/2497, art. 5
- F54** Words in s. 71(3)(b) inserted (1.10.2008) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 142(5)(a)**, 170(3)(4); S.I. 2008/2497, art. 5
- F55** Words in s. 71(3)(c) inserted (1.10.2008) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 142(5)(b)**, 170(3)(4); S.I. 2008/2497, art. 5
- F56** S. 71(5) substituted (1.10.2008) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 142(6)**, 170(3)(4); S.I. 2008/2497, art. 5
- F57** S. 71(9)(10) inserted (1.10.2008) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 142(7)**, 170(3)(4); S.I. 2008/2497, art. 5

Modifications etc. (not altering text)

- C1** S. 71(2) modified (temp.) (1.10.2008) by [Health and Social Care Act 2008 \(Consequential Amendments and Transitory Provisions\) Order 2008 \(S.I. 2008/2250\)](#), arts. 1(1), **3(15)**

Co-operation between NHS bodies

72 Co-operation between NHS bodies **E+W**

It is the duty of NHS bodies to co-operate with each other in exercising their functions.

Status: Point in time view as at 27/03/2012.

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Directions and regulations under this Part

73 Directions and regulations under this Part **E+W**

- (1) This section applies to directions and regulations under any of—
- (a) section 7,
 - (b) section 8,
 - (c) section 14,
 - (d) section 15,
 - (e) section 19,
 - (f) section 20,
 - (g) section 29.
- (2) Except in prescribed cases, the directions and regulations must not preclude a person or body by whom the function is exercisable apart from the directions or regulations from exercising the function.

Status:

Point in time view as at 27/03/2012.

Changes to legislation:

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